

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARCUS SHARIF MCNEAL,

Petitioner

v.

BRIAN E. WILLIAMS, et al.,

Respondents

Case No.: 2:16-cv-01618-JAD-GWF

Order

In my order on respondents' motion to dismiss, I gave Petitioner Marcus Sharif McNeal three options with respect to his mixed petition: (1) move to dismiss his unexhausted claims and proceed on the exhausted claims in his petition; (2) move to dismiss the entire petition so he could return to state court to exhaust his unexhausted claims; or (3) move for other appropriate relief. The time originally set for McNeal to make his election has expired without any election made. McNeal now indicates that he did not receive my order on respondents' motion to dismiss until it was re-sent by the Clerk pursuant to my order of November 19, 2018.¹ He states that if I were to allow him to make his election still, he would choose to dismiss his unexhausted claims and proceed on his exhausted claims. McNeal's request to make an untimely election will be granted, and the unexhausted claims in the petition will therefore be dismissed.

McNeal also indicates that, despite filing a motion to amend his petition,² he does not want to amend his petition. Rather, he wants to supplement it, adding the claims in the proposed amended petition to the original petition.³ Accordingly, I construe the motion to amend⁴ as a motion to supplement. Respondents no longer need to file a supplement to their response to the

¹ ECF No. 44.

² ECF No. 39.

³ The proposed amended petition is located at ECF No. 42.

⁴ ECF No. 39

1 motion to amend as previously directed and may instead simply respond to the motion to
2 supplement⁵ by December 21, 2018.

3 Accordingly, IT IS ORDERED that McNeal's request to make an untimely election is
4 GRANTED, and his request to dismiss the unexhausted claims from this action is also
5 GRANTED. As discussed more specifically in my order of August 27, 2018, **the following**
6 **claims are therefore DISMISSED WITHOUT PREJUDICE as unexhausted: (1) Ground 2,**
7 **in part; (2) Ground 4; (3) Ground 5; (4) Ground 6; (5) Ground 7, in part; (6) Ground 8, in**
8 **part; (7) Ground 9, in part; (8) Ground 10, in part; (9) Ground 11, in part; (10) Ground 12,**
9 **in part; (11) Ground 13, in part; (12) Ground 15, in part; (13) Ground 16; (14) Ground 17;**
10 **(15) Ground 18, in part; (16) Ground 19; (17) Ground 21; and (18) Ground 22.**

11 IT IS FURTHER ORDERED that McNeal's motion to amend [ECF No. 39] is
12 construed as a motion to supplement, and respondents have until December 21, 2018, to
13 respond in a single document to McNeal's requests to supplement his petition [ECF Nos. 39
14 & 44].

15 Dated: December 2, 2018

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U.S. District Judge Jennifer A. Dorsey

⁵ ECF Nos. 39 & 44