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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

FERNANDO GALLEGOS,

Petitioner,

Case No. 3:15-cv-00254-RCJ-VPC

v.

ORDER

ISIDRO BACA, et al.,

Respondents.

This habeas matter comes before the court on petitioner Fernando Gallegos' counseled motion for leave to file a third-amended petition (ECF No. 36).

Counsel for Gallegos indicates that respondents correctly point out in their motion to dismiss that Gallegos made an error in time calculation, and his protective petition was filed four days late. *Id.* at 2. Gallegos, therefore, recognizes that the protective petition is "unavailable as a relation-back anchor." *Id.* He seeks leave to file a third-amended petition in order to eliminate claims for which there is no credible relation-back argument. *Id.* Respondents oppose on the basis that they have already expended the effort and resources to file a motion to dismiss (ECF No. 37). Good cause appearing, Gallegos' motion for leave to file a third-amended petition is granted. The court shall dismiss respondents' motion to dismiss without prejudice and with leave renew as respondents deem appropriate.

**IT IS THEREFORE ORDERED** that petitioner's motion for leave to file a third-amended petition (ECF No. 36) is **GRANTED**. Within **thirty (30) days** of the date of this order, petitioner shall file and serve his third-amended petition.

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**IT IS FURTHER ORDERED** that an answer or other responsive pleading and any subsequent response thereto by petitioner, shall be filed as set forth in the scheduling order dated December 18, 2015 (ECF No. 10).

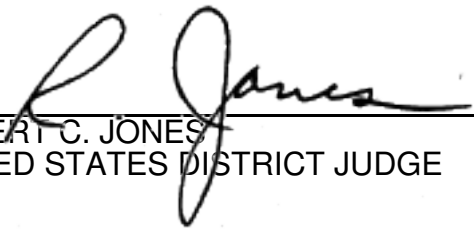
**IT IS FURTHER ORDERED** that petitioner's motion for leave to file exhibit under seal (ECF No. 27) is **GRANTED**.

**IT IS FURTHER ORDERED** that respondents' motion to dismiss (ECF No. 30) is **DENIED without prejudice**.

**IT IS FURTHER ORDERED** that petitioner's motion for extension of time to file an opposition to the motion to dismiss (ECF No. 35) is **DENIED** as moot.

**IT IS FURTHER ORDERED** that petitioner's motion for extension of time to file a second-amended petition (ECF No. 22) is **GRANTED nunc pro tunc**.

Dated: This 16<sup>th</sup> day of February, 2017.

  
ROBERT C. JONES  
UNITED STATES DISTRICT JUDGE