

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

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

JOSE L. ECHAVARRIA, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
E.K. McDANIEL, *et al.*, )  
 )  
Respondents. )  
/

3:98-cv-0202-RLH-VPC

**ORDER**

This order is issued pursuant to Federal Rule of Civil Procedure 16(b), the Rules Governing Section 2254 Cases in the United States District Courts, and Local Rule 16-1.

This action is a petition for writ of habeas corpus brought by Jose L. Echavarria, a Nevada prisoner sentenced to death. Echavarria initiated this action on April 17, 1998. The action was stayed on March 25, 2007, to allow Echavarria an opportunity to exhaust claims in state court. On July 12, 2011, the stay was lifted.

**IT IS ORDERED:**

1. **Amended Petition.** If necessary, petitioner shall file and serve an amended petition for a writ of habeas corpus on or before **November 18, 2011**. The amended petition shall contain all known grounds for relief, both exhausted and unexhausted. The amended petition shall specifically state whether each ground for relief has been exhausted in state court; for each claim that has been exhausted in state court, the amended petition shall state how, when, and where that

1 occurred. If petitioner determines that an amended petition need not be filed, then, when the  
2 amended petition is due, petitioner shall file and serve a statement to that effect.

3       2.       **Response to Petition.** Respondents shall have **60 days** following service of the  
4 amended petition to file and serve an answer or other response to the amended petition. If petitioner  
5 does not file an amended petition, respondents shall have **60 days** following the due-date for the  
6 amended petition to file and serve an answer or other response to the original petition.

7       3.       **Reply and Response to Reply.** Petitioner shall have **45 days** following service of  
8 an answer to file and serve a reply. Respondents shall thereafter have **30 days** following service of a  
9 reply to file and serve a response to the reply.

10       4.       **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner  
11 shall have **30 days** following service of the motion to file and serve an opposition to the motion.  
12 Respondents shall thereafter have **30 days** following service of the opposition to file and serve a  
13 reply.

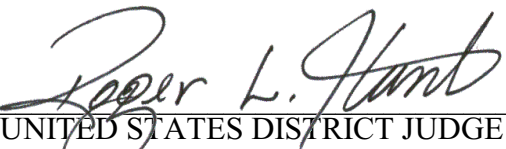
14       5.       **Discovery.** If petitioner wishes to move for leave to conduct discovery, petitioner  
15 shall file and serve such motion concurrently with, but separate from, the response to respondents'  
16 motion to dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery  
17 filed by petitioner before that time may be considered premature, and may be denied, without  
18 prejudice, on that basis. Respondents shall file and serve a response to any such motion concurrently  
19 with, but separate from, their reply in support of their motion to dismiss or their response to  
20 petitioner's reply. Thereafter, petitioner shall have 20 days to file and serve a reply in support of the  
21 motion for leave to conduct discovery. If the court grants petitioner leave to conduct discovery, the  
22 court will then establish time limits for the completion of the authorized discovery.

23       6.       **Evidentiary Hearing.** If petitioner wishes to request an evidentiary hearing,  
24 petitioner shall file and serve a motion for an evidentiary hearing concurrently with, but separate  
25 from, the response to respondents' motion to dismiss or the reply to respondents' answer. Any  
26 motion for an evidentiary hearing filed by petitioner before that time may be considered premature,

1 and may be denied, without prejudice, on that basis. The motion for an evidentiary hearing must  
2 specifically address why an evidentiary hearing is required, and must meet the requirements of  
3 28 U.S.C. § 2254(e). The motion must state whether an evidentiary hearing was held in state court,  
4 and, if so, state where the transcript is located in the record. If petitioner files a motion for an  
5 evidentiary hearing, respondents shall file and serve a response to that motion concurrently with, but  
6 separate from, their reply in support of their motion to dismiss or their response to petitioner's reply.  
7 Thereafter, petitioner shall have 20 days to file and serve a reply in support of the motion for an  
8 evidentiary hearing.

9         **7. Status Reports and Status Conferences.** The court may from time to time, as the  
10 need arises, schedule status conferences, and/or require the filing and service of status reports, in  
11 order to manage the progress of this action.

12  
13 Dated this 17<sup>th</sup> day of August, 2011.

14  
15   
16 \_\_\_\_\_  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26