

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ERIK DANIEL GONZALEZ,  
Petitioner,  
v.  
A. HEDGPETH,  
Respondent.

Case No. 1:12-cv-001244-LJO-BAM-HC  
FINDINGS AND RECOMMENDATIONS TO  
DENY PETITIONER'S MOTION FOR  
EXTENSION OF TIME AND FOR A STAY TO  
EXHAUST STATE COURT CLAIMS (DOC.  
33), AND TO SCHEDULE THE FILING  
OF PETITIONER'S TRAVERSE  
**DEADLINE FOR FILING OBJECTIONS:  
THIRTY(30) DAYS**

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 through 304. Pending before the Court is Petitioner's motion for a stay of the proceedings<sup>1</sup> to permit him to exhaust state court remedies, which was filed on December 2, 2013.

Although the issues presented to the Court arise in the context of a motion for a stay, ruling on Petitioner's motion in effect

\_\_\_\_\_

<sup>1</sup> Although Petitioner appears to seek both a stay and an extension of time, the Court understands Petitioner's motion to be a motion for a stay.

1 removes the availability of a federal forum with respect to new  
2 claims as to which Petitioner seeks to exhaust state court remedies.  
3 Accordingly, the undersigned proceeds by way of findings and  
4 recommendations.

5 I. Background

6 A. Procedural History

7 In the petition filed on June 20, 2012,<sup>2</sup> Petitioner set forth  
8 claims of 1) prosecutorial misconduct, 2) trial court error in  
9 response to a jury question, 3) erroneous denial of defense access  
10 to juror information, 4) ineffective assistance of counsel (IAC)  
11 based on multiple omissions (failure to present DNA evidence, call  
12 alibi witness, present telephone records, and present a statement  
13 made by Luz Delgado to law enforcement), 5) insufficient evidence,  
14 and 6) prosecutorial misconduct in the form of knowingly presenting

---

15  
16 <sup>2</sup> Dates of filing are calculated pursuant to the "mailbox rule." Habeas Rule 3(d)  
17 provides that a paper filed by a prisoner is timely if deposited in the  
18 institution's internal mailing system on or before the last day for filing. The  
19 rule requires the inmate to use the custodial institution's system designed for  
20 legal mail; further, timely filing may be shown by a declaration in compliance  
21 with 28 U.S.C. § 1746 or by a notarized statement setting forth the date of  
22 deposit and verifying prepayment of first-class postage. Id. Habeas Rule 3(d)  
23 reflects the "mailbox rule," initially developed in case law, pursuant to which a  
24 prisoner's pro se habeas petition is "deemed filed when he hands it over to prison  
25 authorities for mailing to the relevant court." Houston v. Lack, 487 U.S. 266,  
26 276 (1988); Huizar v. Carey, 273 F.3d 1220, 1222 (9th Cir. 2001). The mailbox  
27 rule applies to federal and state petitions alike. Campbell v. Henry, 614 F.3d  
28 1056, 1058-59 (9th Cir. 2010) (citing Stillman v. LaMarque, 319 F.3d 1199, 1201  
(9th Cir. 2003), and Smith v. Ratelle, 323 F.3d 813, 816 n.2 (9th Cir. 2003)).  
The mailbox rule, liberally applied, in effect assumes that absent evidence to the  
contrary, a legal document is filed on the date it was delivered to prison  
authorities, and a petition was delivered on the day it was signed. Houston v.  
Lack, 487 U.S. at 275-76; Roberts v. Marshall, 627 F.3d 768, 770 n.1 (9th Cir.  
2010); Campbell v. Henry, 614 F.3d 1056, 1058-59 (9th Cir. 2010); Lewis v.  
Mitchell, 173 F.Supp.2d 1057, 1058 n.1 (C.D.Cal. 2001). The date a petition is  
signed may be inferred to be the earliest possible date an inmate could submit his  
petition to prison authorities for filing under the mailbox rule. Jenkins v.  
Johnson, 330 F.3d 1146, 1149 n.2 (9th Cir. 2003), overruled on other grounds, Pace  
v. DiGuglielmo, 544 U.S. 408 (2005). Here, Petitioner signed the petition on June  
20, 2012. (Doc. 1, 9.)

1 perjured testimony. (Doc. 1.) His fourth through sixth claims were  
2 withdrawn because they were unexhausted. On November 7, 2012, the  
3 Court granted Petitioner a stay to permit Petitioner to exhaust  
4 state court remedies.

5 On July 26, 2013, after Petitioner had filed numerous status  
6 reports, the Court informed Petitioner that the stay had been  
7 conditioned on efficient efforts to exhaust state court remedies,  
8 and Petitioner had failed to explain how the conditions of which he  
9 complained had indeed impeded his ability to file a state court  
10 petition. The Court directed Petitioner to file a state petition in  
11 thirty days. (Doc. 23, 1-2.)<sup>3</sup>

12 On September 13, 2013, this Court found that Petitioner had  
13 failed to exhaust state court remedies in a timely and efficient  
14 manner, and the stay was vacated nunc pro tunc after Petitioner  
15 failed to comply with the order to file a state court petition.  
16 (Doc. 25, 1.) In November 2013, Respondent filed an answer  
17 addressing the merits of the petition.

18 On December 2, 2013, Petitioner filed the instant motion for an  
19 extension of time and for a stay of the proceedings to exhaust state  
20

21 <sup>3</sup>In its order giving Petitioner a final period of thirty days to file a state  
petition, the Court stated:

22 In his status reports, Petitioner has repeatedly complained about  
23 the lack of access to his legal property and law library. Petitioner  
24 is advised that the instances of which he explains are routine  
25 occurrences within the prison population and the Court cannot continue  
26 to stay the instant proceedings without further effort on Petitioner's  
27 part to exhaust the state court remedies. In particular, Petitioner  
28 fails to explain how the conditions for which he complains have indeed  
impeded his ability to file a petition in the state courts. Petitioner  
is advised that the Court conditioned the stay on the efficient  
pursuant of the state court remedies, and Petitioner is advised that  
he must proceed to exhaust the state court remedies in an efficient  
and timely manner....

(Doc. 23, 1-2.)

1 court remedies before the California Supreme Court with respect to  
2 claims concerning ineffective assistance of counsel (substantially  
3 similar to the IAC claims in the initial petition), actual  
4 innocence, selective prosecution, and excessive fines and  
5 restitution. (Doc. 33, 1.) Respondent filed opposition on January  
6 16, 2014. After multiple extensions of time, Petitioner filed a  
7 reply on June 5, 2014.

8 B. Circumstances of Petitioner's Delay

9 The timeliness of Petitioner's new claims is central to the  
10 Court's analysis of Petitioner's application for a stay. Thus, the  
11 procedurally pertinent facts will be set forth in the context of the  
12 governing legal requirements for timeliness of petitions filed under  
13 28 U.S.C. § 2254.

14 Petitioner's petition for review of the affirmance of his  
15 criminal judgment was denied by the California Supreme Court (CSC)  
16 on June 22, 2011. (LD 8.)

17 Because the petition in this proceeding was filed after April  
18 24, 1996, the effective date of the Antiterrorism and Effective  
19 Death Penalty Act of 1996 (AEDPA), the AEDPA applies to the  
20 petition. Lindh v. Murphy, 521 U.S. 320, 327 (1997); Jeffries v.  
21 Wood, 114 F.3d 1484, 1499 (9th Cir. 1997). The AEDPA provides a  
22 one-year period of limitation in which a petitioner must file a  
23 petition for writ of habeas corpus. 28 U.S.C. § 2244(d)(1). As  
24 amended, § 2244(d)(1)(A) provides, "The limitation period shall run  
25 from the latest of - (A) the date on which the judgment became final  
26 by the conclusion of direct review or the expiration of the time for  
27 seeking such review...." Under this provision, a judgment becomes  
28 final either upon the conclusion of direct review or the expiration

1 of the time for seeking such review in the highest court from which  
2 review could be sought. Wixom v. Washington, 264 F.3d 894, 897 (9th  
3 Cir. 2001).

4 Here, on September 21, 2011, ninety days after the CSC denied  
5 review on June 22, 2011, the time for seeking certiorari expired.  
6 Supreme Court Rule 13; Porter v. Ollison, 620 F.3d 952, 958-59 (9th  
7 Cir. 2010); Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999).  
8 Thus, on September 21, 2011, the judgment was final within the  
9 meaning of 28 U.S.C. § 2244(d)(1)(A). Wixom v. Washington, 264 F.3d  
10 at 897 (quoting Smith v. Bowersox, 159 F.3d 345, 348 (8th Cir.  
11 1998), cert. denied, 525 U.S. 1187 (1999)). The one-year statute of  
12 limitations began running on the following day, September 22, 2011,  
13 and, absent any tolling or exception of the statute of limitations,  
14 expired on September 21, 2012.

15 On June 20, 2012, Petitioner constructively filed the initial  
16 petition in the instant case while he was housed at Salinas Valley  
17 State Prison (SVSP). (Doc. 1 at 9, 11.)

18 On September 17, 2012, Petitioner filed administrative  
19 complaints with the prison regarding law library access, but  
20 documentation concerning the claim reflects that Petitioner only  
21 submitted requests for library access in December 2011, April 2012,  
22 and June 2012; further, he received pager services when he did not  
23 have priority legal user status for the library. (Doc. 11, 2-6.)

24 On September 21, 2012, this Court denied Petitioner's request  
25 for a stay pursuant to Rhines v. Weber, 544 U.S. 269 (2005), which  
26 Petitioner had made in response to the Court's order to Petitioner  
27 to show cause why the petition should not be dismissed as a mixed  
28 petition containing some claims (claims four through six) as to

1 which state court remedies had not been exhausted. In denying the  
2 Rhines stay, the Court found that Petitioner had not set forth any  
3 basis for a finding of good cause for a stay. (Doc. 12.) The  
4 previous stay of the action was based on Kelly v. Small, 315 F.3d  
5 1063 (9th Cir. 2003), and it was granted only after Petitioner had  
6 withdrawn his unexhausted claims. (Doc. 14.)

7 Various status reports filed by Petitioner during the stay  
8 reflect Petitioner's statements regarding his progress thereafter.  
9 On December 13, 2012, Petitioner reported that he had access to the  
10 law library only on November 27, 2012 and December 4, 2012; he had  
11 not received requested "caselaws." (Doc. 15.)

12 In early January 2013, Petitioner reported having only two more  
13 days of law library access, the last being December 10, 2012;  
14 further, he had requested law library access administratively.  
15 (Doc. 16.) Petitioner corresponded with prospective counsel and  
16 others in February 2013 but was not getting physical access to the  
17 law library; he had no access to his legal property from February  
18 21, 2013 through March 4, 2013, due his transfer to Pleasant Valley  
19 State Prison (PVSP) on February 21, 2013. (Docs. 17-19.) In late  
20 April 2013, Petitioner asserted that he was unable to keep up, and  
21 due to two moves had been without his property (apparently for two  
22 weeks), and in June 2013, he reported that his new work assignment  
23 interfered with law library access. (Docs. 20-21.) On July 13,  
24 2013, Petitioner reported that after some facility shutdowns due to  
25 fighting among inmates, he anticipated expanded opportunities for  
26 law library access due to a change in work schedules. (Doc. 22.)

27 On October 7, 2013, after the stay was vacated, Petitioner was  
28 transferred to R. J. Donovan Correctional Facility. (Doc. 28.)

1           On February 20, 2014, Petitioner was transferred to Wasco State  
2 Prison. (Doc. 37.) In an unsolicited status report filed March 19,  
3 2014, Petitioner stated that he had requested law library access,  
4 information, and help from counsel, and he also requested guidance  
5 from the Court. He attached an application for priority legal user  
6 status from January 2014 that was denied for not having a court  
7 deadline (doc. 41 at 4), and he stated that he was in reception at  
8 Wasco for two weeks and wanted main line housing (id. at 5). He was  
9 ducated for the next law library rotation. (Doc. 41 at 7-9.) In  
10 April 2014, he stated that he only got access to the library once on  
11 March 17, 2014, had asked for help, and did not have his legal  
12 property and thus did not have access to Respondent's opposition to  
13 his motion for a stay. (Docs. 42, 46.) On May 30, 2014, he was  
14 moved to a new yard, so there was an unspecified period of  
15 separation from his legal property. (Doc. 46, 2.) In his reply to  
16 Respondent's opposition to the stay motion, which Petitioner filed  
17 on June 5, 2014, Petitioner includes a copy of "the state form to  
18 exhaust state claims" which he had filled out without access to his  
19 legal property. (Id. at 3.) This is a state habeas corpus form  
20 directed to the Tulare County Superior Court raising claims  
21 involving the presentation of perjured testimony of Luis Alvarez and  
22 Luz Maria Delgado; ineffective assistance of counsel in failing to  
23 present DNA evidence and a statement of Luz Delgado to law  
24 enforcement, call alibi witnesses, object to prejudicial misconduct  
25 or seek instructions to cure it; actual innocence based on weak and  
26 untrustworthy evidence of guilt; and excessive restitution fines.  
27 (Doc. 46, 7-15.)

28 ///

1           II. Petitioner's Motion for a Stay

2           A district court has discretion to stay a petition which it may  
3 validly consider on the merits. Rhines v. Weber, 544 U.S. 269, 276  
4 (2005); King v. Ryan, 564 F.3d 1133, 1138-39 (9th Cir. 2009), cert.  
5 den., 558 U.S. 887. A petition may be stayed either under Rhines,  
6 or under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003). King v.  
7 Ryan, 564 F.3d at 1138-41.

8           Under Rhines, the Court has discretion to stay proceedings;  
9 however, this discretion is circumscribed by the AEDPA. Rhines, 544  
10 U.S. at 276-77. In light of the AEDPA's objectives, "stay and  
11 abeyance [is] available only in limited circumstances" and "is only  
12 appropriate when the district court determines there was good cause  
13 for the petitioner=s failure to exhaust his claims first in state  
14 court." Id. at 277-78. A stay of a mixed petition pursuant to  
15 Rhines is required only if 1) the petitioner has good cause for his  
16 failure to exhaust his claims in state court; 2) the unexhausted  
17 claims are potentially meritorious; and 3) there is no indication  
18 that the petitioner intentionally engaged in dilatory litigation  
19 tactics. Id.

20           A petition may also be stayed pursuant to the procedure set  
21 forth by the Ninth Circuit in Kelly v. Small, 315 F.3d 1063 (9th  
22 Cir. 2003). Under this three-step procedure: 1) the petitioner  
23 files an amended petition deleting the unexhausted claims; 2) the  
24 district court stays and holds in abeyance the fully exhausted  
25 petition; and 3) the petitioner later amends the petition to include  
26 the newly exhausted claims. See, King v. Ryan, 564 F.3d 1133, 1135  
27 (9th Cir. 2009). However, the amendment is only allowed if the  
28 additional claims are timely. Id. at 1140-41.



1 A stay under Rhines permits a district court to stay a mixed  
2 petition and does not require that unexhausted claims be dismissed  
3 while the petitioner attempts to exhaust them in state court. In  
4 contrast, a stay pursuant to the three-step Kelly procedure allows a  
5 district court to stay a fully exhausted petition, and it requires  
6 that any unexhausted claims be dismissed. Jackson v. Roe, 425 F.3d  
7 654, 661 (9th Cir. 2005). In this circuit it is recognized that the  
8 Kelly procedure remains available after the decision in Rhines and  
9 is available without a showing of good cause. King v. Ryan, 564  
10 F.3d at 1140.

11 A. Absence of Good Cause for a Rhines Stay

12 The Supreme Court has not articulated what constitutes good  
13 cause under Rhines, but it has stated that a petitioner's reasonable  
14 confusion about whether a state filing would be timely will  
15 ordinarily constitute good cause for him to file a protective  
16 petition in federal court. Pace v. DiGuglielmo, 544 U.S. 408, 416  
17 (2005). The Ninth Circuit has held that the standard is a less  
18 stringent one than that for good cause to establish equitable  
19 tolling, which requires that extraordinary circumstances beyond a  
20 petitioner's control be the proximate cause of any delay. Jackson  
21 v. Roe, 425 F.3d 654, 661 62 (9th Cir. 2005). The Ninth Circuit has  
22 recognized, however, that "a stay and abeyance should be available  
23 only in limited circumstances." Id. at 661 (internal quotation  
24 marks omitted); see, Wooten v. Kirkland, 540 F.3d 1019, 1024 (9th  
25 Cir. 2008), cert. denied, - U.S.- , 129 S.Ct. 2771 (2009)  
26 (concluding that a petitioner's impression that counsel had  
27 exhausted a claim did not demonstrate good cause).

28

1 Recently the Ninth Circuit Court of Appeals found that the  
2 district court had abused its discretion in deciding that the Rhines  
3 good cause standard was not satisfied where a § 2254 petitioner  
4 provided argument and supporting evidence that his appellate counsel  
5 was ineffective in failing to investigate and raise the ineffective  
6 assistance of counsel (IAC) at trial for trial counsel's failure to  
7 present significant mitigating evidence at the penalty phase of a  
8 capital case. Blake v. Baker, 745 F.3d 977 (9th Cir. 2014), pet.  
9 cert. filed June 14, 2014, no. 13-1488. The court in Blake stated  
10 the following regarding the good cause standard:

11 The good cause element is the equitable component of the  
12 Rhines test. It ensures that a stay and abeyance is  
13 available only to those petitioners who have a legitimate  
14 reason for failing to exhaust a claim in state court. As  
15 such, good cause turns on whether the petitioner can set  
16 forth a reasonable excuse, supported by sufficient  
17 evidence, to justify that failure. See Pace, 544 U.S. at  
18 416, 125 S.Ct. 1807 ("A petitioner's reasonable  
19 confusion... will ordinarily constitute 'good cause'  
20 [under Rhines ]...." (emphasis added)). (Footnote  
21 omitted.) An assertion of good cause without evidentiary  
22 support will not typically amount to a reasonable excuse  
23 justifying a petitioner's failure to exhaust. In Wooten,  
24 for example, the petitioner's excuse that he was "under  
25 the impression" that his claim was exhausted was not a  
26 reasonable excuse because no evidence indicated that the  
27 petitioner's ignorance was justified. To the contrary, the  
28 petitioner's attorney sent him a copy of his state  
petition, which did not mention the unexhausted claim, and  
the petitioner did not argue that his attorney provided  
ineffective assistance for failing to include the claim.  
540 F.3d at 1024 n. 2; see also King v. Ryan, 564 F.3d  
1133, 1138 (9th Cir.2009) (holding that the district court  
did not abuse its discretion in finding that the  
petitioner did not establish good cause when his factual  
allegations were "insufficiently detailed").

....

While a bald assertion cannot amount to a showing of good  
cause, a reasonable excuse, supported by evidence to

1 justify a petitioner's failure to exhaust, will.

2 Id. at 982.

3 Respondent correctly contends that Petitioner has not shown  
4 good cause for a stay. This Court previously found that Petitioner  
5 failed to show good cause for a stay and failed to exhaust his state  
6 court remedies in an efficient and timely fashion after a stay was  
7 granted. Petitioner has not demonstrated any basis for abandoning  
8 or amending those findings or for concluding that subsequent events  
9 establish good cause for a stay.

10 Petitioner's counsel's failure to raise the claims which  
11 Petitioner now seeks to raise is not ipso facto sufficient to  
12 explain or show cause for Petitioner's failure to file a state court  
13 petition in the years following the finality of the judgment.  
14 Although Petitioner did not always have physical access to the law  
15 library, Petitioner attempted to use the law library only once in  
16 2011 and twice in 2012 (in April and June) in the period pertinent  
17 to his filing his federal claims here in June 2012.

18 During the pendency of the lengthy Kelly stay, Petitioner  
19 visited the law library on three days in December 2012. Although he  
20 corresponded with persons outside the prison regarding a lack of law  
21 library access in February 2013, it appears he experienced two moves  
22 and was separated from his property for two weeks. His prison work  
23 assignment allegedly interfered to an uncertain extent with his law  
24 library access in May 2013, but it appears that those circumstances  
25 resolved.

26 After the stay was vacated in September 2013, Petitioner was  
27 moved twice (to RJ Donovan and Wasco) and thus suffered some  
28 separation from his legal property, but he had access to the law

1 library by March 2014.

2 In summary, before and during the stay, Petitioner suffered  
3 some limitations on law library access or access to his property,  
4 but it does not appear that these occasional limitations affected  
5 Petitioner's ability to raise his new claims. It does not appear  
6 that Petitioner utilized the paging service or otherwise sought  
7 alternative sources of legal information. Further, Petitioner has  
8 failed to show any causal connection between the instances of  
9 limited access to legal resources or property and the failure to  
10 file a state petition. During the pertinent period, Petitioner was  
11 able to file a federal petition and to file multiple requests for  
12 relief here. The Court concludes that the record is fully  
13 consistent with the Court's previous findings and provides no basis  
14 to disturb them.

15 Since the stay was vacated in July 2013, Petitioner has been  
16 transferred twice and moved within an institution once with  
17 associated short periods of separation from his legal property;  
18 further, he continues to complain of limited access to the law  
19 library. However, these periods are consistent with normal  
20 incidents of prison life and have not been shown to be unusual.  
21 Further, Petitioner has been able to file repeated motions and  
22 reports in the present case, and he has been able to set forth the  
23 claims he seeks to exhaust in a form petition for the state trial  
24 court. These claims concern trial court matters that by virtue of  
25 their nature must have been known to Petitioner before the judgment  
26 became final. Petitioner continues to fail to show a causal  
27 connection between any limitations on his access to legal resources  
28 and his failure to exhaust state court remedies.

1           Accordingly, it is concluded that Petitioner has not shown good  
2 cause for a stay pursuant to Rhines.

3           B. Kelly Stay

4           With respect to Petitioner's motion for another Kelly stay, it  
5 has been recognized that it is appropriate to deny a Kelly stay  
6 where a petitioner's new claims are determined to be untimely and do  
7 not relate back to exhausted claims. King v. Ryan, 564 F.3d at  
8 1141-42.

9           1. The Running of the Statute of Limitations

10          Here, even if Petitioner had otherwise shown entitlement to a  
11 stay, Petitioner's new claims would be untimely.

12          As previously detailed, on September 21, 2011, ninety days  
13 after the CSC denied review on June 22, 2011, the time for seeking  
14 certiorari expired. Supreme Court Rule 13; Porter v. Ollison, 620  
15 F.3d 952, 958-59 (9th Cir. 2010); Bowen v. Roe, 188 F.3d 1157, 1159  
16 (9th Cir. 1999). Thus, on September 21, 2011, the judgment was  
17 final within the meaning of 28 U.S.C. § 2244(d) (1) (A). Wixom v.  
18 Washington, 264 F.3d at 897 (quoting Smith v. Bowersox, 159 F.3d  
19 345, 348 (8th Cir. 1998), cert. denied, 525 U.S. 1187 (1999)). The  
20 one-year statute of limitations commenced running on the following  
21 day, September 22, 2011. Fed. R. Civ. P. 6(a); see Waldrip v. Hall,  
22 548 F.3d 729, 735 n.2 (9th Cir. 2008), cert. den., 130 S.Ct. 2415  
23 (2010); Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001).  
24 Absent any tolling or exception to the statute of limitations, the  
25 limitation period expired one year later on September 21, 2012. As  
26 a result, Petitioner's new claims, which have been subsequently  
27 brought to federal court, would be barred by § 2244(d). 28 U.S.C.  
28 § 2244(d) (1) (A).



1 demonstrate that equitable tolling is warranted. Roy v. Lampert,  
2 465 F.3d 964, 973 (9th Cir. 2006). Conclusional allegations are  
3 generally inadequate. Williams v. Dexter, 649 F.Supp.2d 1055, 1061-  
4 62 (C.D.Cal. 2009). The petitioner must show that the extraordinary  
5 circumstances were the cause of his untimeliness and that the  
6 extraordinary circumstances made it impossible to file a petition on  
7 time. Ramirez v. Yates, 571 F.3d 993, 997 (9th Cir. 2009). Where a  
8 prisoner fails to show any causal connection between the grounds  
9 upon which he asserts a right to equitable tolling and his inability  
10 to timely file a federal habeas application, the equitable tolling  
11 claim will be denied. Gaston v. Palmer, 417 F.3d 1030, 1034-35 (9th  
12 Cir. 2005).

13 Here, Petitioner has not shown any extraordinary circumstances.  
14 Insofar as Petitioner relies on his ignorance of the law and his  
15 status as a pro se litigant operating from prison with limited  
16 resources, Petitioner's pro se status is not an extraordinary  
17 circumstance. Chaffer v. Prosper, 592 U.S. 1046, 1049 (9th Cir.  
18 2010). A pro se petitioner's confusion or ignorance of the law  
19 is not alone a circumstance warranting equitable tolling. Rasberry  
20 v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006).

21 Likewise, limitations on law library access and research  
22 materials are not extraordinary, but rather are normal conditions  
23 of prison life. Chaffer v. Prosper, 592 F.3d at 1049. Further,  
24 Petitioner has not shown how any specific instance of allegedly  
25 inadequate access to legal resources or property caused him to be  
26 unable to file a timely petition.

27 Accordingly, the Court concludes that Petitioner has not shown  
28 that the limitation period was equitably tolled.

1                                   4. Relation Back of Claims

2           Even if otherwise untimely filed, an amendment to a pleading  
3 relates back to the date of the original pleading when 1) the law  
4 that provides the applicable statute of limitations allows relation  
5 back, 2) the amendment asserts a claim or defense that arose out of  
6 the conduct, transaction, or occurrence set out, or attempted to be  
7 set out, in the original pleading, or 3) the amendment changes the  
8 party or naming of a party under specified circumstances. Fed. R.  
9 Civ. P. 15(c)(1). In a habeas corpus case, the "original pleading"  
10 referred to in Rule 15 is the petition. Mayle v. Felix, 545 U.S.  
11 644, 655 (2004). A habeas petition differs from a complaint in an  
12 ordinary civil case, however, because although notice pleading is  
13 sufficient in ordinary civil cases, it fails to meet the  
14 requirements of Habeas Rule 2(c), which requires that a habeas  
15 petition specify all the grounds for relief available to the  
16 petitioner and state the facts supporting each ground. Id.

17           Relation back is appropriate in habeas cases where the original  
18 and amended petitions state claims that are tied to a common core of  
19 operative facts. Mayle, 545 U.S. at 664. The claims added by  
20 amendment must arise from the same core facts as the timely filed  
21 claims and must depend upon events not separate in "both time and  
22 type" from the originally raised episodes. Id. at 657. Thus, the  
23 terms "conduct, transaction, or occurrence" in Fed. R. Civ. P.  
24 15(c)(1)(B) are not interpreted so broadly that it is sufficient  
25 that a claim first asserted in an amended petition simply stems from  
26 the same trial, conviction, or sentence that was the subject of a  
27 claim in an original petition. Id. at 656-57. In Mayle, the Court  
28 concluded that the petitioner's pretrial statements, which were the



1 subject of an amended petition, were separate in time and type from  
2 a witness's videotaped statements, which occurred at a different  
3 time and place and were the basis of a claim in the original  
4 petition. Thus, relation back was not appropriate. Mayle, 545 U.S.  
5 at 657, 659-60.

6 Here, Petitioner's new claims concern the ineffective  
7 assistance of counsel based on multiple omissions (failure to  
8 present DNA evidence, alibi witnesses, telephone records, and a  
9 statement of Luz Delgado), actual innocence based on the weakness of  
10 the prosecution evidence, selective prosecution, and excessive fines  
11 and restitution. The new claims relate to counsel's investigation  
12 and handling of the trial, the weight of the evidence, the conduct  
13 of the prosecution in instituting and maintaining the prosecution,  
14 and the components of the sentence that involve fines and  
15 restitution. The original claims relate to presentation of  
16 particular testimony alleged to have been perjured, and to trial  
17 court error in responding to a jury question and to a defense  
18 request for juror information. The new claims are based on events  
19 that are different in both time and type from those involved in the  
20 originally raised claims. Although both the new claims and the  
21 original claims relate to proceedings before the jury, this is not a  
22 sufficient relationship to permit relation back. Cf. Hebner v.  
23 McGrath, 543 F.3d 1133, 1138-39 (9th Cir. 2008) (holding that a  
24 claim concerning jury instructions that allegedly lowered the burden  
25 of proof did not relate back to a claim concerning the admissibility  
26 of evidence).

27 Accordingly, the Court concludes that Petitioner's new claims,  
28 which are untimely, do not relate back to the claims in the original

1 petition. Therefore, permitting a stay to exhaust the claims would  
2 be futile because it appears that the claims would be untimely.

3 In summary, in accordance with the foregoing analysis, it will  
4 be recommended that the Court deny Petitioner's motion for a stay.

5 Further, review of the docket shows that Petitioner's stay  
6 motion was filed soon after the answer to the petition was filed; no  
7 traverse has been filed. In an effort to reduce further delay, it  
8 will be recommended that a thirty-day period be scheduled for the  
9 filing of a traverse by Petitioner.

10 III. Recommendations

11 In accordance with the foregoing analysis, it is RECOMMENDED  
12 that:

13 1) Petitioner's motion for a stay be DENIED; and

14 2) A thirty-day period be SCHEDULED for the filing of  
15 Petitioner's traverse.

16 These findings and recommendations are submitted to the United  
17 States District Court Judge assigned to the case, pursuant to the  
18 provisions of 28 U.S.C. ' 636 (b) (1) (B) and Rule 304 of the Local  
19 Rules of Practice for the United States District Court, Eastern  
20 District of California. Within thirty (30) days after being served  
21 with a copy, any party may file written objections with the Court  
22 and serve a copy on all parties. Such a document should be  
23 captioned AObjections to Magistrate Judge=s Findings and  
24 Recommendations.@ Replies to the objections shall be served and  
25 filed within fourteen (14) days (plus three (3) days if served by  
26 mail) after service of the objections. The Court will then review  
27 the Magistrate Judge=s ruling pursuant to 28 U.S.C. ' 636 (b) (1) (C).  
28 The parties are advised that failure to file objections within the

1 specified time may "waive their right to challenge the magistrate's  
2 factual findings" on appeal. Wilkerson v. Wheeler, \_\_ F.3d \_\_, \_\_,  
3 No. 11-17911, 2014 WL 6435497, at \*3 (9th Cir. Nov. 18, 2014)  
4 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).  
5

6 IT IS SO ORDERED.

7 Dated: January 13, 2015

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28