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8 **IN THE UNITED STATES DISTRICT COURT**
 9 **FOR THE DISTRICT OF NEVADA**

10 OMAR RUEDA-DENVERS,
 11 Petitioner,
 12 vs.
 13 RENEE BAKER, *et al.*,
 14 Respondents.

Case No. 3:13-cv-00309-MMD-WGC
**THIRD STIPULATION TO ALTER
 OR AMEND JUDGMENT**

15 Petitioner Omar Rueda-Denvers and Respondents Renee Baker, *et al.*, stipulate to request this
 16 Court modify the deadline for commencement of the retrial of Rueda-Denvers until September 1, 2021.
 17 This stipulation is based upon the provisions of Rules 59(e) and Rule 60 of the Federal Rules of Civil
 18 Procedure, along with all other papers, documents, records, pleadings and other materials on file herein.

19 **POINTS AND AUTHORITIES**

20 On January 14, 2019, this Court entered an order conditionally granting Ground 2 of the first-
 21 amended federal habeas petition. ECF No. 53 at 28-29. The Court vacated the judgment of conviction
 22 and ordered Rueda-Denvers released from custody unless the State filed a written election within that
 23 time to retry Rueda-Denvers, and the jury selection in retrial to commence 120 days thereafter. *Id.* at 29.
 24 The Court provided the period was “subject to reasonable request for modification of the time periods in
 25 the judgment by either party pursuant to Rules 59 or 60.” *Id.* at 29-30. The corrected judgment issued on
 26 January 15, 2019 reiterated the 120-day provisions. ECF No. 56.

27 Respondents filed the notice of election to retry on February 12, 2019. ECF No. 59. Therefore,
 28 the 120-day period expired on June 12, 2019.

1 The state district court scheduled the retrial to commence on June 24, 2019. Rueda-Denvers'
2 defense counsel, Christopher Oram, and the prosecutor, Christopher Hamner, jointly informed
3 Respondents' counsel that pursuant to mutual agreement, they sought to continue the trial date.
4 Specifically, Mr. Oram required additional time to prepare and Mr. Hamner agreed to continue the matter
5 to late May or early June, 2020. *See* ECF No. 62.

6 In anticipation of the new trial date, the parties submitted a stipulation to extend the 120-day
7 period set by this Court to hold the retrial to July 1, 2020 based upon the representations of Mr. Oram
8 and Mr. Hamner. ECF No. 62. This Court granted the extension. ECF No. 63.

9 The state trial court scheduled the retrial to start on June 15, 2020. ECF No. 64-1. However, due
10 to the COVID-19 pandemic and the continuation of all trial dates by the state courts, Mr. Oram and Mr.
11 Hamner requested a new trial date in January 2021. *See id.*; ECF No. 64. Based upon their request,
12 Petitioner and Respondents again stipulated to continue the period to February 28, 2021. ECF No. 64.
13 This Court granted the extension. ECF No. 65. The state court ultimately scheduled the retrial for
14 February 8, 2021. Exhibit C attached.

15 On January 20, 2021, Mr. Oram requested an additional six months within which to hold the
16 retrial. Exhibit C. Mr. Hamner responded that the State was ready to proceed but did not object to Mr.
17 Oram's request. *Id.* The trial court moved the retrial date to August 16, 2021.

18 Based upon the representations of Mr. Oram and Mr. Hamner and the new date of retrial in the
19 state trial court, both Petitioner and Respondents believe a continuance beyond the current time period
20 imposed by this Court is appropriate and that this Court should amend its judgment to reflect such

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1 continuance. The parties therefore stipulate to request this Court amend the judgment to permit retrial of
2 this matter by September 1, 2021, which will accommodate the new retrial date in the state court.

3 RESPECTFULLY SUBMITTED this 5th day of February, 2021.

4 AARON D. FORD
5 Attorney General

6 By: /s/ Heather D. Procter
HEATHER D. PROCTER (Bar. No. 8621)
7 Chief Deputy Attorney General

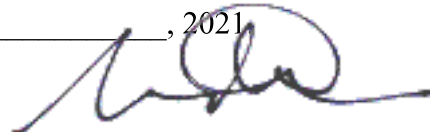
8 RENE L. VALLADARES
Federal Public Defender

9 By: /s/ T. Kenneth Lee
10 T. Kenneth Lee (Bar. No. 0065158)
Assistant Federal Public Defenders

11 **ORDER**

12 IT IS SO ORDERED.

13 Dated this 8th day of February, 2021

14 

15 _____
16 DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 5th day of February, 2021, I served a copy of the foregoing **THIRD STIPULATION TO ALTER OR AMEND JUDGMENT**, by U.S. District Court CM/ECF electronic filing to:

T. Kenneth Lee
Assistant Federal Public Defenders
411 E Bonneville Ave. Ste. 250
Las Vegas, Nevada 89101
ken_lee@fd.org

/s/ Amanda White

EXHIBIT C

EXHIBIT C

Heather D. Procter

From: Jessie Folkestad <jfolkestad@christopheroramlaw.com>
Sent: February 5, 2021 9:36 AM
To: Ken Lee
Cc: Chris Oram; Christopher Hamner; Heather D. Procter
Subject: Re: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

Good morning,

The Court set the retrial for Mr. Denvers for August 16, 2021. If you would be able to obtain a stipulation extending the retrial deadline until this date, we would greatly appreciate it.

Thank you,

Jessie

On Wed, Jan 27, 2021 at 3:32 PM Ken Lee <Ken_Lee@fd.org> wrote:

Awesome. Thanks Chris.

From: Christopher Oram <contact@christopheroramlaw.com>
Sent: Wednesday, January 27, 2021 1:31 PM
To: Ken Lee <Ken_Lee@fd.org>
Cc: Christopher Hamner <christopher.hamner@clarkcountyda.com>; jfolkestad@christopheroramlaw.com; Heather D. Procter <HProcter@ag.nv.gov>
Subject: Re: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

Sounds good, should have a date to you next Wednesday.

On Jan 27, 2021, at 3:24 PM, Ken Lee <Ken_Lee@fd.org> wrote:

Hi Chris:

I think the federal court is going to want us to put in the new trial date. So, once you provide us that information, we will file the stip.

Thanks,

Ken

--

Jessie L. Folkestad, Esq.

The Law Office of Christopher R. Oram
520 South 4th Street,
Second Floor
Las Vegas, Nevada 89101
(702) 598-1471

Heather D. Procter

From: Heather D. Procter
Sent: January 20, 2021 4:13 PM
To: Christopher Hamner; Jessie Folkestad
Cc: Christopher Oram; Ken Lee
Subject: RE: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

Thank you. I will forward a draft stipulation for an additional extension to Mr. Lee shortly.

From: Christopher Hamner <Christopher.Hamner@clarkcountyda.com>
Sent: January 20, 2021 2:20 PM
To: Jessie Folkestad <jfolkestad@christopheroramlaw.com>; Heather D. Procter <HProcter@ag.nv.gov>
Cc: Christopher Oram <contact@christopheroramlaw.com>; Ken Lee <Ken_Lee@fd.org>
Subject: RE: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

If six months is what the defense needs that is fine with the State. We will be ready for that setting.

Thank you.

Chris Hamner

From: Jessie Folkestad <jfolkestad@christopheroramlaw.com>
Sent: Wednesday, January 20, 2021 12:44 PM
To: Heather D. Procter <HProcter@ag.nv.gov>
Cc: Christopher Hamner <Christopher.Hamner@clarkcountyda.com>; Christopher Oram <contact@christopheroramlaw.com>; Ken Lee <Ken_Lee@fd.org>
Subject: Re: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

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Great, thank you. Six months is good for me, if that is okay with the state.

Chris

On Jan 20, 2021, at 2:38 PM, Heather D. Procter <HProcter@ag.nv.gov> wrote:

I will be happy to do so. How much additional time will you need beyond February?

Heather D. Procter
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From: Christopher Hamner <Christopher.Hamner@clarkcountyda.com>
Sent: January 20, 2021 9:13 AM
To: Christopher Oram <contact@christopheroramlaw.com>
Cc: Heather D. Procter <HProcter@ag.nv.gov>; Jessie Folkestad <jfolkestad@christopheroramlaw.com>; Ken Lee <Ken_Lee@fd.org>
Subject: Re: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

The State confirms that it was ready to proceed to trial but is amenable to moving the trial date after speaking with defense counsel.

Sent from my iPhone

On Jan 20, 2021, at 9:01 AM, Christopher Oram <contact@christopheroramlaw.com> wrote:

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Good morning,

I believe the parties are both agreeable to extending this matter again due to COVID concerns. Would you be able to assist us again with a stipulation giving us more time to try it?

Thank you,

Chris

On Mon, Jan 4, 2021 at 11:04 AM Heather D. Procter <HProcter@ag.nv.gov> wrote:

Thanks Chris!

From: Christopher Oram <contact@christopheroramlaw.com>
Sent: January 4, 2021 8:30 AM
To: Heather D. Procter <HProcter@ag.nv.gov>
Cc: Christopher Hamner <Christopher.Hamner@clarkcountyda.com>; Jessie Folkestad

<jfolkestad@christopheroramlaw.com>; Ken Lee <Ken_Lee@fd.org>

Subject: Re: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

Good morning,

I have been in contact with Chris Hamner and we are taking it day by day but will keep you updated as it gets closer or if we hear anything.

Chris

On Tue, Dec 29, 2020 at 2:52 PM Heather D. Procter <HProcter@ag.nv.gov> wrote:

Good afternoon. We previously requested an extension of the federal court deadline through February 28, 2021, for the Rueda-Denvers retrial. I notice on the 8th JD website that the trial is still scheduled for February 8, 2021. As we are about 60 days out, I wanted to follow-up to see if you felt the February 8th trial date would go. I will follow-up at 30 days before, but I wanted to plant the thought in advance. Thank you and I hope you enjoy(ed) your holidays!

Heather

From: Heather D. Procter

Sent: April 14, 2020 2:28 PM

To: 'Christopher Oram' <contact@christopheroramlaw.com>

Cc: Ken Lee <Ken_Lee@fd.org>; Christopher Hamner <Christopher.Hamner@clarkcountyda.com>; Jessie Folkestad <jfolkestad@christopheroramlaw.com>

Subject: RE: Omar Rueda-Denvers, Retrial (3:13-cv-00309-MMD-WGC)

Enclosed are the USDC second stipulation and order extending the time to hold trial to February 28, 2021. Thank you!

Heather D. Procter

Chief Deputy Attorney General, Post-Conviction Division