

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

JAMES D. CHAVEZ,

Petitioner,

v.

WARDEN,

Respondent.

Case No. 1:17-cv-01202- DAD-EPG-HC

ORDER VACATING FINDINGS AND  
RECOMMENDATION (ECF No. 12)

ORDER TO RESPOND

ORDER SETTING BRIEFING SCHEDULE

ORDER DIRECTING CLERK OF COURT  
TO SERVE DOCUMENTS ON  
CALIFORNIA ATTORNEY GENERAL

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On September 26, 2017, the Court ordered Petitioner to show cause why the petition should not be dismissed for failure to exhaust state court remedies. (ECF No. 6). On November 7, 2017, Petitioner filed a motion “requesting an additional 30 days in which to file an amended petition or to exhaust at the Supreme Court level.” (ECF No. 8). The Court construed the motion as a request for an extension of time to file a response to the order to show cause and granted an extension of time. The Court also informed Petitioner that if he wished to stay the proceedings so that he could return to state court to exhaust his claims, Petitioner must file a motion for stay that addresses the factors set forth in Rhines v. Weber, 544 U.S. 269 (2005). (ECF No. 9). Petitioner

1 did not file a response to the order to show cause, and the undersigned issued findings and  
2 recommendation to dismiss the petition without prejudice for nonexhaustion. (ECF No. 12).

3 Petitioner has filed objections to the findings and recommendation. (ECF No. 13).  
4 Therein, Petitioner informed the Court that he filed a state habeas petition in the California  
5 Supreme Court to exhaust his state court remedies. (ECF No. 13).

6 Accordingly, the Court HEREBY ORDERS:

- 7 1. The findings and recommendation issued on January 23, 2018 (ECF No. 12) are  
8 VACATED;
- 9 2. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL FILE a  
10 RESPONSE to the Petition. See Rule 4, Rules Governing Section 2254 Cases; Cluchette  
11 v. Rushen, 770 F.2d 1469, 1473-74 (9th Cir. 1985) (court has discretion to fix time for  
12 filing a response). A Response can be made by filing one of the following:
  - 13 A. AN ANSWER addressing the merits of the Petition. Any argument by  
14 Respondent that Petitioner has procedurally defaulted a claim SHALL BE MADE  
15 in the ANSWER, but must also address the merits of the claim asserted.
  - 16 B. A MOTION TO DISMISS the Petition.
- 17 3. Within **SIXTY (60) days** of the date of service of this order, Respondent SHALL FILE  
18 any and all transcripts or other documents necessary for the resolution of the issues  
19 presented in the Petition. See Rule 5(c), Rules Governing Section 2254 Cases.
- 20 4. If Respondent files an Answer to the Petition, Petitioner MAY FILE a Traverse within  
21 **THIRTY (30) days** of the date of service of Respondent's Answer. If no Traverse is  
22 filed, the Petition and Answer are deemed submitted at the expiration of the thirty days.
- 23 5. If Respondent files a Motion to Dismiss, Petitioner SHALL FILE an Opposition or  
24 Statement of Non-Opposition within **TWENTY-ONE (21) days** of the date of service of  
25 Respondent's Motion. Any Reply to an Opposition to the Motion to Dismiss SHALL be  
26 filed within **SEVEN (7) days** after the Opposition is served. The Motion to Dismiss will  
27 be deemed submitted **TWENTY-EIGHT (28) days** after the service of the Motion or  
28 when the Reply is filed, whichever comes first. See Local Rule 230(l).

1 6. Respondent SHALL COMPLETE and RETURN to the Court within **THIRTY (30) days**  
2 a Consent/Decline form indicating whether Respondent consents or declines to consent to  
3 the jurisdiction of a the United States Magistrate Judge pursuant to Title 28 U.S.C. §  
4 636(c)(1).

5 7. The Clerk of the Court is DIRECTED to SERVE a copy of this order on the California  
6 Attorney General or his representative.

7 All motions shall be submitted on the record and briefs filed without oral argument unless  
8 otherwise ordered by the Court. Local Rule 230(l). These dates should be considered as firm by  
9 all parties. If any party requires additional time, it should file a motion for amendment of the  
10 schedule before a deadline has passed and explain in detail why the party cannot comply with  
11 this schedule. Extensions of time will only be granted upon a showing of good cause. All  
12 provisions of Local Rule 110 are applicable to this order.

13 IT IS SO ORDERED.  
14

15 Dated: February 20, 2018

16 /s/ Eric P. Gray  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28