

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

RAY PINEDA,

Case No. 3:16-cv-00187-RCJ-WGC

v

Petitioner,

ORDER

BRIAN WILLIAMS, et al.,

Respondents.

14 Petitioner Ray Pineda has submitted a *pro se* petition for writ of habeas corpus
15 pursuant to 28 U.S.C. § 2254. His application to proceed *in forma pauperis* (ECF No. 2)
16 shall be granted. The court has reviewed the petition pursuant to Habeas Rule 4, and it
17 shall be docketed and served on respondents.

18 A petition for federal habeas corpus should include all claims for relief of which
19 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be
20 forever barred from seeking federal habeas relief upon that claim. See 28 U.S.C.
21 §2254(b) (successive petitions). If petitioner is aware of any claim not included in his
22 petition, he should notify the court of that as soon as possible, perhaps by means of a
23 motion to amend his petition to add the claim.

24 Petitioner has also submitted a motion for appointment of counsel (ECF No. 1-2).
25 There is no constitutional right to appointed counsel for a federal habeas corpus
26 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999
27 F.2d 425, 428 (9th Cir.1993). The decision to appoint counsel is generally
28 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481

1 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), cert. denied, 469
2 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case
3 are such that denial of counsel would amount to a denial of due process, and where the
4 petitioner is a person of such limited education as to be incapable of fairly presenting his
5 claims. *See Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th
6 Cir.1970). Here, Pineda's petition appears sufficiently clear in presenting the issues
7 that he wishes to raise, and the legal issues are not particularly complex. Therefore,
8 counsel is not justified. Pineda's motion is denied.

9 **IT IS THEREFORE ORDERED** that petitioner's application to proceed *in forma*
10 *pauperis* (ECF No. 2) is **GRANTED**.

11 **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**
12 **SERVE** the petition (ECF No. 1-1) on the respondents.

13 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
14 Attorney General, as counsel for respondents.

15 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
16 including potentially by motion to dismiss, within **ninety (90) days** of service of the
17 petition, with any requests for relief by petitioner by motion otherwise being subject to
18 the normal briefing schedule under the local rules. Any response filed shall comply with
19 the remaining provisions below, which are entered pursuant to Habeas Rule 5.

20 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
21 in this case shall be raised together in a single consolidated motion to dismiss. In other
22 words, the court does not wish to address any procedural defenses raised herein either
23 *in seriatum* fashion in multiple successive motions to dismiss or embedded in the
24 answer. Procedural defenses omitted from such motion to dismiss will be subject to
25 potential waiver. Respondents shall not file a response in this case that consolidates
26 their procedural defenses, if any, with their response on the merits, except pursuant to
27 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If

1 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall
2 do so within the single motion to dismiss not in the answer; and (b) they shall
3 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
4 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
5 procedural defenses, including exhaustion, shall be included with the merits in an
6 answer. All procedural defenses, including exhaustion, instead must be raised by
7 motion to dismiss.

8 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
9 shall specifically cite to and address the applicable state court written decision and state
10 court record materials, if any, regarding each claim within the response as to that claim.

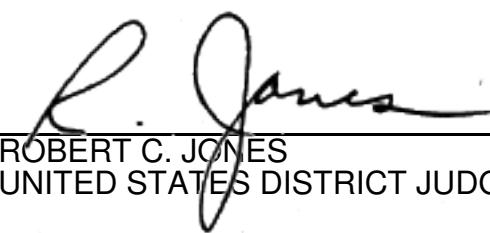
11 **IT IS FURTHER ORDERED** that petitioner shall have **forty-five (45) days** from
12 service of the answer, motion to dismiss, or other response to file a reply or opposition,
13 with any other requests for relief by respondents by motion otherwise being subject to
14 the normal briefing schedule under the local rules.

15 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
16 herein by either petitioner or respondents shall be filed with a separate index of exhibits
17 identifying the exhibits by number. The CM/ECF attachments that are filed further shall
18 be identified by the number of the exhibit in the attachment.

19 **IT IS FURTHER ORDERED** that the parties SHALL SEND courtesy copies of all
20 exhibits in this case to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501, directed
21 to the attention of "Staff Attorney" on the outside of the mailing address label.
22 Additionally, in the future, all parties shall provide courtesy copies of any additional
23 exhibits submitted to the court in this case, in the manner described above.

24 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
25 (ECF No. 3) is **DENIED**.

26 DATED: 12 October 2016.
27


28 ROBERT C. JONES
UNITED STATES DISTRICT JUDGE