

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA

4 RAYMOND E. LOPEZ,

No. C 13-0649 TEH (PR)

5 Petitioner,

ORDER OF DISMISSAL

6 v.

7 GREG D. LEWIS, Warden,

8 Respondent.
9
10 _____/

11 On February 13, 2013, Petitioner Raymond E. Lopez, an
12 inmate at Pelican Bay State Prison, filed a petition for a writ of
13 habeas corpus pursuant to 28 U.S.C. § 2254. The petition contained
14 exhausted and unexhausted claims. On the same date, Petitioner
15 moved for a stay of his petition while he exhausted his unexhausted
16 claims in state court.

17 On March 19, 2013, the Court issued an Order Denying
18 without prejudice Petitioner's motion for a stay. Doc. #4. The
19 Court indicated that, as it was written, Petitioner's motion did not
20 meet the requirements to stay his petition and explained the two
21 types of stays that were available to him. The Court granted
22 Petitioner twenty-eight days in which to pursue one of the two
23 options for a stay or to inform the Court that he wished to proceed
24 only on the exhausted claims that were presented in his petition.

25 After twenty-eight days Petitioner had not filed a re-
26 newed motion for a stay, informed the Court that he wished to
27 proceed only on his exhausted claims, or communicated with the Court
28 in any manner.

1 On April 23, 2013, the Court issued an Order granting
2 Petitioner fourteen more days in which to respond. Doc. #5. In the
3 Order, the Court explained that the general rule is that a federal
4 district court must dismiss a mixed petition containing exhausted
5 and unexhausted claims but that the court may stay a mixed petition
6 to allow the petitioner to exhaust the unexhausted claims. Rose v.
7 Lundy, 455 U.S. 509, 522 (1982); Rhines v. Weber, 544 U.S. 269, 277
8 (2005). Thus, if Petitioner did not file, within fourteen days from
9 the date of the Order, a re-newed motion for a stay or inform the
10 Court that he wished to proceed only with his exhausted claims, his
11 mixed petition would be dismissed without prejudice.

12 Fourteen days have passed and Petitioner has not filed a
13 re-newed motion for a stay or communicated with the Court in any
14 manner. Therefore, his petition is dismissed without prejudice to
15 re-filing when his claims are exhausted. The Clerk shall close the
16 file.

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18 IT IS SO ORDERED.

19
20 DATED 05/13/2013



THELTON E. HENDERSON
United States District Judge

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