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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID VELASQUEZ,

No. 2:06-cv-02618-JCW

Petitioner,

vs.

ROBERT A. HOREL, Acting Warden, et al.,

ORDER

Respondents.

David Velasquez, a California state prisoner, petitions *pro se* for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Velasquez challenges a decision by the California Board of Parole Hearings denying him parole. The United States Court of Appeals for the Ninth Circuit is currently adjudicating an appeal, *Hayward v. Marshall*, 512 F.3d 536 (9th Cir. 2008), *reh'g en banc granted*, 527 F.3d 797 (9th Cir. 2008), argued en banc and submitted for decision June 24, 2008, which may have an impact on how federal district courts review decisions by the California Board of Parole Hearings. Therefore, this court *sua sponte* stays the proceedings pending resolution of *Hayward* by the *en banc* court.

1 A district court has the inherent power to stay cases to control its docket and  
2 promote efficient use of judicial resources. *See Landis v. N. Am. Co.*, 299 U.S.  
3 248, 254-55 (1936); *Dependable Highway Express v. Navigators Ins. Co.*, 498  
4 F.3d 1059, 1066 (9th Cir. 2007). In determining whether a stay is appropriate  
5 pending the resolution of another case, a district court must consider various  
6 competing interests, including: (1) the possible damage which may result from the  
7 granting of a stay; (2) the hardship to the parties if the suit is allowed to go  
8 forward; and (3) the orderly course of justice measured in terms of the simplifying  
9 or complicating of issues, proof, and questions of law which could be expected to  
10 result from a stay. *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110-09 (9th Cir.  
11 2005), *citing CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Additionally,  
12 a district court must consider whether a stay pending resolution of another case is  
13 likely to be resolved in a reasonable amount of time because of our duty to  
14 adjudicate habeas petitions in a reasonable time frame. *Yong v. INS*, 208 F.3d  
15 1116, 1119-20 (9th Cir. 2000).

16 **1. Damage**

17 The only potential damage resulting from a stay is to Velasquez, who may  
18 have to wait longer for resolution of his petition. However, prudence dictates that  
19 the court await the Ninth Circuit's *en banc* decision in *Hayward* so that

1 Velasquez's claims need not be reconsidered in the wake of that appeal.

2 Reconsideration would also result in delay. It is consequently not clear that a stay  
3 pending *Hayward* will ultimately lengthen the pendency of Velasquez's petition.

4 The court finds that the possible damage to Velasquez is minimal.

## 5 **2. Hardship**

6 Both parties face the prospect of hardship if the court were to resolve the  
7 petition before *Hayward* is decided. If *Hayward* affects the legal standard  
8 applicable to federal habeas petitions challenging parole hearings in California,  
9 then this proceeding, and possibly a subsequent parole hearing, may need to be  
10 reconsidered and may result in duplicate hearings. Therefore, the court finds that  
11 both parties would be disadvantaged by permitting the petition to proceed at this  
12 stage.

## 13 **3. Orderly Course of Justice**

14 A stay pending resolution of *Hayward* will permit the court to consider  
15 Velasquez's petition under the most current precedent and thereby will simplify  
16 the proceedings and promote the efficient use of judicial resources. It is in the  
17 interest of justice to await the *en banc* decision in *Hayward* rather than proceed  
18 and have to reconsider the case. Therefore, a stay promotes the orderly course of  
19 justice.

