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

OMAR CASILLAS,

Petitioner,

v.

SECRETARY OF CORRECTIONS,

Respondent.

Case No. 1:17-cv-00511-LJO-SKO HC

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS RECOMMENDING  
DENIAL OF THE MOTION FOR AN ORDER  
OF STAY AND ABEYANCE

(Doc. 11)

Petitioner Omar Casillas is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The Court referred the matter to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and Local Rules 302 and 304.

On May 11, 2017, the Magistrate Judge filed findings and recommendations in which she recommended that the Court deny the motion for stay and abeyance. The Magistrate Judge first found that the state court had already addressed the petition's first three claims in Petitioner's direct appeal, rendering those claims exhausted. Only the fourth claim, which alleged ineffective assistance of appellate counsel, was unexhausted. Because the fourth claim lacked merit, the Magistrate Judge recommended that the Court deny the motion for stay and abeyance as to ground four.

1 The findings and recommendations, which were served on Petitioner on the same date,  
2 provided that Petitioner could file objections within thirty days. On June 12, 2017, Petitioner filed  
3 objections in which he sought to establish that his motion for stay and abeyance was timely. The  
4 objections did not address the Magistrate Judge's finding that an order of stay and abeyance was  
5 inappropriate in light of ground four's lack of merit.

6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed the  
7 entire file *de novo*, and considered Petitioner's objections, the Court finds that the findings and  
8 recommendations are supported by the record and proper analysis.  
9

10 Accordingly, the Court hereby ORDERS:

- 11 1. The findings and recommendations filed May 11, 2017, are adopted in full;
- 12 2. Petitioner's motion for stay and abeyance pursuant to *Rhines v. Weber*, 544 U.S. 269,  
13 275 (2005), is denied;
- 14 3. Within thirty (30) days of this order, Petitioner may file an amended petition for writ  
15 of habeas corpus pursuant to 28 U.S.C. § 2254, including the only first three grounds  
16 for relief alleged in the petition filed April 5, 2017 (Doc. 1). The amended petition  
17 shall not include the unexhausted fourth ground for relief alleging ineffective  
18 assistance of appellate counsel.  
19
- 20 4. Petitioner shall sign the amended petition under penalty of perjury where indicated.  
21 The amended petition must be complete in itself. This means that the amended  
22 petition may not refer back to any portion of the original petition filed in this case but  
23 must include all pleadings and any appendices which Petitioner intends to incorporate  
24 within the amended petition.  
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5. If Petitioner fails to file an amended petition within thirty (30) days from the date of this order, the case will be dismissed without further notice for lack of prosecution.

6. The Court DECLINES to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: June 22, 2017

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE