

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

ANTHONY ROBERT MIZNER,

No. CV 12-00288 CRB

Petitioner,

**ORDER DENYING MOTION FOR
STAY**

v.

RANDY GROUNDS,

Respondent.

Petitioner has moved (dkt. 15) to “stay and abey” these proceedings pending the resolution of his anticipated motion in state court for resentencing under California’s recently-enacted Proposition 36. See Cal. Penal Code § 1170.126. Respondent opposes on the grounds that at least one, and possibly two, of Petitioner’s claims will remain in this case regardless of the outcome of state proceedings; that Petitioner will later be able to raise constitutional challenges to the resentencing proceedings without running afoul of the bar on second or successive habeas petitions; and that granting a stay would be inconsistent with the purposes of the Antiterrorism and Effective Death Penalty Act (AEDPA).

Petitioner has not presented a so-called “mixed” petition with exhausted and unexhausted claims, see Rhines v. Weber, 544 U.S. 269, 271 (2005); rather, he seeks to stay his petition raising fully exhausted claims based on the possibility that additional claims may—or may not—become ripe as a result of his resentencing proceedings. Petitioner cites no precedent supporting a stay in such a situation, but says it is appropriate because, according

1 to Petitioner, he might be barred from later raising claims related to his resentencing. The
2 precedent cited to the Court, see Magwood v. Patterson, 130 S. Ct. 2788, 2796 (2010)
3 (referring to “an exception to § 2244(b) for a second application raising a claim that would
4 have been unripe had the petitioner presented it in his first application” (citing Panetti v.
5 Quarterman, 551 U.S. 930, 947 (2007))), and the government itself, Opp’n at 3 n.2, suggest
6 otherwise.

7 Because the state resentencing proceedings will not resolve at least some of
8 Petitioner’s claims, and Petitioner’s hypothetical claims regarding his resentencing
9 proceeding are not yet ripe, the Court concludes that a stay is inappropriate and inconsistent
10 with AEDPA’s emphasis on speedy resolution of federal habeas petitions. Cf. Rhines, 544
11 U.S. at 278. The Court therefore DENIES Petitioner’s motion.

12 **IT IS SO ORDERED.**

13
14
15 Dated: May 20, 2013

16
17
18
19
20
21
22
23
24
25
26
27
28


CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE