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28IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SALVADOR M. RENTERIA,

No. C 07-05217 CRB

Petitioner,

**ORDER STAYING PETITION FOR
HABEAS CORPUS**

v.

DERRAL G. ADAMS,

Respondent.

Now pending before the Court is the petition for writ of habeas corpus of Salvador M. Renteria. Petitioner admits that he has not exhausted his state remedies with respect to his double jeopardy claim as his prior counsel did not raise the double jeopardy issue in the California Supreme Court, although it was raised before the state appellate court. Petitioner did, however, exhaust the other claim raised in his petition, namely, the mistrial claim. As he petition includes exhausted and unexhausted claims, this Court has the discretion to stay this action while petitioner exhausts the double jeopardy claim in state court under certain circumstances. See Rhines v. Weber, 544 U.S. 269, 278 (2005).

The Court concludes that there is good cause for the failure to exhaust the double jeopardy claim, the claim has potential merit, and petitioner has been diligent in prosecuting his action; indeed, although this case was filed in late 2008, the petition is already fully briefed. Thus, a stay is warranted. Id. at 278.

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Accordingly, petitioner's request for a stay is GRANTED and this action is STAYED pending exhaustion of the double jeopardy clause in the state courts, provided petitioner file his state habeas petition within 30 days of the date of this Order. Any exhausted claims contained in the federal habeas corpus petition are ABEYED.

This case will be administratively closed pending petitioner's exhaustion of his state claims. Within 30 days of the state court's final disposition of his claims, petitioner shall file a motion to reopen these proceedings, should petitioner wish to continue with them.

IT IS SO ORDERED.

Dated: April 3, 2009



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE