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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA
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7 FERNANDO NAVARRO HERNANDEZ,

8 Petitioner,

9 v.

10 WILLIAM GITTERE, *et al.*,

11 Respondents.
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Case No. 3:09-cv-00545-LRH-WGC

ORDER DENYING
MOTION FOR EXTENSION OF TIME
(ECF NO. 235)

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14 In this capital habeas corpus action, the Respondents filed a motion to dismiss
15 on December 24, 2019 (ECF No. 224). Petitioner Fernando Navarro Hernandez,
16 represented by appointed counsel, filed an opposition to the motion to dismiss on
17 June 8, 2020 (ECF No. 234). Respondents' reply is due July 8, 2020. See Order
18 entered February 20, 2015 (ECF No. 94) (30 days for reply).

19 With his response to the motion to dismiss, Hernandez filed a motion for
20 extension of time (ECF No. 235), requesting a 90-day extension of time, to
21 September 6, 2020, to file a motion for leave to conduct discovery. Under the
22 scheduling order in this case, entered February 20, 2015 (ECF No. 94), any motion for
23 leave to conduct discovery related to the motion to dismiss was due on the same date
24 as the opposition to the motion to dismiss.

25 The motion to dismiss and Hernandez's response to it raise predominantly legal
26 issues. It appears the main issues are whether the three new claims pled in
27 Hernandez's Fifth Amended Petition (ECF No. 221) relate back to the filing of his
28 original petition for purposes of application of the statute of limitations, and whether the

1 three new claims have been exhausted in state court. Those are issues that can be
2 resolved based upon the record on file in this action. Hernandez does make an
3 argument that he is entitled to equitable tolling, but that argument does not appear to
4 turn on any factual allegations that would warrant discovery. In short, there is no
5 indication, in the motion to dismiss, Hernandez's response to that motion, or
6 Hernandez's motion for extension of time, that discovery relative to the motion to
7 dismiss is warranted.

8 Hernandez's counsel states in the motion for extension of time that he needs to
9 speak with Hernandez about the contemplated motion for leave to conduct discovery
10 before filing it, and, because of complications caused by the COVID-19 pandemic, he
11 needs 90 days to do that. Under the circumstances, with no suggestion why discovery
12 might be required with respect to the motion to dismiss, the Court finds that Hernandez
13 does not show good cause for such a delay of this action. The Court will deny
14 Hernandez's motion for extension of time. However, in case Hernandez still wishes to
15 file a motion for leave to conduct discovery relative to the motion to dismiss, without
16 such delay, the Court will grant a short extension of time for the filing of the discovery
17 motion, and, in turn, Respondents' reply in support of their motion to dismiss and their
18 response to any discovery motion filed by Hernandez.

19 This order has no impact on the question of any discovery Hernandez may wish
20 to seek relative to the merits of any of the three new claims. To the extent those new
21 claims survive the motion to dismiss, they will be subject to merits briefing, likely
22 including at least a supplement to Respondents' answer and a supplement to
23 Hernandez's reply. Under the scheduling order (ECF No 95), Hernandez would then be
24 able to seek discovery relative to the merits of those claims if he believes it warranted.
25 Such a motion for leave to conduct discovery relative to the merits of the new claims
26 would be due with Hernandez's supplement to his reply.

1 **IT IS THEREFORE ORDERED** that Petitioner's motion for extension of time
2 (ECF No. 235) is **DENIED**.

3 **IT IS FURTHER ORDERED** that Petitioner will have 7 days from the date of this
4 order to file any motion for leave to conduct discovery relative to the pending motion to
5 dismiss. After such motion is filed, or after that deadline passes without any such motion
6 filed, Respondents will have 30 days to file a reply in support of their motion to dismiss
7 and a response to any motion for leave to conduct discovery.

8 **IT IS FURTHER ORDERED** that, in all other respects, the schedule for further
9 proceedings set forth in the order entered February 20, 2015 (ECF No. 94) will remain
10 in effect.

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12 DATED THIS 9th day of June, 2020.



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LARRY R. HICKS,
UNITED STATES DISTRICT JUDGE