

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

ERHAN KAYIK,
Petitioner,
v.
RALPH M. DIAZ,
Respondent.


NO. C12-5907 TEH

ORDER SETTING DEADLINE
TO FILE MOTION TO STAY OR
AMENDED PETITION

Petitioner Erhan Kayik, has filed a petition for writ of habeas corpus that he acknowledges contains both exhausted and unexhausted claims. He states an intent to “file a motion to stay and hold his petition in abeyance so that he can exhaust the unexhausted claims in state court.” Pet. ¶ 122. As Petitioner appears to recognize, “habeas petitions containing both unexhausted and exhausted claims” are subject to dismissal. *Rose v. Lundy*, 455 U.S. 509, 522 (1982); *but cf.* 28 U.S.C. § 2254(b)(2) (providing that a habeas petition may be denied on the merits notwithstanding a failure to exhaust). To ensure that this case proceeds efficiently, IT IS HEREBY ORDERED that, on or before **January 7, 2013**, Petitioner shall file either a motion to stay or an amended petition containing only exhausted claims.

IT IS SO ORDERED.

Dated: 11/27/12



THELTON E. HENDERSON, JUDGE
UNITED STATES DISTRICT COURT