

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Manuel Melendez,

Petitioner

V.

Dwight Neven, et al.,

Respondents

Case No.: 2:15-cv-02076-JAD-VCF

Order Granting Motions for Leave to File a First- and Second-Amended Petition; and Denying as Moot Respondents' Motion to Dismiss

[ECF Nos. 16, 42, 43]

10 I previously granted petitioner Manuel Melendez’s motion for appointment of counsel
11 and appointed the Federal Public Defender to represent him in his pursuit of a writ of habeas
12 corpus under 28 U.S.C. § 2254.¹ I also directed Melendez to respond to the pending dismissal
13 motion or file a notice that he intends to amend his petition.² Melendez intends to amend his
14 petition, and he moves for leave to file a first-amended petition and, potentially, a second-
15 amended petition after his counsel has had an opportunity to investigate Melendez’s claims.³

16 Basically, Melendez wants to file an initial, counseled amended petition, preserving all
17 then-known claims and avoiding relation-back issues, and he wants preemptive leave to file a
18 potential second-amended petition after his newly appointed counsel has had a full opportunity
19 to investigate all of his claims. This two-step process has been authorized before in this district,⁴
20 and I find that it is appropriate in this case.

¹ ECF Nos. 39, 41.

2 ECF No. 41.

³ ECF Nos. 42, 43.

⁴ See, e.g., *McMahon v. Neven*, Case No. 2:14-cv-00076-APG-CWH, ECF No. 29 (D. Nev. May 29, 2014) (approving and explaining the court’s rationale in allowing a bifurcated amendment procedure in habeas cases where the limitation period may expire before federal habeas counsel would be able to conduct a complete investigation). I express no opinion as to the putative expiration date of the limitation period in this case.

1 Accordingly, IT IS HEREBY ORDERED that Melendez's motions for leave to file a
2 first-amended petition [ECF No. 42] and for leave to file a second-amended petition [ECF No.
3 43] are GRANTED.

4 The Clerk of Court is directed to DETACH and FILE Melendez's first-amended
5 petition [ECF No. 42-21].

6 IT IS FURTHER ORDERED that Melendez has until June 8, 2018, to file a second-
7 amended petition. I make no implied finding regarding the expiration of the federal limitation
8 period or a basis for tolling until this deadline. Melendez at all times remains responsible for
9 calculating the running of the federal limitation period and timely asserting claims, without
10 regard to any deadlines established in this order. By setting a deadline to amend the petition, I
11 make no finding or representation that the petition, its amendments, or its claims are not subject
12 to dismissal as untimely.⁵

13 IT IS FURTHER ORDERED that respondents' motion to dismiss the original petition
14 [ECF No. 16] is DENIED as moot in light of this order.⁶

15 IT IS FURTHER ORDERED that respondents DO NOT yet have to respond to the
16 first-amended petition. If Melendez files a second-amended petition, respondents will have 60
17 days from the date of service to respond to it. If Melendez chooses not to file a second-
18 amended petition, then respondents will have until August 6, 2018, to respond to the first-
19 amended petition. Melendez will have 30 days from the date of service of a response to reply.
20 The local rules govern the briefing schedule for all motions, including motions that are filed in
21 lieu of a pleading.

22 Dated: March 8, 2018

23 
24 U.S. District Judge Jennifer A. Dorsey
25

26 ⁵ See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

27 ⁶ See *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989)
28 ("[A]n amended pleading supersedes the original.").