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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

OCTAVIO VIVANO,  
Plaintiff,  
v.  
JOE A. LIZARRAGA,  
Defendant.

Case No. [18-cv-00028-JSC](#)

**ORDER TO SHOW CAUSE RE  
PETITION FOR WRIT OF HABEAS  
CORPUS AND MOTION FOR STAY**

Re: Dkt. Nos. 1, 2

Petitioner, a prisoner of the State of California, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 and a motion for stay and abeyance. (Dkt. Nos. 1, 2.) Petitioner has paid the \$5.00 filing fee. His petition sets forth five claims challenging the constitutionality of petitioner's conviction in state court: (1) Petitioner's right to cross examination of the victim under the Fifth and Sixth Amendments, (2) ineffective assistance of trial counsel in violation of the Sixth and Fourteenth Amendments due to counsel's failure to object to the trial court's limitation on cross examination of the victim, (3) ineffective assistance of trial counsel in violation of the Sixth and Fourteenth Amendments due to counsel's failure to explain facts pertinent to the Las Vegas assault to the trial court, (4) ineffective assistance of appellate counsel in violation of the Fourteenth Amendment, and (5) violation of the Confrontation Clause due to the admission of the victim's statement from the sexual assault report identifying the assailant's race through the testimony of a non-testifying sexual assault nurse. These claims, when liberally construed, are cognizable and potentially meritorious.

The Clerk shall serve respondent and the respondent's attorney, the Attorney General of the State of California, with a copy of this order and the petition with all attachments.

In light of Petitioner's motion to stay, before the Court orders Respondent to answer the petition, Respondent shall respond to the motion for a stay. Respondent is ordered to file a

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response or a statement of non-opposition by March 12, 2018.

**IT IS SO ORDERED.**

Dated: February 13, 2018



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JACQUELINE SCOTT CORLEY  
United States Magistrate Judge