

1 RENE L. VALLADARES
 Federal Public Defender
 2 Nevada State Bar No. 11479
 C.B. KIRSCHNER
 3 Assistant Federal Public Defender
 4 Pennsylvania Bar No. 92998
 411 E. Bonneville, Ste. 250
 5 Las Vegas, Nevada 89101
 (702) 388-6577
 6 (702) 388-6419 (Fax)
 7 CB_Kirschner@fd.org

8 Attorneys for Petitioner Ray Antonio Azcarate

9
 10 UNITED STATES DISTRICT COURT
 11 DISTRICT OF NEVADA

12 RAY ANTONIO AZCARATE,
 13 Petitioner,
 14 v.
 15 BRIAN WILLIAMS, et al.,
 16 Respondents.

Case No. 2:17-cv-02190-RFB-GWF

**UNOPPOSED MOTION FOR
 EXTENSION OF TIME TO FILE A
 FIRST AMENDED PETITION FOR
 WRIT OF HABEAS CORPUS**

(Second Request)

18
 19 Petitioner, Ray Azcarate, by and through counsel, C.B. Kirschner, Assistant
 20 Federal Public Defender, moves this Court for an extension of time of sixteen (16)
 21 days from April 23, 2018, to and including May 9, 2018, to file a First Amended
 22 Petition for Writ of Habeas Corpus. This motion is based upon the attached points
 23 and authorities and all pleadings and papers on file herein.

24 ///
 25 ///
 26 ///

1 **POINTS AND AUTHORITIES**

2 1. On or about November 8, 2007, Ray Antonio Azcarate was sentenced to
3 two, consecutive sentences of life imprisonment without the possibility of parole,
4 following his conviction for murder with use of a deadly weapon. On August 4, 2017,
5 he filed a Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 by a
6 Person in State Custody (Not Sentenced to Death). ECF No. 1-1. Mr. Azcarate
7 remains incarcerated at High Desert State Prison.

8 2. On October 25, 2017, this Court appointed the Office of the Federal
9 Public Defender as counsel for Mr. Azcarate. ECF No. 6. Undersigned counsel, C.B.
10 Kirschner, filed a Notice of Representation on November 22, 2017. ECF No. 9.

11 3. This Court further granted leave for counsel to file an Amended
12 Petition for Writ of Habeas Corpus. ECF No. 6. The Amended Petition is currently
13 due April 23, 2018. Petitioner now requests an additional sixteen (16) days, up to
14 and including May 9, 2018, to file the Amended Petition. This is the second request
15 for an extension of time.

16 4. The additional period of time is necessary in order to effectively
17 represent Mr. Azcarate. This motion is filed in the interests of justice and not for
18 the purposes of unnecessary delay.

19 5. Since being appointed to this case, counsel's office has been working
20 diligently to assemble all necessary materials in order to file a complete and
21 accurate Amended Petition.

22 6. Counsel has also had to meet filing deadlines on several other cases:
23 *Hazelwood v. Skolnik*, 3:14-cv-00022-LRH-WGC, Reply to Answer filed March 7,
24 2018; *Rodney v. Baker*, 17-15438, Opening Brief to Ninth Circuit filed March 29,
25 2018; *Taukitoku v. Filson*, 3:16-cv-00762-HDM-WGC, Amended Petition and Motion
26 for Discovery filed April 3, 2018; *Sanchez-Dominguez v. Baker*, 3:17-cv-00053-HDM-

1 WGC, Opposition to Motion to Dismiss filed April 10, 2018; and *Flowers v. State*,
2 53159 & 55759, Motion to Reinstate Appeals to Nevada Supreme Court filed April
3 18, 2018. Counsel also has another Amended Petition that must be filed in *Barron-*
4 *Aguilar v. Wickham*, 3:17-cv-00548-MMD-VPC, before the expiration of the AEDPA
5 statute of limitations on May 4, 2018.

6 7. On April 19, 2018, Deputy Attorney General Natasha Gebrael was
7 contacted via email and stated that she did not object to the extension, but the lack
8 of objection should not be construed as a waiver of any procedural defenses, nor as a
9 concession that any amended petition will be considered timely filed, nor as a basis
10 for equitable tolling.

11 8. For the above stated reasons, Petitioner respectfully requests this
12 Court grant the request for an extension of time of sixteen (16) days and order the
13 Amended Petition to be filed on or before May 9, 2018.

14 Dated this 23rd day of April, 2018.

15 Respectfully submitted,
16 RENE L. VALLADARES
17 Federal Public Defender

18 /s/ CB Kirschner

19 C.B. KIRSCHNER
20 Assistant Federal Public Defender

21
22 IT IS SO ORDERED:

23
24 
25 RICHARD F. BOULWARE, II
26 United States District Judge

DATED this 24th day of April, 2018.

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on April 23, 2018, I electronically filed the foregoing with
3 the Clerk of the Court for the United States District Court, District of Nevada by
4 using the CM/ECF system.

5 Participants in the case who are registered CM/ECF users will be served by
6 the CM/ECF system and include: Natasha M. Gabrael.

7 I further certify that some of the participants in the case are not registered
8 CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage
9 pre-paid, or have dispatched it to a third party commercial carrier for delivery within
10 three calendar days, to the following non-CM/ECF participants:

11 Ray Antonio Azcarate
12 No. 62962
13 High Desert State Prison
14 PO Box 650
Indian Springs, NV 89070

15 /s/ Dayron Rodriguez
16 An Employee of the
17 Federal Public Defender
18
19
20
21
22
23
24
25
26