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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOEL CARDENAS,

Petitioner,

Case No. 3:15-cv-00476-MMD-VPC

ORDER

v.

DWIGHT NEVEN, *et al.*,

Respondents.

Following the entry of appearance (ECF No. 24) by the Federal Public Defender:

It is ordered that the Federal Public Defender, through S. Alex Spelman, Esq., is appointed as counsel for Petitioner pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel will represent Petitioner in all federal proceedings related to this matter, including any appeals or *certiorari* proceedings, unless allowed to withdraw.

It is further ordered that Petitioner will have until and including ninety (90) days from entry of this Order within which to file an amended petition and/or seek other appropriate relief, including a renewed motion to stay and abey, a motion to dismiss his unexhausted claims, or a motion to dismiss the entire Petition without prejudice so that Petitioner may return to state court to exhaust his claims. Neither the foregoing deadline nor any extension thereof signifies or will signify any implied finding as to the expiration of the federal limitation period and/or of a basis for tolling during the time period established. Petitioner at all times remains responsible for calculating the running of the federal limitation period and timely asserting claims, without regard to any deadlines established or extensions granted herein. That is, by setting a deadline to amend the

1 Petition and/or by granting any extension thereof, the Court makes no finding or  
2 representation that the Petition, any amendments thereto, and/or any claims contained  
3 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235  
4 (9th Cir. 2013).

5 It is further ordered that Respondents must file a response to any amended  
6 petition, including potentially by motion to dismiss, within sixty (60) days of service of the  
7 amended petition and that Petitioner may file a reply thereto within thirty (30) days of  
8 service of the answer. The response and reply time to any motion filed by either party,  
9 including a motion filed in lieu of a pleading, will be governed instead by LR 7-2(b).

10 It is further ordered that any procedural defenses raised by Respondents to the  
11 counseled amended petition must be raised together in a single consolidated motion to  
12 dismiss. Procedural defenses omitted from such motion to dismiss will be subject to  
13 potential waiver. Respondents must not file a response in this case that consolidates their  
14 procedural defenses, if any, with their response on the merits, except pursuant to 28  
15 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondents  
16 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must do so within  
17 the single motion to dismiss not in the answer; and (b) they must specifically direct their  
18 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,  
19 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
20 exhaustion, should be included with the merits in an answer. All procedural defenses,  
21 including exhaustion, instead must be raised by motion to dismiss.

22 It is further ordered that, in any answer filed on the merits, Respondents must  
23 specifically cite to and address the applicable state court written decision and state court  
24 record materials, if any, regarding each claim within the response as to that claim.

25 It is further ordered that any state court record and related exhibits filed herein by  
26 either Petitioner or Respondents must be filed with a separate index of exhibits identifying  
27 the exhibits by number. The CM/ECF attachments that are filed further must be identified  
28 by the number or numbers of the exhibits in the attachment. If the exhibits filed will span

1 more than one ECF Number in the record, the first document under each successive ECF  
2 Number must be either another copy of the index, a volume cover page, or some other  
3 document serving as a filler, so that each exhibit under the ECF Number thereafter will  
4 be listed under an attachment number (i.e., Attachment 1, 2, etc.).

5 DATED THIS 22<sup>nd</sup> day of June 2018.



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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE

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