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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

GERMAN Y. QUEZADA,  
Petitioner,  
v.  
W.L. MUNIZ,  
Respondent.

No. 2:17-cv-00243 AC P

ORDER

Petitioner is a state prisoner proceeding pro se who appears to be attempting to pursue a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. However, rather than filing a habeas petition, petitioner has filed a request that he be given a sixty-day extension of time to file his initial petition for a writ of habeas corpus. ECF No. 1 at 1. Petitioner requests the additional time in an attempt to extend the one-year statute of limitations to submit a habeas corpus petition set forth in the Antiterrorism and Effective Death Penalty Act (“ADEPA”). 28 U.S.C. § 2244(d)(1). In the alternative, petitioner requests that this court stay proceedings so that he may be able to exhaust state court remedies. ECF No. 1 at 1.

I. Motion for Extension of Time

This court does not have the authority to extend the statute of limitations established in AEDPA and cannot grant an extension of time for petitioner to file his initial habeas corpus petition. See (d)(1); Joseph v. People of the State of Cal., No. CV 16-07921-JAK (AS), 2016 WL

1 6680409, at \*1, 2016 U.S. Dist. LEXIS 157340, at \*2-3 (C.D. Cal. Nov. 14, 2016) (“Petitioner’s  
2 motion for an extension of time in an attempt to bypass the statute of limitations hurdle must be  
3 denied because the Court has no basis for determining whether an extension of time and/or  
4 statutory or equitable tolling would be appropriate.” (internal citation omitted)). Accordingly,  
5 petitioner’s motion for a sixty-day extension of time will be denied.

6 Petitioner shall have an opportunity to submit a habeas corpus petition within thirty days  
7 of the filing date of this order. Failure to comply with this order will result in a recommendation  
8 that this action be dismissed.

9 The court makes no representation that a petition filed by this deadline will be timely  
10 under the AEDPA. The court is merely providing an opportunity for petitioner to file the  
11 document.

## 12 II. Motion to Stay

13 District courts have the authority to issue stays where such a stay would be a proper  
14 exercise of discretion. Rhines v. Weber, 544 U.S. 269, 277 (2005). Under Rhines, the district  
15 court stays a mixed petition<sup>1</sup> while the petitioner exhausts unexhausted claims in state court. 544  
16 U.S. at 277. Rhines instructs district courts to stay, rather than dismiss, a mixed petition, only “in  
17 limited circumstances,” namely when three conditions are met: “[1] the petitioner had good  
18 cause for his failure to exhaust, [(2)] his unexhausted claims are potentially meritorious, and [(3)]  
19 there is no indication that the petitioner engaged in intentionally dilatory litigation tactics.” 544  
20 U.S. at 277-78. The court may also stay a completely unexhausted petition if the conditions set  
21 forth in Rhines are met.<sup>2</sup> Mena v. Long, 813 F.3d 907, 912 (9th Cir. 2016).

22 As an initial matter, petitioner’s motion to stay proceedings cannot be granted because  
23 petitioner has not submitted a habeas corpus petition. Right now there is nothing to stay.  
24 Additionally, petitioner’s motion does not include any information about his claims, his diligence  
25 in pursuing his claims, or whether there is good cause for the failure to exhaust. ECF No. 1. This

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26 <sup>1</sup> A “mixed” petition is “a single petition that includes both exhausted and unexhausted claims.”  
27 Mena v. Long, 813 F.3d 907, 908 (9th Cir. 2016).

28 <sup>2</sup> It is not clear from the motion whether petitioner’s potential claims are fully or partially  
exhausted.

1 court cannot determine whether a stay is appropriate until petitioner submits his petition for  
2 habeas corpus and a motion that addresses all three Rhines factors. Therefore, the instant motion  
3 to stay proceedings will be denied.

4 Petitioner is reminded that he does not require permission from this court to pursue state  
5 court remedies. If he is seeking to file something in the state court, he should proceed in state  
6 court without delay.

7 III. In Forma Pauperis

8 Petitioner has not filed an in forma pauperis application or paid the required filing fee of  
9 \$5.00. See 28 U.S.C. §§ 1914(a), 1915(a). No action can be taken with regards to petitioner's  
10 habeas corpus petition until such time as he submits the in forma pauperis application or pays the  
11 filing fee. See L.R. 121(c). Petitioner will be provided the opportunity to either submit the  
12 appropriate application in support of a request to proceed in forma pauperis or submit the  
13 appropriate filing fee. Failure to comply with this order will result in a recommendation that this  
14 action be dismissed.

15 Accordingly, IT IS HEREBY ORDERED that:


- 16 1. Petitioner's motion for a sixty-day extension of time to file a petition for habeas  
17 corpus (ECF No.1) is DENIED.
- 18 2. Petitioner's motion to stay proceedings (ECF No. 1) is DENIED without prejudice.
- 19 3. Petitioner shall have thirty days from service of this order to file a petition for habeas  
20 corpus. Petitioner's failure to comply with this order will result in a recommendation that this  
21 action be dismissed.
- 22 4. If petitioner is seeking a stay, he may file a motion for stay once he has filed a petition  
23 for habeas corpus.
- 24 5. Petitioner shall submit, within thirty days from service of this order, an application in  
25 support of his request to proceed in forma pauperis on the form provided by the Clerk of Court, or  
26 the appropriate filing fee. Petitioner's failure to comply with this order will result in a  
27 recommendation that this action be dismissed.

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6. The Clerk of the Court is directed to send petitioner a copy of the in forma pauperis form used by this district and the court's form for application for writ of habeas corpus.

DATED: February 10, 2017

  
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ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE