



1 before presenting them to the federal court. Picard v. Connor, 404 U.S. 270, 277 (1971);  
2 Middleton v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985), *cert. denied* 478 US. 1021 (1986).

3 Petitioner should be aware that under Rhines v. Weber, 544 U.S. 269, 277 (2005) a district  
4 court may stay a petition to allow a petitioner to present an unexhausted claim or unexhausted  
5 claims to the state courts. Assuming the petition itself has time been filed in this court such a stay  
6 “eliminates entirely any limitations issue with regard to the originally unexhausted claims, as the  
7 claims remain pending in federal court.” King v. Ryan, 564 F.3d 1133, 1140 (9th Cir. 2009). A  
8 dismissal, such as petitioner has requested, will not, however, retard the statute of limitations on  
9 filing in his court and the result may be that when the petitioner seeks to return here with a new  
10 petition it may be subject to dismissal for untimely filing.

11 To qualify for a stay under Rhines a petitioner must (1) show good cause for her failure to  
12 exhaust all her claims before filing this action; (2) explain and demonstrate how her unexhausted  
13 claims are potentially meritorious; (3) describe the status of any pending state court proceedings,  
14 if any there are on her unexhausted claims; and (4) explain how she has diligently pursued any  
15 such claims. Rhines, 544 U.S. at 277-278.

16 What constitutes good cause has not been precisely defined except to indicate at the outer  
17 end that petitioner must not have engaged in purposeful dilatory tactics, Rhines, 544 U.S. at 277-  
18 78, and that “extraordinary circumstances” need not be found. Jackson v. Roe, 425 F.3d 654,  
19 661-662 (9th Cir. 2005); see also Rhines, 544 U.S. at 279 (Stevens, J., concurring) (the “good  
20 cause” requirement should not be read “to impose the sort of strict and inflexible requirement that  
21 would trap the unwary pro se prisoner”) (internal citation omitted); *id.* (Souter, J., concurring)  
22 (pro se habeas petitioners do not come well trained to address tricky exhaustion determinations).  
23 “But as the Jackson court recognized, we must interpret whether a petitioner has “good cause” for  
24 a failure to exhaust in light of the Supreme Court’s instruction in Rhines that the district court  
25 should only stay mixed petitions in ‘limited circumstances.’ We also must be mindful that  
26 AEDPA aims to encourage the finality of sentences and to encourage petitioners to exhaust their  
27 claims in state court before filing in federal court.” Wooten v. Kirkland, 540 F.3d 1019, 1023-24  
28 (9th Cir. 2008), *quoting Jackson*, 425 F.3d at 661) (internal citations omitted).

1 Recently, the Ninth Circuit stated that “a reasonable excuse, supported by evidence to  
2 justify a petitioner’s failure to exhaust,” will demonstrate good cause under Rhines. Blake v.  
3 Baker, 745 F.3d 977, 982 (9th Cir. 2014). In Blake, the Ninth Circuit held that ineffective  
4 assistance of counsel by post-conviction counsel can be good cause for a Rhines stay, however,  
5 bare allegations of state post-conviction IAC do not suffice. Id. at 983. The Blake court  
6 concluded that petitioner satisfied the good cause standard where he argued that his post-  
7 conviction counsel “failed to conduct any independent investigation or retain experts in order to  
8 discover the facts underlying his trial-counsel IAC claim; namely, evidence that Blake was  
9 subject to outrageous and severe sexual, physical and emotional abuse as a child and suffered  
10 from organic brain damage and psychological disorders.” 745 F.3d at 982 (internal quotes  
11 omitted). The petitioner supported this argument with extensive evidence, including  
12 psychological evaluation reports, a declaration by the private investigator who worked briefly for  
13 his post-conviction attorney, and thirteen declarations from petitioner’s family and friends  
14 describing his “abhorrent” childhood conditions. Id. at 982-83. The Blake court concluded that  
15 the petitioner had met the Coleman/Martinez standard to show good cause under Rhines.” Id. at  
16 983-84 & n.7.

17 If petitioner finds that she wishes to take advantage of the Rhines stay and abeyance  
18 procedure she should provide the court with a request for the stay that meets the pleading  
19 requirements laid out in this Order within 30 days of the date of this Order. If on the other hand  
20 she prefers to have the matter dismissed, she should notify the court of that decision within the  
21 same 30 day period and the dismissal will be effected.

22 In light of the foregoing IT IS HEREBY ORDERED that:

23 1. Petitioner shall have 30 days from the date of this Order to either request a Rhines  
24 stay or to elect dismissal of her petition;

25 ///

26 ///

27 ///

28 ///

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

2. Failure to respond within the 30 day period shall result in a sua sponte dismissal by the court.

**IT IS SO ORDERED.**

Dated: January 11, 2018

/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE