

opposition

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OSCAR ALEJANDRO CARRILLO,

Petitioner,

v.

WILLIAM MUNIZ,

Respondent.

Case No. [15-cv-02561-JD](#)

**ORDER GRANTING MOTION TO
STAY AND
ADMINISTRATIVELY CLOSING
CASE**

Re: Dkt. No. 12, 14

Petitioner has filed an amended motion for a stay of this action so that he may exhaust state court remedies for several claims in his habeas petition that he wishes to present to this Court. The Court **GRANTS** the stay. Liberally construing the motion, petitioner has shown good cause for his failure to exhaust the claims before filing this action, the claims do not appear patently meritless, and there does not appear to be any intentionally dilatory litigation tactic by petitioner. *See Rhines v. Weber*, 544 U.S. 269, 277-78 (2005). Petitioner states that he was in Administrative Segregation for eighteen months and was denied legal materials required to file his claims in state court.

Petitioner is informed that before he may challenge either the fact or length of his confinement in a habeas petition in this court, he must present to the California Supreme Court any claims he wishes to raise in this Court. *See Rose v. Lundy*, 455 U.S. 509, 522 (1982) (holding every claim raised in federal habeas petition must be exhausted). Petitioner should also present his claims to the state court and to this Court once the claims have been exhausted in a clear and concise manner. He should list the claims at the beginning of the petition and then more fully describe why he is entitled to relief. Interspersing the claims through more than 100 pages may result in the state court not addressing the merits or being unaware of the claims.

CONCLUSION

1. Petitioner's motion for a stay (Docket No. 12) is **GRANTED** and this case is **STAYED** to allow petitioner to present his unexhausted claim in state court. If petitioner is not granted relief in state court, he may return to this court and ask that the stay be lifted.

2. Respondent's motion for an extension (Docket No. 14) is **DENIED** as moot. Respondent need not file a response to the petition until instructed by the Court once the stay is lifted.

3. The stay is subject to the following conditions:

(1) Petitioner must diligently pursue his state court habeas proceedings; and

(2) Petitioner must notify this court within thirty days after the state courts have completed their review of his claim or after they have refused review of his claims.

If either condition of the stay is not satisfied, this Court may vacate the stay and act on this petition. *See Rhines v. Webber*, 544 U.S. 269, 278 (2005) (district court must effectuate timeliness concerns of AEDPA by placing "reasonable limits on a petitioner's trip to state court and back.").

The Clerk shall administratively close this case. The closure has no legal effect; it is purely a statistical matter. The case will be reopened and the stay vacated upon notification by petitioner in accordance with section (3) above.

IT IS SO ORDERED.

Dated: January 19, 2016



JAMES DONATO
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OSCAR ALEJANDRO CARRILLO,
Plaintiff,
v.
WILLIAM MUNIZ,
Defendant.

Case No. [15-cv-02561-JD](#)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 19, 2016, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Oscar Alejandro Carrillo ID: Prisoner Id AM 1743
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960

Dated: January 19, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO