

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

Fernando Navarro Hernandez v. John Henley, et al.

Hernandez · No. 3:09-cv-00545-MMD-CSD · Decided January 5, 2026

OPINION

Hernandez

PER CURIAM.

1 2

3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * * 6 FERNANDO NAVARRO HERNANDEZ, Case No. 3:09-cv-00545-MMD-CSD 7
Petitioner, ORDER v. 8 9 JOHN HENLEY, et al., 10 Respondents. 11

12 I. SUMMARY

13 Petitioner Fernando Navarro Hernandez was sentenced in Nevada state court to 14 death after a
jury found him guilty of burglary while in possession of a weapon; the first- 15 degree murder of
his ex-wife, Donna Hernandez (hereinafter “Donna”), with the use of a 16 deadly weapon; the
second-degree kidnapping of his daughter, A.H.1; and unlawful 17 sexual penetration of a dead
body. (ECF No. 53-3.) On March 27, 2025, this Court denied 18 Hernandez’s Fifth-Amended
Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254 19 (“Fifth-Amended Petition”) but
granted a Certificate of Appealability for grounds 1a, 1b, 20 1e, 1f, 4, and 29. (ECF No. 349
 (“Merits Order”).) Judgment was entered. (ECF No. 350.) 21 Hernandez now moves to alter or
amend the Merits Order judgment. (ECF No. 351 22 (“Motion”).) In his Motion, Hernandez
argues that the Court should find that he is entitled 23 to relief on grounds 1a, 1b, 1e, 1f, 4, and
29, or, alternatively, expand the Certificate of 24 Appealability to include grounds 2 and 3. (Id.)
Respondents opposed the Motion, and 25 Hernandez replied. (ECF Nos. 363, 364.) For the
reasons discussed below, the Court 26 denies the Motion. 27

1 II. LEGAL STANDARD

2 Rule 59(e) of the Federal Rules of Civil Procedure states that a “motion to alter or
3 amend a judgment must be filed no later than 28 days after the entry of the 4 judgment.” Fed. R.
Civ. P. 59(e). As the Ninth Circuit has recognized, “a Rule 59(e) 5 motion is an extraordinary
remedy, to be used sparingly in the interests of finality and 6 conservation of judicial resources.”
Wood v. Ryan, 759 F.3d 1117, 1121 (9th Cir. 2014) 7 (internal quotation marks omitted). Absent
highly unusual circumstances, reconsideration 8 under Rule 59(e) is “available only when (1) the
court committed manifest errors of law or 9 fact, (2) the court is presented with newly discovered
or previously unavailable evidence, 10 (3) the decision was manifestly unjust, or (4) there is an
intervening change in the 11 controlling law.” Rishor v. Ferguson, 822 F.3d 482, 491–92 (9th Cir.

2016).

12 III. DISCUSSION

13 Hernandez moves this Court to alter or amend the judgment in this case under
14 Rule 59(e), arguing that (1) this Court committed manifest error of law and fact by refusing
15 to consider the evidence he presented during his second state postconviction proceeding 16 in
support of grounds 1 and 2; (2) this Court committed manifest errors of law and fact in 17 denying
relief on grounds 1c and 3; (3) this Court committed manifest errors of law and 18 fact when it
rejected ground 4 for lack of evidence while simultaneously denying his 19 request for discovery
and an evidentiary hearing; (4) this Court committed manifest errors 20 of law and fact when it
rejected ground 29; and (5) the recent United States Supreme 21 Court decision in *Loper Bright*
*Enterprises v. Raimondo*² demonstrates that this Court 22 should apply a less restrictive form of
AEDPA deference. (ECF No. 351.) The Court 23 addresses each argument in turn, and, for the
reasons discussed below, the Court 24 determines that reconsideration under Rule 59(e) is not
appropriate. 25 /// 26 27 2603 U.S. 369 (2024). 2 1 A. Consideration of evidence from second
postconviction proceeding 2 Hernandez argues that this Court committed a manifest error of law
and fact by 3 refusing to consider the evidence he presented during his second state postconviction
4 proceeding in support of grounds 1 and 2. (ECF No. 351 at 9.) Hernandez explains that 5 this
Court did not consider that at the time he filed his second state postconviction petition, 6 it would
have been reasonable for him to believe the new mitigating evidence he 7 presented would be
considered. (Id. at 10.) He also explains that Ramirez does not bar 8 consideration of the evidence
he brought in his properly filed second state postconviction 9 petition because he was a capital
petitioner who had an available state process to raise 10 his claims. (Id.) 11 The Court stated in its
Merits Order that it could not “consider evidence presented 12 during [or after] Hernandez’s
second state postconviction proceedings” since it “is 13 precluded from considering evidence
presented in a procedurally barred state 14 postconviction action, and . . . Hernandez’s second
state postconviction action was found 15 to be procedurally barred by the state district court and
the Nevada Supreme Court 16 affirmed that ruling.” (ECF No. 349 at 14 n.4 (citing *McLaughlin v.*
Oliver, 95 F.4th 1239 17 (9th Cir. 2024)).) Hernandez argues *McLaughlin* only limits
consideration of evidence that 18 a prisoner failed to present in compliance with state procedural
rules, regardless of 19 whether the state court applied a procedural bar. (ECF No. 351 at 14.)
Hernandez 20 contends that his second state postconviction petition was presented in compliance
with 21 Nevada’s procedural rules, which permit capital petitioners to file a second state 22
postconviction petition asserting first postconviction counsel’s ineffectiveness. (Id.) 23 The
Court’s focus on the state postconviction action being found to be procedurally 24 barred—rather
than focusing on the state postconviction action’s compliance with state 25 procedural rules—was
merely an imprecise rephrasing of *McLaughlin*. The Court 26 accurately cited *McLaughlin* within
its discussion of Hernandez’s motion for an evidentiary 27 3 1 hearing. (ECF No. 349 at 127
(quoting *McLaughlin*, 95 F.4th at 1249) (“[A] failure to 2 present evidence to the state courts ‘in

compliance with the state procedural rules,’ counts 3 as a ‘fail[ure] to develop the factual basis of a claim in State court.’”).) 4 Individuals like Hernandez facing the death penalty are entitled to effective 5 assistance of counsel in their first state postconviction proceedings. See NRS § 6 34.820(1)(a). Therefore, Hernandez was entitled to file a second state postconviction 7 petition wherein he could argue ineffective assistance of his first postconviction counsel 8 amounted to cause and prejudice to excuse the procedural default of his second 9 postconviction petition. See *Crump v. Warden*, 934 P.2d 247 (Nev. 1997). However, 10 ineffective counsel arguments must be raised within a reasonable time after they become 11 available. See *Hathaway v. State*, 71 P.3d 503, 507–08 (Nev. 2003). Hernandez failed to 12 comply with this requirement, filing his second postconviction petition 1 year and 5 months 13 after the remittitur issued on the appeal from the order denying his first postconviction 14 petition. (ECF Nos. 53-9 (remittitur issued on February 3, 2009), 264-1 (second 15 postconviction petition filed on July 7, 2010).) Accordingly, under *McLaughlin*, the Court 16 is precluded from considering evidence generated during Hernandez’s second 17 postconviction proceedings given that he failed to comply with state procedural rules— 18 namely, raising his first postconviction counsel’s ineffectiveness within a reasonable time 19 under *Hathaway*.3 (ECF No. 351 at 14.) 20 /// 21 /// 22 23 3Hernandez argues that this “reasonable time” requirement was vague and that the Nevada Supreme Court did not adopt a brightline rule in this regard until 2016 when 24 it decided *Rippo v. State*. (ECF No. 351 at 18–19.) Thus, according to Hernandez, he cannot be faulted for failing to comply with a rule that had not yet been clearly established. 25 (Id.) Although the definition of “reasonable time” may not have been definitively fleshed out until 2016, this argument fails because Hernandez was on notice that NRS § 34.726— 26 the 1-year time limitation requirement—would be applied to his second postconviction 27 petition. See *Pellegrini v. State*, 34 P.3d 519, 526 (Nev. 2001). 4 1 B. Denial of grounds 1c and 3 2 In ground 1c, Hernandez alleged that his trial counsel was ineffective for failing to 3 move the trial court to question all the jurors regarding any conversations concerning the 4 purchase of a gift for A.H. by two jurors and an alternate juror. (ECF No. 221 at 66.) The 5 Court noted that Hernandez’s counsel could have taken extra steps to attempt to acquire 6 more evidentiary support for the motion for a mistrial. (ECF No. 349 at 27.) But the Court 7 ultimately found that Hernandez did not demonstrate that the failure to take these extra 8 steps resulted in his counsel’s performance falling below an objective standard of 9 reasonableness. (Id. at 27–28.) This finding was based on two jurors’ answers to the trial 10 court’s questions, which confirmed that they did not discuss the case either before or 11 during their shopping trip for the gift. (Id. at 28.) Therefore, the Court reasoned that 12 “Hernandez’s trial counsel could have reasonably determined that the jurors’ buying of 13 the gift did not warrant a mistrial, negating a futile further investigation into the issue.” (Id.) 14 Hernandez appears to interpret this reasoning as stating that he did not move for a 15 mistrial. (ECF No. 351 at 21 (“However, counsel did move for a mistrial.”).) This 16 interpretation is mistaken. As discussed in the Merits Order, the bailiff informed the trial 17 court during deliberations about the issue of the gift. (ECF No. 349 at 26.)

The trial court 18 indicated that it desired to question the jurors who bought the gift, and Hernandez's 19 counsel stated that he would be moving for a mistrial depending upon that questioning. 20 (Id.) The Merits Order merely states Hernandez's trial counsel could have reassessed the 21 viability of the motion and thus the need to investigate further—not that it did not make 22 the motion. 23 Hernandez then argues that the Court committed manifest error of fact and law in 24 attributing strategic considerations to counsel that were explicitly belied by the record. 25 (ECF No. 351 at 23.) The Court acknowledges that it “may not indulge ‘post hoc 26 rationalization’ for counsel’s decision-making that contradicts the available evidence of 27 5 1 counsel’s actions[.]” *Harrington v. Richter*, 562 U.S. 86, 109 (2011). However, the Court’s 2 finding that Hernandez’s trial counsel could have made a strategic decision not to 3 investigate further is not contradicted by the available evidence. As was discussed further 4 in ground 3, the discussion, purchase, and giving of the gift was a result of the jurors’ 5 sympathy for A.H. (ECF No. 349 at 36-37.) A few jurors’ mutual sympathy for Hernandez’s 6 young child does not necessarily correlate to a prejudicial impact against Hernandez. See 7 *Valdez v. State*, 196 P.3d 465, 475 (Nev. 2008) (explaining that to support a mistrial based 8 on jury misconduct, “[t]he defendant must prove the nature of the jury misconduct and 9 that there is a reasonable possibility that the misconduct affected the verdict” (emphasis 10 added).) Thus, even if Hernandez’s trial counsel could have further questioned the jurors 11 about their misconduct, this lack of correlation means Hernandez’s trial counsel’s motion 12 for a mistrial on this ground was bound to fail. See *Kimmelman v. Morrison*, 477 U.S. 365, 13 375 (1986) (“Where defense counsel’s failure to litigate a Fourth Amendment claim 14 competently is the principal allegation of ineffectiveness, the defendant must also prove 15 that his Fourth Amendment claim is meritorious.”). If the motion for a mistrial was 16 unmeritorious regardless of what further questioning could have been sought—for 17 example, as contended by Hernandez, examining the two jurors out of each other’s 18 presence, placing the two jurors under oath, asking about whether the gift was discussed 19 with the other jurors, or asking if the other jurors saw the gift—then Hernandez fails to 20 demonstrate the deficiency of his trial counsel in litigating that motion. 21 Moving to ground 3, Hernandez alleged that the jury’s misconduct in buying the 22 gift resulted in the jury deciding his sentence based on improper bias. (ECF No. 221 at 23 100–04.) Hernandez argues that the Court’s denial of relief on ground 3 was based on 24 irreconcilable and erroneous factual findings. (ECF No. 351 at 24.) Specifically, 25 Hernandez argues that the following findings by this Court were contradictory: (1) the 26 jurors’ discussion of their mutual sympathies for A.H. did not necessarily entail 27 6 1 discussions of the basis of their sympathy or any other facts surrounding the case, and 2 (2) sympathies for the victim’s daughter was a natural response. (Id. at 25.) The Court 3 fails to see how these findings were contradictory. Instead, these findings are 4 complementary: having feelings of sympathy for a child victim would come naturally to a 5 juror after hearing about the hardship that child was facing, resulting in several jurors 6 discussing their desire to get that child a condolence gift. 7 Hernandez also argues the Court misapprehended his prejudice argument, 8

explaining that it was not based on the jurors' sympathy for A.H. but rather on the fact 9 that jurors began discussing their sympathies in the middle of the penalty phase and 10 before defense counsel had presented any mitigation evidence. (ECF No. 351 at 26.) 11 While the Court did not specifically discuss the timing of the gift in relation to its prejudice 12 analysis, the Court broadly found that no prejudice resulted from the gift. 13 C. Denial of ground 4 14 In ground 4, Hernandez alleged that his counsel failed to ensure that the jury was 15 composed of an ethnic and racial cross-section of the community. (ECF No. 221 at 108.) 16 In denying relief on this portion of ground 4, the Court explained that "Hernandez is faced 17 with the arduous task of supporting his prejudice argument—that the jury pool and venire 18 were not fairly drawn—with a lack of evidence which is the result of the deficiency with 19 which he alleges here—his counsels' failures regarding the jury pool and venire." (ECF 20 No. 349 at 42.). The Court then explained that "[t]his circular argument results in 21 Hernandez failing to factually support this ground" because "the Court would need 22 significant additional information to be able to determine whether Hernandez's counsel 23 acted deficiently in not challenging the venire." (Id.) Nonetheless, noting that 24 "Hernandez's counsel was the reason behind this lack of additional information," the Court 25 found that it would be "inequitable that those failures will forever hinder Hernandez from 26 litigating this type of claim," so it also found this ground to be substantial for procedural 27 7 1 default purposes. However, "because there [was] nothing in the record to show that 2 Hernandez's counsel should have taken any sort of action in response to the jury pool 3 and venire," the Court ultimately denied this portion of ground 4, finding that Hernandez 4 "fail[ed] to meet his burden of demonstrating ineffectiveness under Strickland." (Id.) 5 Notably, the Court granted a Certificate of Appealability for ground 4, explaining that 6 "reasonable jurists could debate the fairness of denying relief on a petitioner's ineffective- 7 assistance-of-counsel claim on the sole basis of said counsels' failure to develop factual 8 support for the claim, especially in light of the Court's prohibition on conducting an 9 evidentiary hearing under Ramirez." (Id. at 129–130.) 10 Relatedly, in discussing Hernandez's motion for discovery, the Court stated that it 11 "is prohibited from considering newly developed evidence" under Ramirez, meaning "it 12 would be an errand in futility to discover information [related to ground 4] that the Court 13 [was] prohibited from considering." (Id. at 123–24.) In discussing Hernandez's motion for 14 evidentiary hearing, the Court stated that "[u]nder Ramirez, the failure to develop the 15 factual basis of [ground 4] is due to the negligence of Hernandez or his first state 16 postconviction counsel," meaning "the requirements of § 2254(e)(2) are triggered." (Id. at 17 127.) The Court then found that "Hernandez fail[ed] to demonstrate that he has met these 18 requirements." (Id.) 19 Hernandez argues the Court committed manifest errors of law and fact when it 20 rejected ground 4 for lack of evidence while simultaneously denying his request for 21 discovery and an evidentiary hearing. (ECF No. 351 at 28.) Hernandez explains that the 22 state court precluded him from developing evidence in support of his ineffective 23 assistance claim during his initial

state postconviction proceedings, meaning he was not at fault for the deficiency of the state court record and the limitations of § 2254(e)(2) do not apply.⁴ (Id. at 29–30.) Hernandez also argues that the state court presiding over his second state postconviction proceedings barred him from developing any record at all. (ECF No. 351 8 1 In his initial pro se state postconviction petition, Hernandez’s relevant argument in its entirety is as follows: his trial counsel failed to file a “motion challenging the racial composition of the jury venire.” (ECF No. 117-5 at 8.) Hernandez was appointed counsel, and his postconviction counsel filed a supplemental petition which incorporated Hernandez’s pro se petition. (ECF No. 260-19 at 4.) Notably, Hernandez’s counseled supplemental petition did not elaborate on the relevant claim. The state court “ordered that an evidentiary hearing would be held addressing” Hernandez’s trial counsel “failing to file a motion to change venue or a motion to suppress statements, failing to present Dr. Kinsora to the jury, [and] conceding that Defendant was involved in the killing.” (ECF

No. 1-2 at 47.) Later, in his opening brief on his appeal of the denial of his first state habeas action, Hernandez argued to the Nevada Supreme Court that his trial counsel never filed a “motion challenging the racial composition of the jury venire.” (ECF No. 17 13 at 36.) Section 2254(e)(2) applies when “there is lack of diligence . . . attributable to the prisoner.” *Williams v. Taylor*, 529 U.S. 420, 432 (2000). A finding of diligence “depends upon whether the prisoner made a reasonable attempt, in light of the information available at the time, to investigate and pursue claims in state court.” Id. at 435. A prisoner “is not at fault” for purposes of § 2254(e)(2) “when his diligent efforts to perform an act are thwarted . . . by the conduct of another or by happenstance.” Id. at 432. When “[a]n indigent prisoner . . . is denied counsel and discovery[, he] has no practical likelihood of” investigating his postconviction claims in state court. *Rodney v. Garrett*, 116 F.4th 947, 957 (9th Cir. 2024). In that situation, a petitioner has done “all that he could to develop the evidentiary bases of his . . . claims in state court,” so he cannot be found to have “fail[ed] to develop the state-court record within the meaning of § 2254(e)(2).” Id. 25 at 29–30.) As was discussed earlier in this Order, the second state postconviction court did not bar development of the record; rather, Hernandez failed to comply with state procedural rules in filing his second postconviction petition. 9 1 Here, Hernandez was appointed postconviction counsel, meaning his postconviction counsel could have investigated whether the jury was composed of an ethnic and racial cross-section of the community. It is true that the state court limited the postconviction evidentiary hearing to non-related issues; however, this did not prevent Hernandez’s postconviction counsel from conducting discovery on this issue. Indeed, Hernandez’s postconviction counsel merely incorporated the relevant claim from Hernandez’s pro se petition into the supplemental petition without conducting any investigation, including legal support for the claim, or adding relevant details. As such, Hernandez fails to support his argument that he diligently pursued development of the state-court record but was thwarted by the state court from doing so. Instead, 11

Hernandez's postconviction counsel was the basis for this claim not being developed. 12 Thus, this Court properly concluded that Ramirez prevents Hernandez from presenting 13 new evidence now, so discovery and an evidentiary hearing are unwarranted. 14 Hernandez also argues that the Court erroneously concluded that this portion of 15 ground 4 was procedurally defaulted. (ECF No. 351 at 30.) In ruling on Respondents' 16 motion to dismiss, the Court found that to the extent this portion of ground 4 was "more 17 detailed than . . . asserted on the appeal in Hernandez's first state habeas action, 18 Hernandez might be able to overcome the procedural default by showing inadequate 19 assistance of counsel in his first state habeas action." (ECF No. 184 at 23.) Then, in its 20 Merits Order, the Court stated that "[b]ecause Hernandez's argument here is broader and 21 more detailed than the argument he presented to the Nevada Supreme Court, this portion 22 of ground 4 is procedurally defaulted." (ECF No. 349 at 41.) 23 Even if the Court reconsidered its finding that this portion of ground 4 is 24 procedurally defaulted, which it does not, it would have to defer to the Nevada Supreme 25 Court's holding that "Hernandez has not provided adequate facts or argument 26 establishing that his counsel were deficient or, assuming any deficiency, that he was 27 10 1 prejudiced by counsel's omissions." (ECF No. 14-2 at 73.) Hernandez argues that the 2 Nevada Supreme Court's rejection of this claim was based on an unreasonable 3 determination of the facts, entitling him to de novo review. (ECF No. 351 at 30.) 4 Hernandez's argument in this regard is based on the state court confining the scope of 5 the evidentiary hearing, precluding him from developing evidence in support of this claim. 6 However, as the Court already discussed, the state court did not preclude Hernandez 7 from developing evidence in support of this claim by limiting the scope of the evidentiary 8 hearing. Instead, Hernandez's postconviction counsel was the basis for this claim not 9 being developed. 10 D. Denial of ground 29 11 In ground 29, Hernandez alleged that his death sentence is invalid under the 12 federal constitutional guarantees of due process, equal protection, a reliable sentence, 13 and a jury trial because the Nevada Supreme Court, on collateral review, struck an 14 aggravating circumstance and proceeded to reweigh the two remaining aggravators 15 against the seven mitigators that the jury found during the penalty phase. (ECF No. 221 16 at 230.) In its Merits Order, this Court explained that "[t]he Nevada Supreme Court treaded 17 closely to crossing the line between reweighing and making factual findings, including, for 18 example, stating that the murder took place 'in clear view' of A.H., which was never 19 definitively proven at the trial." (ECF No. 349 at 115.) This Court also explained that "the 20 Nevada Supreme Court's finding that it was convinced beyond a reasonable doubt that, 21 after striking one of three aggravating circumstances and reweighing those remaining two 22 aggravating circumstances against the seven mitigating circumstances, the jury would 23 have found Hernandez death eligible is debatable." (Id. (emphasis in original).) However, 24 the Court determined that Hernandez was not entitled to federal habeas relief because 25 he "fail[ed] to demonstrate that the Nevada Supreme Court's reweighing amounted to an 26 unreasonable determination of the facts given that it appears to have fully considered the 27 11 1 mitigating circumstances presented by Hernandez

and the remaining aggravating 2 circumstances in its analysis.” (Id.) 3 The Court did, however, grant a Certificate of Appealability for this ground, stating 4 that (1) “reasonable jurists could debate whether the Nevada Supreme Court made 5 factual findings when, after striking an aggravating circumstance, it reweighed the 6 remaining aggravating circumstances with the mitigating circumstances,” and (2) “the 7 reasonable jurists could debate whether the Nevada Supreme Court’s reweighing 8 amounted to an unreasonable determination of the facts given that it discussed 9 Hernandez’s mitigating circumstances in cursory fashion while prioritizing its discussion 10 on the ‘brutal,’ ‘vicious,’ ‘reprehensible,’ and ‘cruel’ details in aggravation.” (Id. at 130.) 11 Hernandez argues that this Court’s conclusion that he could not overcome AEDPA 12 deference while simultaneously acknowledging the Nevada Supreme Court had engaged 13 in improper fact finding amounted to a manifest error of fact and law. (ECF No. 351 at 14 32.) This Court did not state that the Nevada Supreme Court engaged in improper fact 15 finding. Rather, as indicated above, it stated that “[t]he Nevada Supreme Court treaded 16 closely to crossing the line [of] making factual findings.” (ECF No. 349 at 115.) This 17 statement is not contradictory, as Hernandez appears to claim, to its subsequent 18 example: the Nevada Supreme Court “stat[ed] that the murder took place ‘in clear view’ 19 of A.H., which was never definitively proven at the trial.” (Id. (emphasis added).) Rather, 20 there was evidence presented at trial that A.H. at least observed the aftermath of the 21 murder. Thus, interpreting the Nevada Supreme Court’s statement that the “attack on 22 Donna [took place] in clear view” of A.H. in broader terms (i.e., that she was present in 23 some capacity) rather than in more specific terms (i.e., that she specifically saw her 24 mother being murdered) negates Hernandez’s contention that the Nevada Supreme 25 Court “construe[d] conjecture as fact.” (ECF No. 351 at 27.) 26 /// 27 12 1 E. Loper Bright Enterprises 2 Hernandez argues that the recent United States Supreme Court decision Loper 3 Bright Enterprises v. Raimondo demonstrates that this Court should apply a less 4 restrictive form of AEDPA deference. (ECF No. 351 at 28 (citing 603 U.S. 369 (2024)).) 5 In Loper Bright, the Supreme Court overruled Chevron U.S.A. Inc. v. Natural Resources 6 Defense Council, Inc., 467 U.S. 837 (1984), dealing with the deference owed to agency 7 interpretations of ambiguous statutes. 603 U.S. at 378–79. Hernandez argues that 8 because Loper Bright recognized that federal courts may not abdicate their role in 9 deciding questions of federal law, this Court should not be required to defer to the Nevada 10 state courts on federal constitutional issues under AEDPA but rather should be able to 11 exercise independent judgment when deciding legal questions. (ECF No. 351 at 38.) 12 While this Court may prefer to exercise its independent judgment on questions of 13 federal constitutional law, this Court is bound to follow controlling United States Supreme 14 Court precedent until it has been explicitly overruled by that Court. See United States v. 15 Werle, 35 4th 1195, 1201 (9th Cir. 2022) (quoting Nunez-Reyes v. Holder, 646 F.3d 684, 16 693 (9th Cir. 2011) (en banc)). In Loper Bright, the Supreme Court did not explicitly (or 17 implicitly) overrule or dilute AEDPA deference—or even discuss AEDPA at all. See 18 Mallory v. Norfolk S. Ry. Co., 600 U.S. 122, 136 (2023) (“If a precedent of this Court has 19

direct application in a case, . . . a lower court should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decision. This is true even if the lower court thinks the precedent is in tension with some other line of decisions.” (internal quotation marks and citation omitted)). And the Supreme Court recently confirmed AEDPA’s constitutionality. See *Brown v. Davenport*, 596 U.S. 118, 127 (2022) (“When Congress supplies a constitutionally valid rule of decision, federal courts must follow it. In AEDPA, Congress announced such a rule.”). Accordingly, this Court rejects Hernandez’s request for this Court to apply a less restrictive form of deference to his Fifth- Amended Petition.

IV. CONCLUSION

It is therefore ordered that the Motion (ECF No. 351) is denied. To the extent that it is required, the Court denies a Certificate of Appealability because reasonable jurists would not find this Court’s denial of the Motion to be debatable or wrong. It is further kindly ordered that the Clerk of the Court reclose this action. DATED THIS 5th Day of January 2026.

MIRANDAM.DU

UNITED STATES DISTRICT JUDGE

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