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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FERNANDO NAVARRO HERNANDEZ,

Petitioner,

v.

WILLIAM REUBART, *et al.*,

Respondents.

Case No. 3:09-cv-00545-LRH-CSD

ORDER

In this capital habeas corpus action, the respondents filed an answer on July 14, 2021 (ECF No. 285), and the petitioner, Fernando Navarro Hernandez, represented by appointed counsel, filed a reply on May 4, 2022 (ECF No. 301). Along with his reply, on May 4, 2022, Hernandez filed a motion for leave to conduct discovery (ECF No. 305) and a motion for evidentiary hearing (ECF No. 304).

Respondents were then to file a response to Hernandez’s reply, and responses to his two motions, by June 3, 2022. See Order entered February 20, 2015 (ECF No. 94 (scheduling order)). On June 3, 2022, Respondents filed a motion for extension of time (ECF No. 306), requesting a 60-day extension of those deadlines.

On May 23, 2022, the United States Supreme Court decided *Shinn v. Ramirez*, ___ U.S. ___, 2022 WL 1611786 (2022) (factual development in support of procedurally defaulted claim of ineffective assistance of trial counsel, under *Martinez v. Ryan*, 566 U.S. 1 (2012), subject to requirements of 28 U.S.C. § 2254(e)(2)). It appears to the Court that *Shinn* may substantially affect the positions of the parties with respect to many of Hernandez’s claims of ineffective assistance of trial counsel. Recognizing the effect that *Shinn* may have with regard to many of Hernandez’s claims, the Court will require the parties to amend their answer and reply (as opposed to supplementing their

1 pleadings), so that the resulting briefing will be clear. The amended answer and reply
2 will be treated as superseding the original pleadings; therefore, they should be drafted
3 to be complete in themselves, without reference to the original answer and reply.

4 Furthermore, it appears that *Shinn* may substantially affect Hernandez's motion
5 for leave to conduct discovery and motion for evidentiary hearing. The Court will,
6 therefore, deny, as moot, and without prejudice, those motions filed by Hernandez on
7 May 4, 2022 (ECF Nos. 304, 305). Hernandez may file a new motion for leave to
8 conduct discovery and/or a new motion for evidentiary hearing with his amended reply,
9 as contemplated in the scheduling order entered February 20, 2015 (ECF No. 94).

10 The Court will set a due date for Respondents' amended answer. Beyond that,
11 the schedule for Hernandez's amended reply, any motion for leave to conduct discovery
12 and/or motion for evidentiary hearing, and other further briefing, will be governed by the
13 order entered on February 20, 2015 (ECF No. 94).

14 **IT IS THEREFORE ORDERED** that Respondents' Motion for Enlargement of
15 Time (ECF No. 306) is **DENIED** as moot.

16 **IT IS FURTHER ORDERED** that Petitioner's Motion for Evidentiary Hearing (ECF
17 No. 304) and Motion for Leave to Conduct Discovery (ECF No. 305) are **DENIED**, as
18 moot, and without prejudice.

19 **IT IS FURTHER ORDERED** that Respondents will have 60 days from the date of
20 this order to file an amended answer. In all other respects, the schedule for further
21 proceedings will be governed by the order entered February 20, 2015 (ECF No. 94) (45
22 days for amended reply, etc.).

23
24 DATED THIS 28th day of June, 2022.

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27 LARRY R. HICKS
28 UNITED STATES DISTRICT JUDGE