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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

GILBERTO DIAZ-SANCHEZ,  
Petitioner,  
v.  
JEFFREY BEARD and  
NEIL McDOWELL,  
Respondents.

No. 1:14-cv-01204-DAD-SKO HC

**FINDINGS AND RECOMMENDATIONS  
THAT THE COURT GRANT  
PETITIONER’S MOTION TO MODIFY  
STAY AND ABEYANCE**

**(Doc. 68)**

Petitioner, Gilberto Diaz-Sanchez, is a state prisoner represented by counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 31, 2018, the undersigned recommended granting Petitioner’s motion for stay and abeyance, (Doc. 64), which the Court adopted on May 15, 2018. (Doc. 66.) On May 29, 2018, Petitioner filed a motion to modify the stay to exhaust additional claims with the state court.

The undersigned, having previously found good cause for the stay, recommends granting the motion to modify the stay to include additional unexhausted claims Petitioner may present to the state court.

1 Conclusion and Recommendations

2 The Court hereby RECOMMENDS:

3 1. The prior order granting the motion for stay and abeyance, (Doc. 66), be modified  
4 to include any unexhausted claims pursuant to the recent holding in *McCoy v. Louisiana*, 138  
5 S.Ct. 1500 (2018).

6 2. Petitioner is DIRECTED to file a status report within ninety (90) days of the date  
7 of this Order advising the Court of the status of the state court proceedings.

8 3. Petitioner shall file an additional status report every ninety (90) days thereafter.

9 4. Within thirty (30) days after the California Supreme Court issues a final order  
10 resolving the unexhausted claims, Petitioner shall file a motion to lift the stay and an amended  
11 habeas petition setting forth all exhausted claims. The Court shall then screen the petition  
12 pursuant to the Rules Governing Section 2254 Cases.

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15 These Findings and Recommendations will be submitted to the United States District  
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**  
17 **(30) days** after being served with these Findings and Recommendations, either party may file  
18 written objections with the Court. The document should be captioned "Objections to Magistrate  
19 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and  
20 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure  
21 to file objections within the specified time may constitute waiver of the right to appeal the District  
22 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*  
23 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

24  
25 IT IS SO ORDERED.

26 Dated: June 15, 2018

27 /s/ Sheila K. Oberto  
28 UNITED STATES MAGISTRATE JUDGE