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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL SETH MACIEL,  
Petitioner,  
v.  
WILLIAM KNIPP,  
Respondent.

No. 2:12-cv-1023 MCE AC P

ORDER

This habeas matter was stayed, pursuant to Kelly v. Small 315 F.3d 1063, 1070 (9th Cir. 2003), on July 16, 2012. See ECF No. 14. On October 29, 2013 (ECF No. 16), petitioner was directed to inform the court regarding the status of the case, and to show cause why the stay should not be lifted and the case proceed solely on the two evidently exhausted claims of the original petition. See ECF No. 16.

Petitioner has filed a timely response outlining his on-going efforts to exhaust and the difficulties he has encountered in attempting to do so. The court finds that petitioner has discharged the show cause order, and the stay will remain in place at this time.<sup>1</sup> Petitioner will be

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<sup>1</sup> The court makes no representation by this order that any subsequently amended petition is not subject to dismissal as untimely. See Sossa v. Diaz, 729 F.3d 1225 (9th Cir. 2013). Petitioner has previously been cautioned that under the Kelly procedure, newly exhausted claims in an amended federal petition may only proceed following state court exhaustion if those claims are determined to be timely. Findings and Recommendations (ECF No. 8), filed May 4, 2012, citing (continued...)

1 directed to file case status updates every ninety (90) days, beginning on June 20, 2014.

2 Accordingly, IT IS ORDERED that:

3 1. The show cause order at ECF No. 16 has been discharged by petitioner's timely  
4 response at ECF No. 17.

5 2. The stay will not be lifted at this time.

6 3. Petitioner is to file, every ninety days, a case status update in this matter,  
7 notwithstanding the stay of proceedings in this court. The first such update shall be filed on or  
8 before June 20, 2014.

9 4. Petitioner shall inform the court within 30 days of a decision by the state's highest  
10 court exhausting his new claims, and shall at that time request a lift of the stay and file an  
11 amended petition setting forth all of his claims.

12 DATED: March 20, 2014

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14 ALLISON CLAIRE  
15 UNITED STATES MAGISTRATE JUDGE  
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26 King v. Ryan, 564 F.3d at 1140-41 (9th Cir. 2009), adopted by Order at ECF No. 14. That is, the  
27 new claims must relate back to the exhausted claims of a timely filed petition. Mayle v. Felix,  
28 545 U.S. 644, 664 (2005).