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8	IN THE UNITED STATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA
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11	GLEN CORNWELL, JR. Petitioner, No. CIV-S-06-0705 JAM GGH P
12	vs. DEATH PENALTY CASE
13	
14	ROBERT L. AYERS, JR. ORDER Respondent.
15	/
16	On March 26, 2007, the assigned Magistrate Judge issued an Order and Findings
17	and Recommendations concerning a stay in this death penalty action. The Magistrate Judge found
18	that petitioner was bringing some unexhausted claims in a federal petition for writ of habeas
19	corpus, which the magistrate judge characterized as a "protective petition" to avoid further
20	running of the AEDPA statute of limitations. The Order part directed petitioner to add his
21	unexhausted federal claims to a then pending state habeas petition, and do so forthwith regardless
22	of any sought review of the Order/Findings and Recommendations with the district judge.
23	Petitioner's counsel complied with the Order.
24	The magistrate judge also found and recommended that the federal petition, a
25	mixed petition, be stayed pending completion of the state habeas proceedings. Respondent
26	objected to the recommendation on April 14, 2007 on account of a perceived lack of good cause
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to permit a mixed petition to be stayed pending further exhaustion. See Rhines v. Weber, 544
 U.S. 269 (2005). For reasons not known, the then assigned district judge did not rule on the
 objections. Thereafter, the case was assigned to a visiting judge, and finally to the undersigned on
 April 30, 2008. However, respondent's objections to the March 26 Order/Findings and
 Recommendations were not brought to the undersigned's attention. Thus, the federal petition has
 been de facto stayed since March 26, 2007.

On July 7, 2009, petitioner's counsel brought to the undersigned's attention that
the objections remained outstanding, but also notified the court that one of the pending state
petitions had been decided by the state supreme court on June 24, 2009.<sup>1</sup> Petitioner asked for
clarification that a stay was indeed in effect.

Due to the procedural history, the court need not obtain a response to petitioner's Motion for Stay and For Clarification of Previous Stay of Proceedings. The undersigned has reviewed the March 26, 2007 Findings and Recommendations de novo. For the reasons stated therein, and the passage of time as explained above, the undersigned adopts the Findings and Recommendations in their entirety. The stay of these federal proceedings is now formally ordered. Petitioner's Motion for Stay and for Clarification etc. (Docket # 28) is denied as moot.

Petitioner and Respondent shall file a status report before the magistrate judge
within sixty (60) days relating the status of the state habeas proceedings, and further contemplated
proceedings in this federal action if the state action is finally resolved.

20 IT IS SO ORDERED.

21 Dated: July 16, 2009

/s/ John A. Mendez

UNITED STATES DISTRICT JUDGE

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<sup>&</sup>lt;sup>1</sup>Evidently, a "protective petition" filed with the state supreme court on July 2, 2004 has 26 not yet been ruled upon.