

1 the 2012 motion that the public defender was engaged in an ongoing representation of
2 the victim in another case. ECF No. 22-3. Warenback acknowledges that he was
3 notified of the motion at the time it was filed. Moreover, even assuming, arguendo, that
4 Warenback was unaware of the victim's criminal case in 2012, he acknowledges that he
5 became aware of it when respondents filed a copy of the motion as an exhibit to their
6 first motion to dismiss. Those exhibits were filed in June, 2016, and Warenback offers
7 no explanation whatsoever as to why he waited almost two years to try to add a claim
8 based on the existence of the juvenile criminal case. He fails to demonstrate that the
9 factual basis for this claim could not have been discovered earlier through due
10 diligence. 28 U.S.C. § 2244(d)(1)(D).

11 IT IS THEREFORE ORDERED that petitioner's motion for leave to file an
12 amended petition **(ECF No. 69) is DENIED.**

13 IT IS FURTHER ORDERED that petitioner's motion for certificate of appealability
14 **(ECF No. 71) is DENIED.**

15 IT IS FURTHER ORDERED that respondents' motion to extend time to respond
16 to the motion for leave to amend **(ECF No. 70) is GRANTED *nunc pro tunc*.**

17 IT IS FURTHER ORDERED that respondents' motion for extension of time to file
18 their answer to the petition **(ECF No. 73) is GRANTED.** Respondents shall file their
19 answer within **forty-five (45) days** of the date of this order.

20 DATED: 4 May 2018.

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24 ANDREW P. GORDON
25 UNITED STATES DISTRICT JUDGE
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