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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

AARON MONTGOMERY,
Petitioner,
v.
S. PERRY,
Respondent.

No. 2:15-cv-1220 AC P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

This court previously denied petitioner’s request for a stay and abeyance after finding that petitioner had failed to provide the supplemental information he had been ordered to provide. ECF No. 15. Petitioner has now filed another request to stay this case in which he states that he did respond to the court’s October 16, 2015 order and indicates that his response may not have reached the court because it was mishandled by prison staff. ECF No. 27. Petitioner states that he did exhaust all the issues contained in the petition in state court. Id. Since petitioner is asserting that the petition is fully exhausted, a stay under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), which does not require a showing of good cause, may be appropriate. The court will therefore vacate respondent’s deadline to respond to the petition and give respondent an opportunity to respond to the motion for stay.

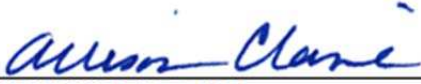
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Accordingly, IT IS HEREBY ORDERED that:

1. Respondent’s deadline to respond to the petition is vacated.

2. Within twenty-one days of the filing of this order, respondent may file a response to petitioner’s request for stay and abeyance under Kelly (ECF No. 27). Respondent is not required to respond to the request for stay, but the absence of a response will be deemed consent to the issuance of a stay.

DATED: February 22, 2016



ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE