

2

3

4

5

6

DISTRICT OF NEVADA

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

[Dockets.Justia.com](https://www.dockets.justia.com)

1 On May 29, 2015, Nika also filed a Motion to Stay Setting of Execution Date (ECF No. 63).
2 In that motion, Nika notifies the court that a hearing has been set in state court for July 1, 2015, for
3 the purpose of setting a date for Nika's execution pursuant to his death sentence. *See* Motion to Stay
4 Setting of Execution Date, p. 2. Nika requests that this court "enter an order staying the setting of
5 an execution date for Mr. Nika pending resolution of the instant federal proceedings." *Id.* at 5. On
6 June 1, 2015, respondents filed a notice of non-opposition to that motion (ECF No. 67).

7 Congress has granted federal courts "before whom a habeas corpus proceeding is pending"
8 authority to stay any proceeding "for any matter involved in the habeas corpus proceeding":

9 A justice or judge of the United States before whom a habeas corpus proceeding is
10 pending, may, before final judgment or after final judgment of discharge, or pending
11 appeal, stay any proceeding against the person detained in any State court or by or
under the authority of any State for any matter involved in the habeas corpus
proceeding.

12 28 U.S.C. § 2251(a)(1); *see also Lonchar v. Thomas*, 517 U.S. 314, 320 (1996) ("[I]f the district
13 court cannot dismiss the petition on the merits before the scheduled execution, it is obligated to
14 address the merits and must issue a stay to prevent the case from becoming moot."). Therefore, to
15 prevent Nika's federal habeas corpus petition from becoming moot on account of his execution
16 before it is finally resolved, and good cause appearing, the court will grant Nika's motion for an
17 order staying the setting of his execution date.

18 **IT IS THEREFORE ORDERED** that petitioner's Motion to Vacate Stay and Reopen
19 Federal Habeas Corpus Proceedings (ECF No. 62) is **GRANTED**. The stay of this action is lifted.
20 The clerk of the court shall update the docket for this case accordingly.

21 **IT IS FURTHER ORDERED** that the following schedule shall govern further litigation of
22 this action:

23 1. **Second Amended Petition.** If necessary, petitioner shall file and serve a second
24 amended petition for writ of habeas corpus within **45 days** after entry of this order. The second
25 amended petition shall specifically state whether each ground for relief has been exhausted in state
26 court; for each claim that has been exhausted in state court, the second amended petition shall state

1 how, when, and where that occurred. If petitioner determines that a second amended petition need
2 not be filed, then, within 45 days after entry of this order, petitioner shall file and serve a statement
3 to that effect.

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

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

12 4. **Briefing of Motion to Dismiss.** If respondents file a motion to dismiss, petitioner
13 shall have **60 days** following service of the motion to file and serve a response to the motion.
14 Respondents shall thereafter have **30 days** following service of the response to file and serve a reply.


15 5. **Discovery.** If petitioner wishes to move for leave to conduct discovery, petitioner
16 shall file and serve such motion concurrently with, but separate from, the response to respondents'
17 motion to dismiss or the reply to respondents' answer. Any motion for leave to conduct discovery
18 filed by petitioner before that time may be considered premature, and may be denied, without
19 prejudice, on that basis. Respondents shall file and serve a response to any such motion concurrently
20 with, but separate from, their reply in support of their motion to dismiss or their response to
21 petitioner's reply. Thereafter, petitioner shall have 20 days to file and serve a reply in support of the
22 motion for leave to conduct 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 **IT IS FURTHER ORDERED** that petitioner's Motion to Stay Setting of Execution Date
10 (ECF No. 63) is **GRANTED**. The setting of an execution date for Avram Vineto Nika, the
11 petitioner in this federal habeas corpus action, is stayed, pending the final resolution of this action.

12
13 Dated June 18, 2015.

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