

Court were to determine at some later time that any of Ildefonso's claims are procedurally defaulted, it would be because Ildefonso did not fairly present the claims in Nebraska's state courts and not merely because Respondent raised the issue. Indeed, even if the Court denied leave to amend, it would be free to address the procedural-default issues on its own motion.

Ildefonso also argues allowing Respondent's proposed amendment is meritless because his actual-innocence claim is sufficient to excuse any procedural default of his claims. (Filing No. 41 at ECF 13.) The Court cannot determine whether Ildefonso's claims are procedurally defaulted without carefully reviewing the voluminous state court records filed by Respondent in this case, a task the undersigned judge will not undertake until this matter is fully submitted for disposition. However, it is clear from the record before the court that Respondent's proposed amendment is not plainly meritless. Accordingly,

IT IS ORDERED:

1. Respondent's Motion to Amend (Filing No. 37) is granted. As set forth in NECivR 15.1(c), "[t]he granting of the motion for leave to amend does not constitute filing the amended pleading. If granted leave to amend, the party must then file the amended pleading."; and
2. Ildefonso's Objection (Filing No. 41) is overruled.

DATED this 5th day of September, 2014.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge