

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARIO HERRADA-GONZALEZ,

Petitioner,

v.

JERRY HOWELL, et al.,

Respondents.

Case No. 2:20-cv-01013-GMN-DJA

ORDER

The Federal Public Defender has filed a notice of appearance on petitioner's behalf (ECF No. 8). The court will formally appoint the Federal Public Defender.

Petitioner also has filed a motion for leave to file first amended protective petition (ECF No. 9) and a motion for scheduling order (ECF No. 10). The court grants these motions.

IT THEREFORE IS ORDERED that the Federal Public Defender is appointed as counsel for petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent petitioner in all federal proceedings related to this matter, including any appeals or certiorari proceedings, unless allowed to withdraw.

IT FURTHER IS ORDERED that petitioner's motion for leave to file first amended protective petition (ECF No. 9) is **GRANTED**. Petitioner must file the counseled first amended protective petition and supporting exhibits within seven (7) days from the date of entry of this order.

1 IT FURTHER IS ORDERED that petitioner's motion for scheduling order (ECF No. 10)
2 is **GRANTED**.

3 IT FURTHER IS ORDERED that petitioner will have until up to and including one
4 hundred twenty (120) days from entry of this order within which to file a second amended
5 petition and/or seek other appropriate relief. Neither the foregoing deadline nor any extension
6 thereof signifies or will signify any implied finding as to the expiration of the federal limitation
7 period and/or of a basis for tolling during the time period established. Petitioner always remains
8 responsible for calculating the running of the federal limitation period and timely asserting
9 claims, without regard to any deadlines established or extensions granted herein. That is, by
10 setting a deadline to amend the petition and/or by granting any extension thereof, the court makes
11 no finding or representation that the petition, any amendments thereto, and/or any claims
12 contained therein are not subject to dismissal as untimely. See Sossa v. Diaz, 729 F.3d 1225,
13 1235 (9th Cir. 2013).

14 IT FURTHER IS ORDERED that respondents must file a response to the second amended
15 petition, including potentially by motion to dismiss, within sixty (60) days of service of a second
16 amended petition and that petitioner may file a reply within thirty (30) days of service of an
17 answer. The response and reply time to any motion filed by either party, including a motion filed
18 in lieu of a pleading, will be governed instead by Local Rule LR 7-2(b).

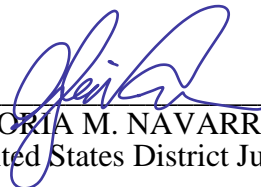
19 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the
20 counseled second amended petition must be raised together in a single consolidated motion to
21 dismiss. In other words, the court does not wish to address any procedural defenses raised herein
22 either in serial fashion in multiple successive motions to dismiss or embedded in the answer.
23 Procedural defenses omitted from such motion to dismiss will be subject to potential waiver.
24 Respondents must not file a response in this case that consolidates their procedural defenses, if
25 any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any
26 unexhausted claims clearly lacking merit. If respondents do seek dismissal of unexhausted claims
27 under § 2254(b)(2): (a) they must do so within the single motion to dismiss not in the answer; and
28 (b) they must specifically direct their argument to the standard for dismissal under § 2254(b)(2)

1 set forth in Cassett v. Stewart, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural
2 defenses, including exhaustion, must be included with the merits in an answer. All procedural
3 defenses, including exhaustion, instead must be raised by motion to dismiss.

4 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must
5 specifically cite to and address the applicable state court written decision and state court record
6 materials, if any, regarding each claim within the response as to that claim.

7 IT FURTHER IS ORDERED that, notwithstanding Local Rule LR IC 2-2(g), paper copies
8 of any electronically filed exhibits need not be provided to chambers or to the staff attorney,
9 unless later directed by the court.

10 DATED: July 8, 2020

11 
12 _____
13 GLORIA M. NAVARRO
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28