

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

JERRY GALINDO MARTINEZ,

Petitioner,

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PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Case No. 1:14-cv-01132 MJS (HC)

ORDER GRANTING PETITIONER'S MOTION TO LIFT STAY AND FILE FIRST AMENDED PETITION

[Doc. 11]

**PEOPLE OF THE STATE OF
CALIFORNIA,**

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has declined Magistrate Judge jurisdiction under 28 U.S.C. § 636(c). (ECF No. 6.)

Petitioner is a state prisoner proceeding pro se and in forma pauperis with an application for writ of habeas corpus under 28 U.S.C. § 2254. On October 24, 2012, the Court granted Petitioner's request to stay the proceeding under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003).

On November 17, 2012, Petitioner filed a motion to lift the stay and a motion to file an amended petition. Petitioner informed the Court that the California Supreme Court denied his petition containing the previously unexhausted claim, and he filed a motion to

1 amend the petition to add the newly-exhausted claim to his federal petition.

2 As Petitioner asserts that he has exhausted his claim in state court, the Court
3 GRANTS Petitioner's motion to lift the stay and to amend to allow Petitioner to file a first
4 amended petition containing his previously exhausted and newly exhausted claims. The
5 Court cautions Petitioner that Local Rule 220 requires that an amended pleading be
6 complete in itself, without reference to any prior pleading. See Loux v. Rhay, 375 F.2d
7 55, 57 (9th Cir. 1967) (As general rule, an amended complaint or petition supersedes the
8 original.). The Court shall screen the petition and request briefing from the parties by
9 way of a separate order.

10 **ORDER**

11 IT IS THEREFORE ORDERED that Petitioner's motion to lift the stay and file an
12 amended Petition is GRANTED.

13 IT IS SO ORDERED.
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15 Dated: November 21, 2014

16 /s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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