UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ELIZABETH K. CARLEY, a.k.a. MELISSA ARIAS,

Petitioner,

v.

JO GENTRY, et al.,

Respondents.

Case No. 2:14-cv-02097-JCM-BNW

ORDER

Before the court are petitioner's motion for leave to conduct discovery (ECF No. 82), respondents' opposition (ECF No. 86), and petitioner's reply (ECF No. 87). The court grants the motion in part.

Rule 6(a) of the Rules Governing Section 2254 Cases in the United States District Courts allows the court to authorize discovery, and the court may limit the extent of the discovery. If, through "specific allegations before the court," the petitioner can "show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate that [she] is . . . entitled to relief, it is the duty of the court to provide the necessary facilities and procedures for an adequate inquiry." Bracy v. Gramley, 520 U.S. 899, 908-09 (1997) (quoting Harris v. Nelson, 394 U.S. 286, 300 (1969)).

Carley wants a clean, complete copy of the discovery provided to her in her state-court criminal case. Over the years, pages from documents have been lost. Also, Carley was charged

with using a fake Texas driver's license to try to change the personal identification number on a casino's player card. However, Carley's only copy of the driver's license is nothing but a black rectangle. ECF No. 82 at 5-6. Carley thus seeks to subpoena the Clark County District Attorney's Office, the Nevada State Gaming Control Board, and the Las Vegas Metropolitan Police Department for any and all records or evidence related to her case. ECF No. 82 at 4-5. Respondents agree that Carley should have a clean, complete copy of the discovery. ECF No. 86 at 5.

Respondents raise other objections to petitioner's request. First, they warn that the agencies' record-retention period for these documents have expired. ECF No. 86 at 4. That is no reason to deny an otherwise valid discovery request. If an agency has destroyed the documents, then the agency can so respond. Second, respondents argue that the request is overbroad, asking for any and all evidence related to the case, instead of a copy of the discovery provided during the state-court criminal case. ECF No. 86 at 4. Carley notes that she phrased the request the way that she did to ensure that the state agencies provide all the relevant materials and do not withhold documents. ECF No. 87 at 2. Carley describes in detail what she wants the agencies to produce, but without limitation. It is unlikely that the Las Vegas Metropolitan Police Department or the Nevada State Gaming Control Board have any documents other than what Carley describes. Third, respondents argue that the request as phrased can include confidential work product of the Clark County District Attorney's Office. ECF No. 86 at 4. The court agrees with Carley that if the Clark County District Attorney's Office finds confidential work product, then they can submit a privilege log. Respondents' objections do not persuade the court to limit the discovery request.

Respondents have filed an unopposed motion for extension of time to respond to third amended petition for writ of habeas corpus (first request) (ECF No. 88). Respondents ask the court to set the deadline to file a response to Monday, August 30, 2021. That deadline would occur before the deadline that the court is setting for completion of discovery. Instead of extending the time to respond to the third amended petition, which might then either need further extension or become moot based upon what Carley learns from discovery, the court will suspend briefing on the third amended petition until completion of any post-discovery motions.

IT THEREFORE IS ORDERED petitioner's motion for discovery (ECF No. 82) is **GRANTED**. Discovery must be completed within 90 days from the date of entry of this order. Petitioner will have 30 days from the completion of discovery to file and serve any appropriate motion.

IT FURTHER IS ORDERED that respondents' unopposed motion for extension of time to respond to third amended petition for writ of habeas corpus (first request) (ECF No. 88) is **GRANTED**. Respondents need not respond to the third amended petition (ECF No. 80) until further order of the court.

DATED: June 4, 2021.

JAMES C. MAHAN
United States District Judge