

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
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD C. RODRIGUEZ,
Petitioner,
v.
JOE LIZARRAGA,
Respondent.

No. 2:15-cv-1154 JAM DB P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se with an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has requested the court extend the stay (ECF No. 46) and requested the appointment of counsel (ECF No. 57). For the reasons set forth below the court will deny petitioner’s request for counsel and recommend the request for stay be denied.

I. Motion to Appoint Counsel

Petitioner has requested the appointment of counsel. Petitioner argues that he is not equipped to present this claim with accurate reliability, a number of his claims would benefit from clarification provided by an attorney, his limited knowledge of procedures and law, and the limitations inherent in a prison law library warrant the appointment of counsel.

There currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so

1 require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. Petitioner has shown that he is able to
2 follow directives from the court and present his claims coherently. In the present case, the court
3 does not find that the interests of justice would be served by the appointment of counsel at the
4 present time.

5 **II. Request to Extend Stay**

6 Petitioner has requested that the court extend the stay so that he can exhaust his
7 unexhausted claims. (ECF No. 46.) The court previously filed findings and recommendations
8 recommending that petitioner’s request to impose a Rhines¹ stay in this action be denied. (ECF
9 No. 44.) The district judge assigned to the case adopted the findings and recommendations,
10 dismissed claims 10 through 14, and denied as moot petitioners motions to extend the stay (ECF
11 Nos. 42, 43). (ECF No. 47.) Accordingly, the court will recommend that petitioner’s third
12 request to extend the stay be denied as moot.

13 Accordingly, IT IS HEREBY ORDERED that petitioner’s motion for appointment of
14 counsel (ECF No. 57) is denied without prejudice to a renewal of the motion at a later stage of the
15 proceedings.

16 IT IS HEREBY RECOMMENDED that petitioner’s request to extend the stay (ECF No.
17 46) be denied as moot.

18 These findings and recommendations are submitted to the United States District Judge
19 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
20 after being served with these findings and recommendations, petitioner may file written
21 objections with the court. Such a document should be captioned “Objections to Magistrate
22 Judge’s Findings and Recommendations.”

23 ///

24 ///

25 ///

26 ///


27

28 ¹ Rhines v. Weber, 544 U.S. 269 (2005).

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

Petitioner is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: May 17, 2018



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

DLB:12
DLB:1/Orders/Prisoners.Habeas/rodr1154.stay.110+111