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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ISIAH CAMPBELL,  
Petitioner,  
v.  
PATRICK EATON,  
Respondent.<sup>1</sup>

No. 2:21-cv-2369-WBS-CKD P

FINDINGS AND RECOMMENDATIONS

Petitioner is a state prisoner proceeding pro se in this habeas corpus action filed pursuant to 28 U.S.C. § 2254. Currently pending before the court is respondent's motion to dismiss the federal habeas application on the ground that it is a mixed petition containing both exhausted and unexhausted claims. ECF No. 12. By way of opposition thereto, petitioner filed a motion to stay these proceedings in order to exhaust his state court remedies. ECF No. 21, 23. Petitioner also filed a first amended habeas petition striking his unexhausted claim for relief. ECF No. 18. For the reasons discussed below, the undersigned recommends that respondent's motion to dismiss be denied and petitioner's motion for a stay and abeyance be granted.

**I. Factual and Procedural History**

On October 31, 2018, petitioner was convicted in the El Dorado County Superior Court of

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<sup>1</sup> The court grants respondent's motion to substitute Patrick Eaton as the proper respondent in this matter pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

1 three counts of pimping and eleven counts of pandering. ECF No. 1 at 1. He was sentenced to 19  
2 years and 4 months in prison. ECF No. 1 at 1. The California Court of Appeal affirmed his  
3 conviction on June 29, 2020. ECF No. 1 at 2. His petition for review to the California Supreme  
4 Court was denied on September 16, 2020. ECF No. 1 at 3. Petitioner did not file any state  
5 habeas corpus petitions challenging his conviction before filing the instant federal habeas  
6 application which contains six separate claims for relief.

7 On February 25, 2022, respondent filed a motion to dismiss asserting that claim six is  
8 unexhausted because it was not included in the petition for review filed in the California Supreme  
9 Court. ECF No. 12. According to the motion, petitioner’s mixed habeas petition, containing both  
10 exhausted and unexhausted claims, should be dismissed unless petitioner can demonstrate that he  
11 is entitled to a stay and abeyance. ECF No. 12 at 3.

12 In a series of pleadings, petitioner opposed the motion to dismiss and requested a stay and  
13 abeyance of these proceedings pursuant to Rhines v. Weber, 544 U.S. 269 (2005). ECF Nos. 19-  
14 23. Petitioner also conditionally filed a proposed first amended § 2254 petition striking the  
15 unexhausted claim for relief.<sup>2</sup> ECF No. 18. In his opposition to the motion to dismiss, petitioner  
16 explains that he did not discover claim six alleging jury instructional error until he was allowed  
17 access to the prison law library to conduct legal research. ECF No. 19 at 5. He “was prevented  
18 from using the prison law library to research the grounds for his habeas petition from September  
19 29, 2020, the day he received the California Supreme Court’s remittitur, through October 27,  
20 2021, the day he requested and was granted Priority Legal User (“PLU”) status because of  
21 CDCR’s Covid-19 pandemic restrictions.” ECF No. 19 at 2. The delay in exhausting claim six  
22 was not due to any intentional delay on petitioner’s part. ECF No. 21 at 12. Petitioner requests a  
23 stay and abeyance of his pending habeas petition to return to state court to properly exhaust his  
24 jury instruction challenge in claim six along with a related ineffective assistance of trial counsel  
25 claim for not objecting to the challenged instruction. See ECF No. 21. According to petitioner,

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26 <sup>2</sup> By filing a proposed first amended §2254 petition, it appears to the court that petitioner was  
27 following the procedure outlined in Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003). However, the  
28 three step procedure outlined in Kelly is only necessary if the court denies petitioner’s request for  
a Rhines stay and abeyance.

1 these claims are meritorious and, as a result, the court should grant him a stay pursuant to Rhines  
2 v. Weber, 544 U.S. 269 (2005).

3 Respondent filed an opposition to petitioner’s motion for a stay and abeyance. ECF No.  
4 27. First, respondent contends that petitioner has not demonstrated the requisite good cause for a  
5 Rhines stay. Respondent argues that petitioner did not present any actual evidence in support of  
6 his assertion of good cause and compares this case to Blake v. Baker, 745 F.3d 977, 982 (9th Cir.  
7 2014). However, respondent does not address the evidence petitioner submitted concerning the  
8 lack of a prison law library at the fire camp where petitioner was housed for a significant period  
9 of time or the restrictions on prisoner movement due to Covid-19. See ECF NO. 19 at 13-14.  
10 According to respondent, claim six is not meritorious and does not warrant a stay of federal  
11 proceedings. Lastly, respondent asserts that petitioner has engaged in dilatory litigation tactics  
12 because he has not filed any state habeas petition to date raising claim six or the related  
13 ineffective assistance of trial counsel claim. ECF No. 27 at 5-6. Out of an over-abundance of  
14 caution, respondent does not oppose a Kelly stay for the purpose of exhausting claim six. ECF  
15 No. 27 at 6. Respondent requests that the court deny petitioner a Rhines stay and dismiss the  
16 original § 2254 petition unless petitioner deletes claim six. ECF No. 27 at 9.

## 17 **II. Legal Standards**

### 18 **A. Exhaustion of State Court Remedies**

19 The exhaustion of state court remedies is a prerequisite to the granting of a petition for  
20 writ of habeas corpus. 28 U.S.C. § 2254(b)(1). A petitioner satisfies the exhaustion requirement  
21 by providing the highest state court with a full and fair opportunity to consider each habeas claim  
22 before presenting it to the federal court. Picard v. Connor, 404 U.S. 270, 276 (1971); Middleton  
23 v. Cupp, 768 F.2d 1083, 1086 (9th Cir. 1985). The prisoner must “fairly present” both the  
24 operative facts and the federal legal theory supporting his federal claim to the state's highest  
25 court, “thereby alerting that court to the federal nature of the claim.” Baldwin v. Reese, 541 U.S.  
26 27, 29 (2004); see Kelly v. Small, 315 F.3d 1063, 1066 (9th Cir. 2003), overruled on other  
27 grounds by Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007). The United States Supreme Court  
28 has held that a federal district court may not entertain a petition for habeas corpus unless the

1 petitioner has exhausted state remedies with respect to each of the claims raised. Rose v. Lundy,  
2 455 U.S. 509 (1982) (establishing the total exhaustion rule).

### 3 **B. Stay and Abeyance**

4 The court may stay a federal habeas application if petitioner demonstrates (1) good cause  
5 for the failure to previously exhaust the claims in state court, (2) the claims at issue potentially  
6 have merit, and (3) petitioner has been diligent in pursuing relief. See Rhines v. Weber, 544 U.S.  
7 at 278; Mena v. Long, 813 F.3d 907, 910-12 (9th Cir. 2016) (applying the stay and abeyance  
8 procedure to wholly unexhausted petitions). If petitioner fails to establish any of these three  
9 factors then a Rhines stay is not appropriate.

10 In determining what constitutes good cause sufficient for a Rhines stay, the Ninth Circuit  
11 Court of Appeals has determined that a petitioner does not have to demonstrate extraordinary  
12 circumstances in order to justify a Rhines stay. Jackson v. Roe, 425 F.3d 654, 661-662 (9th Cir.  
13 2005). Instead, the good cause standard is similar to the good cause standard used to excuse  
14 procedurally defaulted federal habeas claims. See Dixon v. Baker, 847 F.3d 714, 720 (9th Cir.  
15 2017); see also Blake v. Baker, 745 F.3d 977, 982 (9th Cir. 2014) (emphasizing that “[w]hile a  
16 bald assertion cannot amount to a showing of good cause, a reasonable excuse, supported by  
17 evidence to justify a petitioner’s failure to exhaust, will.”). The legal standard for cause to excuse  
18 a procedurally defaulted claim boils down to objective factors external to the prisoner. See  
19 Murray v. Carrier, 477 U.S. 478, 488 (1986) (emphasizing that to establish cause for a procedural  
20 default, a petitioner must show that “some objective factor external to the defense impeded  
21 counsel’s efforts to comply with the State’s procedural rule.”).

### 22 **III. Analysis**

23 In recognition of his failure to exhaust state court remedies with respect to claim six,  
24 petitioner has filed a motion to stay these proceedings. ECF Nos. 21, 23. Petitioner specifically  
25 requests a stay and abeyance pursuant to Rhines v. Weber, 544 U.S. 269 (2005). The court finds  
26 that petitioner has established good cause for his failure to exhaust based on his lack of access to  
27 a prison law library while housed at a fire camp combined with a delay in being transferred back  
28 to state prison due to Covid-19 restrictions. Petitioner has submitted evidence demonstrating the

1 delay in getting transferred to a prison with a law library due to the Covid-19 pandemic.  
2 Petitioner has established more than bare allegations that explain his delay in exhausting his state  
3 court remedies. Moreover, all of the factors cited by petitioner were beyond his control.  
4 Therefore, petitioner has satisfied the first prong for a Rhines stay and abeyance.

5 The second factor for a Rhines stay requires the unexhausted claims to have potential  
6 merit. Rhines v. Weber, 544 U.S. at 278. “A federal habeas petitioner must establish that at least  
7 one of his unexhausted claims is not ‘plainly meritless’ in order to obtain a stay under Rhines.”  
8 Dixon v. Baker, 847 F.3d 714, 722 (9th Cir. 2017) (quoting Rhines, 544 U.S. at 277). In  
9 recognition of the comity and federalism problems that are created by assessing the merits of  
10 unexhausted claims before a state court has had a chance to rule on them, the Ninth Circuit has  
11 determined that this standard is met unless “it is perfectly clear that the petitioner has no hope of  
12 prevailing” in state court. Dixon, 847 F.3d at 722 (citing Cassett v. Stewart, 406 F.3d 614, 624  
13 (9th Cir. 2005). The only unexhausted and cognizable claim in petitioner’s § 2254 petition is  
14 claim six alleging that the trial court violated petitioner’s right to due process and right to testify  
15 on his own behalf when it instructed the jury that evidence of petitioner’s prior misdemeanor  
16 domestic misconduct could be considered in determining his credibility as a witness. ECF No. 1  
17 at 85-113. Without reviewing the trial court transcripts which have not even been lodged with  
18 this court, it cannot be said at this stage of the proceedings that petitioner’s unexhausted claim has  
19 “no hope of prevailing” in state court. With this understanding, petitioner’s federal habeas  
20 application sufficiently alleges a colorable federal claim. See Cassett, 406 F.3d at 624.  
21 Therefore, the undersigned finds that petitioner has established that his unexhausted claim has  
22 potential merit.

23 The last factor petitioner must establish to obtain a Rhines stay is diligence in pursuing  
24 relief. Rhines, 544 U.S. at 278. While respondent argues that petitioner has failed to demonstrate  
25 diligence based on his lack of any pending state habeas petition, the court does not equate this  
26 with a lack of diligence. Nor does respondent cite any case law requiring a petitioner to have a  
27 pending state habeas corpus petition in order to demonstrate the requisite diligence for a Rhines  
28 stay. Petitioner explains that he was unable to simultaneously prepare a federal habeas petition

1 and a state habeas petition while trying to complete four college correspondence courses and  
2 work seven days a week at the fire camp. ECF No. 23. In light of this explanation, there is no  
3 evidence before the court that petitioner has engaged in “abusive litigation tactics or intentional  
4 delay” by not filing a state habeas petition at the same time as his federal habeas application. See  
5 Rhines, 544 U.S. at 278. Therefore, petitioner meets the diligence standard and is entitled to a  
6 stay of these proceedings pursuant to Rhines v. Weber, 544 U.S. 269 (2005).<sup>3</sup>

7 Based on all these factors, the undersigned recommends granting petitioner’s motion for a  
8 Rhines stay and denying respondent’s motion to dismiss petitioner’s federal habeas application  
9 because it contains both exhausted and unexhausted claims for relief.<sup>4</sup>

10 **IV. Plain Language Summary for Pro Se Party**

11 The following information is meant to explain this order in plain English and is not  
12 intended as legal advice.

13 The court is recommending that respondent’s motion to dismiss be denied and that your  
14 motion for a Rhines stay be granted. Based on this recommendation, it is not necessary to delete  
15 claim six from your habeas corpus petition. As a result, your proposed first amended § 2254  
16 petition is being struck from the docket as unnecessary.

17 If you disagree with any of these recommendations, you have 14 days to explain why it is  
18 not the correct outcome in your case. Label your explanation “Objections to Magistrate Judge’s  
19 Findings and Recommendations.” The district court judge assigned to your case will review any  
20 objections and make the final decision in your case.

21 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall amend the docket  
22 to substitute Patrick Eaton as the proper respondent in this case.

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25 <sup>3</sup> Nothing in the court’s Findings and Recommendations prevents petitioner from pursuing his state  
26 court remedies while the motion to dismiss and motion for a stay are pending before the district  
27 court judge.

28 <sup>4</sup> The court finds it unnecessary to address respondent’s argument that petitioner’s ineffective  
assistance of appellate counsel claim is untimely because that issue is only raised in regards to the  
futility of a Kelly stay. See ECF No. 27 at 6-9.

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IT IS FURTHER RECOMMENDED that:

1. Respondent’s motion to dismiss (ECF No. 12) be denied.
2. Petitioner’s motion for a stay and abeyance (ECF Nos. 21, 23), pursuant to Rhines v. Weber, 544 U.S. 269 (2005), be granted.
3. Petitioner’s proposed first amended § 2254 petition (ECF No. 18) be struck from the docket as unnecessary.
4. The Clerk of Court be directed to administratively close this case.
5. Petitioner be directed to file a status report with the court every 6 months indicating what efforts he has taken to properly exhaust claim six.
6. Petitioner be further directed to file a motion to lift the stay within 30 days from the date of any decision by the California Supreme Court.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the objections shall be served and filed within fourteen days after service of the objections. The parties are 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: June 6, 2022

  
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CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE