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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**

OMAR CEBRERO,	)	Case No.: 1:16-cv-00173-JLT
	)	
Petitioner,	)	ORDER GRANTING PETITIONER’S MOTION
	)	TO STAY PROCEEDINGS (Doc. 1)
v.	)	
	)	ORDER FOR PETITIONER TO FILE REGULAR
S. FRAUENHEIM,	)	STATUS REPORTS
	)	
Respondent.	)	
	)	

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Petitioner requested a stay to exhaust five claims. Plaintiff has now provided additional detail about these claims. As a result, the Court will order the matter stayed to allow Petitioner time to exhaust these claims.

**I. Discussion**

A court has had the discretion to stay a petition. Calderon v. United States Dist. Court (Taylor), 134 F.3d 981, 987-988 (9<sup>th</sup> Cir. 1998); Greenawalt v. Stewart, 105 F.3d 1268, 1274 (9<sup>th</sup> Cir.), *cert. denied*, 519 U.S. 1002 (1997). Granting a stay is appropriate where there is no intention on the part of the Petitioner to delay or harass and in order to avoid piecemeal litigation. Id. Where the petition contains only exhausted claims, still the court may hold it in abeyance to allow exhaustion of other claims. Kelly v. Small, 315 F.3d 1063, 1070 (9<sup>th</sup> Cir. 2004).

Notwithstanding the foregoing, federal case law continued to require that the Court dismiss “mixed” petitions containing both exhausted and unexhausted claims. Rose v. Lundy, 455 U.S. 509

1 (1982). However, in Rhines v. Weber, 544 U.S. 269, (2005) the Court recognized that “[a]s a result of  
2 the interplay between AEDPA’s 1-year statute of limitations<sup>1</sup> and Lundy’s dismissal requirement,  
3 petitioners who come to federal court with ‘mixed’ petitions run the risk of forever losing their  
4 opportunity for any federal review of their unexhausted claims.” Thus, federal courts may now issue  
5 “stay and abey” orders under appropriate circumstances to permit petitioners to exhaust claims before  
6 proceeding with their federal petitions. Rhines, 544 U.S. at 275. IWhile the procedure should be  
7 “available only in limited circumstances,” it “likely would be an abuse of discretion for a district court  
8 to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his failure to exhaust,  
9 his unexhausted claims are potentially meritorious, and there is no indication that the petitioner  
10 engaged in intentionally dilatory litigation tactics.” Rhines, 544 U.S. at 278. When a petitioner has  
11 met these requirements, his interest in obtaining federal review of his claims outweighs the competing  
12 interests in finality and speedy resolution of federal petitions. Id.

13 Here, Petitioner has timely filed a federal habeas petition containing seven claims exhausted  
14 through state habeas corpus proceedings. He has also indicated that he wishes to initiate state court  
15 habeas proceedings to exhaust five additional claims which he hopes to be able to include in the  
16 instant petition. Thus, it appears to the Court that Petitioner is prepared to exhaust his claims in a  
17 timely and expeditious manner, and there is no indication that, in seeking this stay and abeyance,  
18 Petitioner intends to harass or delay the proceedings nor does it appear that Petitioner is engaging in  
19 dilatory conduct. Although the Court is not prepared at this time to make a final assessment of the  
20 merits of the five unexhausted claims in the instant petition, a preliminary review of that claim  
21 indicates that Petitioner has sufficiently alleged a constitutional violation for each of those  
22 unexhausted claims. Moreover, it appears that Petitioner is proceeding in good faith and that no  
23 prejudice would inure to the parties by granting the requested stay.

24 Therefore, good cause having been presented and good cause appearing therefore, the Court  
25 will grant Petitioner’s motion for a stay of the proceedings and will hold the petition for writ of habeas  
26 corpus in abeyance pending exhaustion of Petitioner’s state remedies.

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28 <sup>1</sup>The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA), 28 U.S.C. § 1244(d).



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5. Petitioner is **GRANTED** 30 days following the final order of the state courts within which to file a motion for leave to amend the petition to include the newly exhausted claims.

IT IS SO ORDERED.

Dated: March 10, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE