



1 court.<sup>1</sup> Exhaustion requires that Petitioner's contentions were  
2 fairly presented to the state courts and disposed of on the  
3 merits by the highest court of the state. See James v. Borg, 24  
4 F.3d 20, 24 (9th Cir. 1994). As a matter of comity, a federal  
5 court will not entertain a habeas corpus petition unless the  
6 petitioner has exhausted the available state judicial remedies on  
7 every ground presented in the petition. See Rose v. Lundy, 455  
8 U.S. 509, 518, 102 S. Ct. 1198, 1203, 71 L. Ed. 2d 379 (1982). A  
9 federal court may raise the failure-to-exhaust issue sua sponte  
10 and may summarily dismiss on that ground. See Stone v. San  
11 Francisco, 968 F.2d 850, 856 (9th Cir. 1992); see also Granberry  
12 v. Greer, 481 U.S. 129, 134-35, 107 S. Ct. 1671, 1675, 95 L. Ed.  
13 2d 119 (1987).

14 In section seven of the First Amended Petition, Petitioner  
15 has checked boxes indicating that none of the three asserted  
16 claims for relief was ever raised in any state court proceeding  
17 (see Pet. at 5-6); it is undoubtedly for that reason that  
18 Petitioner separately has filed a motion seeking to stay this  
19 Petition and hold it in abeyance while he exhausts his remedies  
20 in state court.

21 In certain "limited circumstances," a district court may  
22 stay a "mixed" petition - that is, one raising both exhausted and  
23 unexhausted claims - and hold it in abeyance while the petitioner  
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25 <sup>1</sup> A habeas petition "shall not be granted unless it appears  
26 that-- (A) the applicant has exhausted the remedies available in  
27 the courts of the State; or (B)(i) there is an absence of available  
28 State corrective process; or (ii) circumstances exist that render  
such process ineffective to protect the rights of the applicant."  
28 U.S.C. § 2254(b)(1).

1 returns to state court to exhaust unexhausted claims. See Rhines  
2 v. Weber, 544 U.S. 269, 277, 125 S. Ct. 1528, 1535, 161 L. Ed. 2d  
3 440 (2005). Fully unexhausted petitions, however - those in  
4 which none of the claims have ever been presented to the state  
5 supreme court - may not be stayed and held in abeyance. See  
6 Rasberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006) (decided  
7 after Rhines). Rather, they must be dismissed. See id.; Jiminez  
8 v. Rice, 276 F.3d 478, 481 (9th Cir. 2001) (dismissing fully  
9 unexhausted petition raising ineffective assistance of counsel  
10 and other claims); see also Roberts v. McDonald, EDCV 10-873-AHM  
11 (FFM), 2010 WL 2539762, at \*3 n.2 (C.D. Cal. June 17, 2010)  
12 (same, following Rasberry).

13 IT THEREFORE IS ORDERED that on or before **March 21, 2012**,  
14 Petitioner shall show cause in writing why the Court should not  
15 recommend that Petitioner's stay-and-abey motion be denied and  
16 this action be dismissed without prejudice for failure to exhaust  
17 state remedies.

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19 DATED: February 21, 2012



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JEAN ROSENBLUTH  
U.S. MAGISTRATE JUDGE