

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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GILBERT DEMETRIUS AGUILAR,

Case No. 3:12-cv-00397-MMD-WGC

Petitioner,

v.

ORDER

RENEE BAKER, *et al.*

Respondents.

15 This habeas corpus action was stayed on May 19, 2015 (ECF No. 60), pending
16 the petitioner's exhaustion of claims in state court.

17 On May 13, 2016, the petitioner, Gilbert Demetrius Aguilar, filed a motion to lift
18 the stay (ECF No. 64). In that motion, Aguilar states that the state-court proceedings
19 have concluded. Respondents did not respond to Aguilar's motion to lift the stay.

20 The Court will grant Aguilar's motion to lift the stay. The Court will also set a
21 schedule for further litigation of this action.

22 It is therefore ordered that petitioner's Motion to Lift Stay (ECF No. 64) is
23 granted. The stay of this action is vacated.

24 It is further ordered that the Clerk of the Court reopen this case.

25 It is further ordered that the following schedule will govern the further litigation of
26 this action:

27 1. Amended Petition. If necessary, petitioner will file and serve a third amended
28 petition for writ of habeas corpus within thirty (30) days after entry of this order. The

1 third amended petition must specifically state whether each ground for relief has been
2 exhausted in state court; for each claim that has been exhausted in state court, the third
3 amended petition must state how, when, and where that occurred. If petitioner
4 determines that a third amended petition need not be filed, then, within thirty (30) days
5 after entry of this order, petitioner must file and serve a statement to that effect.

6 2. Response to Petition. Respondents will have sixty (60) days following service
7 of the third amended petition to file and serve an answer or other response to the third
8 amended petition. If petitioner does not file a third amended petition, respondents will
9 have sixty (60) days following the due-date for the third amended petition to file and
10 serve an answer or other response to petitioner's second amended petition.

11 3. Reply and Response to Reply. Petitioner will have forty-five (45) days
12 following service of an answer to file and serve a reply. Respondents will thereafter
13 have thirty (30) days following service of a reply to file and serve a response to the
14 reply.

15 4. Briefing of Motion to Dismiss. If respondents file a motion to dismiss,
16 petitioner will have sixty (60) days following service of the motion to file and serve a
17 response to the motion. Respondents will thereafter have thirty (30) days following
18 service of the response to file and serve a reply.

19 5. Discovery. If petitioner wishes to move for leave to conduct discovery,
20 petitioner must file and serve such motion concurrently with, but separate from, the
21 response to respondents' motion to dismiss or the reply to respondents' answer. Any
22 motion for leave to conduct discovery filed by petitioner before that time may be
23 considered premature, and may be denied, without prejudice, on that basis.
24 Respondents must file and serve a response to any such motion concurrently with, but
25 separate from, their reply in support of their motion to dismiss or their response to
26 petitioner's reply. Thereafter, petitioner will have twenty (20) days to file and serve a
27 reply in support of the motion for leave to conduct discovery.

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

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15 DATED THIS 6th day of June 2016.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE