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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA

10 NICHOLAS HACHENEY,

11 Petitioner,

12 v.

13 MIKE OBENLAND,

14 Respondent.

CASE NO. 3:15-CV-05492-RBL-DWC

ORDER GRANTING MOTION FOR
LEAVE TO AMEND

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16 The District Court has referred this action to United States Magistrate Judge David W.
17 Christel. Petitioner Nicholas Hachenev, through court-appointed counsel Jeffrey E. Ellis, filed his
18 federal habeas Petition (“Petition”), pursuant to 28 U.S.C. § 2254, seeking relief from a state court
19 conviction. Dkt. 1. Presently pending before the Court is Petitioner’s Motion for Leave to Amend
20 Habeas Petition (“Motion”). Dkt. 35.

21 **BACKGROUND**

22 On July 16, 2015, Petitioner filed his Petition raising six grounds for relief. *See* Dkt. 1.
23 After review of the Petition, the Court concluded Petitioner’s fifth ground for relief (“Ground 5”)
24 raised a *Brady* violation, which had not been exhausted. *See* Dkt. 34. On May 11, 2016, the Court

1 ordered Petitioner to show cause why Ground 5 should not be denied based on a failure to exhaust
2 and procedural default. Dkt. 34. On May 23, 2016, Petitioner filed the Motion, which the Court
3 interprets as a response to the Order to Show Cause, stating he intended to raise Ground 5 as a
4 Confrontation Clause violation. Dkt. 35. He now seeks leave to amend his Petition to clearly assert
5 a Confrontation Clause violation. *Id.* Petitioner states Respondent has no objection to the request to
6 amend. *Id.* at p. 4.¹

7 DISCUSSION

8 A habeas petition may be amended as provided by Rule 15 of the Federal Rules of Civil
9 Procedure. *Mayle v. Felix*, 545 U.S. 644, 649 (2005). Pursuant to Rule 15(a),

10 (1) *Amending as a Matter of Course*

A party may amend its pleading once as a matter of course within:

11 (A) 21 days after serving it, or

12 (B) if the pleading is one to which a responsive pleading is required,
21 days after service of a responsive pleading or 21 days after
13 service of a motion under Rule 12(b), (e), or (f), whichever is
earlier.

14 (2) *Other Amendments*

15 In all other cases, a party may amend its pleading only with the
opposing party's written consent or the court's leave. The court
16 should freely give leave when justice so requires.

17 The time for filing an amended petition as a matter of course has expired. To amend his Petition,
18 Plaintiff must have Respondent's written consent or the Court's leave. *See* Fed.R.Civ.P. 15(a)(2).
19 Respondent has not provided written consent; however, Petitioner states Respondent does not
20 object to the request to amend his Petition. Dkt. 35. Regardless of written permission from
21 Respondent, the Court finds justice requires Petitioner be allowed to amend his Petition.

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24 ¹ Respondent has not filed a response to the Motion.

1 Petitioner asserts he intended to raise Ground 5 as a Confrontation Clause violation,
2 which is how he raised this ground in the state courts. Dkt. 35. He contends he inadvertently
3 framed his claim in a manner that could be construed as a *Brady* claim. *Id.* at p. 4. The Court
4 finds Respondent will not be prejudiced by allowing Petitioner to amend his Petition to clearly
5 allege a Confrontation Clause violation in Ground 5, in part, because Respondent initially
6 interpreted Ground 5 to be a Confrontation Clause violation. *See* Dkt. 20. After review of the
7 record, the Court finds the interests of justice require Petitioner be given leave to amend.

8 Accordingly, Petitioner's Motion is granted as follows:

- 9 • Petitioner shall file an amended petition by June 17, 2016. In the amended
10 petition, Petitioner must re-allege all grounds for relief on which he wishes to
11 proceed. The amended petition will act as a complete substitute for the original
12 Petition, not a supplement. The amended petition shall be noted for July 22, 2016.
- 13 • Respondent shall file a supplemental answer to the amended petition by July 1,
14 2016.
- 15 • Petitioner may file a supplemental response by July 15, 2016.

16 If Petitioner does not file an amended petition by June 17, 2016, this Court will proceed
17 on the original Petition.

18 Dated this 8th day of June, 2016.

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20 David W. Christel
21 United States Magistrate Judge
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