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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ENRIQUE BARRERA,
Petitioner,
v.
W.L. MUNIZ, Warden,
Respondent.

No. 2:14-cv-2260 JAM KJN P (TEMP)

ORDER

Petitioner is a state prisoner, proceeding pro se, with a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Pending before the court is petitioner’s renewed motion for a stay and abeyance.

By way of background, on July 23, 2015, then-Magistrate Judge Dale A. Drozd issued findings and recommendations, recommending, inter alia, that petitioner’s motion for a stay and abeyance pursuant to the procedure outlined in Rhines v. Weber, 544 U.S. 269 (2005), be denied and that petitioner be directed to file an amended petition containing only his exhausted Claims (1) and (2). Judge Drozd advised petitioner that he could elect to proceed on his fully exhausted Claims (1) and (2) or he could file with his amended petition a motion for a stay pursuant to the procedure outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), if he wished to return to state court to exhaust his unexhausted Claims (3) and (4).

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1 On November 4, 2015, assigned District Judge John A. Mendez adopted the findings and
2 recommendations in full. Even before Judge Mendez issued his order, petitioner filed a first
3 amended petition together with a renewed motion for a stay and abeyance pursuant to the Kelly
4 procedure. In his motion, petitioner explained that his Claims (3) and (4) were currently pending
5 before the California Supreme Court.

6 According to the California Supreme Court's website, it appears that petitioner's pursuit
7 of habeas corpus relief is now complete. Specifically, according to that court's records, petitioner
8 filed his petition for writ of habeas corpus with the California Supreme Court on September 16,
9 2015. The California Supreme Court denied the petition on December 16, 2015. On December
10 31, 2015, petitioner filed a notice of change of address in that action, so petitioner may not have
11 received the California Supreme Court's decision until recently. In any event, it now appears that
12 petitioner's renewed motion for a stay and abeyance filed in this federal habeas corpus action has
13 been rendered moot. If this is the case, and petitioner is no longer pursuing habeas corpus relief
14 in state court, this court will direct petitioner to file a second amended petition containing all of
15 his exhausted claims in this action. Upon receipt and review of petitioner's second amended
16 petition, the court will deny petitioner's renewed motion for a stay and abeyance as moot, allow
17 the case to proceed on petitioner's second amended petition, and order respondent to file and
18 serve a response to petitioner's second amended petition. If, on the other hand, petitioner has a
19 petition for writ of habeas corpus still pending in state court, this court will direct petitioner to file
20 a declaration explaining the status of his petition and any pending state habeas corpus
21 proceedings. Upon receipt and review of petitioner's declaration, the court will issue findings
22 and recommendations on petitioner's renewed motion for a stay and abeyance.

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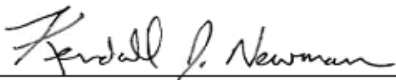
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Accordingly, IT IS HEREBY ORDERED that:

1. Within thirty days of the date of service of this order, petitioner shall either:
 - (a) file a second amended petition containing all of his exhausted claims;¹ or
 - (b) file a declaration explaining the status of any pending habeas corpus proceedings in state court; and
2. The Clerk of the Court is directed to send petitioner the court's form for filing a petition for writ of habeas corpus.

Dated: January 6, 2016


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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¹ If petitioner elects option (a) and files a second amended petition, he is advised that he must file it on the form employed by this court and must state all claims and prayers for relief on the form. His petition must also bear the case number assigned to this action and must bear the title "Second Amended Petition."