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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES H. CARR, JR.,

Petitioner,

No. 2:10-cv-1778 MCE JFM (HC)

vs.

MATTHEW CATE,

Respondent.

FINDINGS AND RECOMMENDATIONS

_____ /

Petitioner is a state prisoner proceeding through counsel with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On September 21, 2010, respondent filed a motion for a stay of this action pending disposition of respondent’s appeal from the grant of habeas corpus relief to petitioner in three other related cases¹ and pending resolution of two petitions for rehearing en banc filed in the United States Court of Appeals for the Ninth Circuit. In opposition to the motion, petitioner observes, *inter alia*, that the petitions for rehearing en banc have been resolved. In reply, respondent continues to assert that this action should be stayed

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¹ Cases No. 2:04-cv-0584 MCE JFM (HC), 2:05-cv-1870 MCE JFM (HC), and 2:05-cv-1871 MCE JFM (HC).

1 pending disposition of the pending appeals in petitioner’s related cases, an outcome petitioner
2 opposes.²

3 Stays in habeas corpus cases are disfavored. See Yong v. I.N.S., 208 F.3d 1116
4 (9th Cir. 2000). In Yong, the court of appeals noted that “although a short stay may be
5 appropriate in a habeas case to await a determination in a parallel case in the same court, . . . we
6 have never authorized, in the interests of judicial economy, an indefinite, potentially lengthy stay
7 in a habeas case.” Id. at 1120. Since respondent’s motion was filed, the United States Supreme
8 Court has decided Swarthout v. Cooke, 131 S. Ct. 859, 861 (2011), which may have substantial
9 bearing on the action at bar. This court finds that judicial economy will not be served by further
10 delay in this case.

11 Accordingly, IT IS HEREBY RECOMMENDED that:

12 1. Respondent’s September 21, 2010 motion for stay be denied;

13 2. Respondent be directed to answer the petition within thirty days from the date
14 of any order by the district court adopting these findings and recommendations, see Rule 4, Rules
15 Governing Section 2254 Cases, and to include with the answer any and all transcripts or other
16 documents relevant to the determination of the issues presented in the application. Rule 5, Rules
17 Governing Section 2254 Cases; and

18 3. Petitioner’s traverse, if any, be due on or before thirty days from the date
19 respondent’s answer is filed.

20 These findings and recommendations are submitted to the United States District
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned

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25 ² Petitioner has been released on parole pursuant to the district court’s decision in the
26 related cases and orders of the district court and the court of appeals declining to stay the district
court’s ruling in those cases. See Order filed February 24, 2011.

1 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
2 objections shall be filed and served within fourteen days after service of the objections. The
3 parties are advised that failure to file objections within the specified time may waive the right to
4 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

5 DATED: June 6, 2011.

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8 UNITED STATES MAGISTRATE JUDGE

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10 carr1778.mts

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