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**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]

I previously granted petitioner Manuel Melendez's motion for appointment of counsel and appointed the Federal Public Defender to represent him in his pursuit of a writ of habeas corpus under 28 U.S.C. § 2254.<sup>1</sup> I also directed Melendez to respond to the pending dismissal motion or file a notice that he intends to amend his petition.<sup>2</sup> Melendez intends to amend his petition, and he moves for leave to file a first-amended petition and, potentially, a second-amended petition after his counsel has had an opportunity to investigate Melendez's claims.<sup>3</sup>

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

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<sup>1</sup> ECF Nos. 39, 41.

<sup>2</sup> ECF No. 41.

<sup>3</sup> ECF Nos. 42, 43.

<sup>4</sup> 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.<sup>5</sup>

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.**<sup>6</sup>

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

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25  
26 U.S. District Judge Jennifer A. Dorsey

27 <sup>5</sup> See *Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

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