

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

MARCO E. TORRES, JR.,

Petitioner,

vs.

SCOTT FRAKES, Director, Nebraska
Department of Correctional Services,

Respondent.

4:17CV3078

ORDER

This matter is before the Court on Petitioner, Marco Torres, Jr.’s, Motion Requesting Additional Relevant State Court Documents to be Filed ([Filing No. 21](#)) and the Motion to Amend Petition for Writ of Habeas Corpus ([Filing No. 26](#)). No response in opposition to the motions was filed by Respondent.

Petitioner requests leave to amend Claim 4 of his petition that challenges the constitutionality of his death sentences under the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States Constitution. Petitioner’s proposed amendment “clarifies and expands the arguments contained in subpart Claim 4I related to the legislative repeal and re-imposition of the death penalty.” Petitioner believes the amendment will “more accurately reflect” the claims raised in his recently filed state court motion for post-conviction relief. ([Filing No. 26](#)). After review of Petitioner’s motion and proposed amendment, and for good cause shown, Petitioner is granted leave to file the proposed Amendment to the Petition ([Filing No. 26-1](#)).

Petitioner has also filed a motion requesting that the Respondent file the following additional court documents:

- Bill of Exceptions Exhibit Folder 9 (exhibits 175-198)
 - Includes law enforcement records documenting the investigation offered as exhibits to the state court in support of Petitioner’s ineffective assistance of counsel and *Brady* claims, which are raised in this federal habeas petition in Claims 6 and Claim 8.
 - Includes sign-in sheets from the Salvation Army offered to the state court relevant to Petitioner’s Claim 6B, raising ineffective assistance of trial counsel for failing to investigate and present evidence contradicting the State’s timeline of events and supporting his claim of innocence.

- Other exhibits Petitioner asserts are relevant to Claim 1, raising ineffective assistance of trial counsel at the sentencing phase for failing to investigate and present mitigating evidence, and to Claim 6, raising ineffective assistance of trial counsel during guilt phase.
- Bill of Exceptions Exhibit Folder 10 (exhibits 199-201)
 - Includes depositions offered in the state court proceedings that Petitioner asserts are relevant to his claims of ineffective assistance of trial counsel during guilt and sentencing phases and his *Brady* claim.
- Bill of Exceptions Exhibit Folder 11 (exhibits 202-205)
 - Includes depositions and trial counsel's billing records offered in state court proceedings relevant to Petitioner's ineffectiveness of trial counsel at the guilt and sentencing phases and *Brady* claims.
- The juror questionnaires for the serving jurors (including alternates).
 - Petitioner asserts the juror questionnaires are relevant to his claim that the jury convicted based upon improper factors and that trial counsel ineffectively failed to protect his right to a fair and impartial jury.
 - Petitioner also believes it may be a relevant factor in the court's determination of whether a claim is exhausted.

[\(Filing No. 21\)](#). Petitioner represents that these records are part of the state court record on file with the Hall County District Court Clerk, and believes they are indispensable to this court's review of the reasonableness of the state court decisions. Upon review of Petitioner's motion, the Court finds he has adequately identified additional state court records and explained why they are relevant to his claims. Accordingly,

IT IS ORDERED:

1. Petitioner's Motion to Amend Petition for Writ of Habeas Corpus ([Filing No. 26](#)) is granted. Petitioner shall file the Amendment to Petition ([Filing No. 26-1](#)) on or before January 19, 2018.
2. Respondent shall file an answer or other responsive pleading within thirty days of the filing of the Amendment to Petition.
3. Petitioner's Motion Requesting Additional Relevant State Court Documents to be Filed ([Filing No. 21](#)) is granted. Respondent shall file the requested additional documents on or before February 28, 2018.

Dated this 10th day of January, 2018.

BY THE COURT:

s/ Michael D. Nelson
United States Magistrate Judge