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

ELIAS D. AVILA,

No. C 08-03424 SBA (PR)

Petitioner,

**ORDER LIFTING STAY AND DIRECTING
RESPONDENT TO SHOW CAUSE WHY
THE WRIT SHOULD NOT BE GRANTED**

v.

MIKE MCDONALD, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On November 13, 2008, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his administrative remedies. On March 20, 2009, Petitioner informed the Court that his state proceedings had concluded, and he filed a first amended habeas petition containing his exhausted claims.

Before the Court is Petitioner's implied motion for leave to file his first amended petition.

Good cause appearing, the Court lifts the stay and GRANTS Petitioner leave to file his first amended petition. The Clerk of the Court is directed to mark Petitioner's first amended petition as filed on March 20, 2009, the date it was received.

The Clerk of the Court shall REOPEN this case and serve a copy of this Order and the first amended petition and all attachments thereto upon Respondent and Respondent's attorney, the

1 Attorney General of the State of California. The Clerk shall also serve a copy of this Order on
2 Petitioner at his most current address.

3 Respondent shall file with this Court and serve upon Petitioner, within **sixty (60) days** of the
4 issuance of this Order, an answer conforming in all respects to Rule 5 of the Rules Governing
5 Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent
6 shall file with the answer a copy of all portions of the state trial record that have been transcribed
7 previously and that are relevant to a determination of the issues presented by the petition.

8 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
9 Court and serving it on Respondent within **thirty (30) days** of his receipt of the answer. Otherwise,
10 the petition will be deemed submitted and ready for decision thirty days after the date Petitioner is
11 served with Respondent's answer. Petitioner is reminded that all communications with the Court,
12 whether by way of formal legal motions or informal letters, must be served on Respondent by
13 mailing a true copy of the document to Respondent's counsel.

14 Extensions of time are not favored, though reasonable extensions will be granted. Any
15 motion for an extension of time must be filed no later than **seven (7) days** prior to the deadline
16 sought to be extended.

17 IT IS SO ORDERED.

18 DATED: 6/29/09


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 ELIAS D. AVILA,
5 Plaintiff,

Case Number: CV08-03424 SBA

CERTIFICATE OF SERVICE

6 v.

7 FELKER et al,
8 Defendant.

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

11 That on June 30, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15
16 Elias Daniel Avila F-34850
17 High Desert State Prison
18 P.O. Box 3030
19 Susanville, CA 96127

20 Dated: June 30, 2009

21 Richard W. Wieking, Clerk
22 By: LISA R CLARK, Deputy Clerk
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