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3 4 5 6 7 IN THE UNITED STATES DISTRICT COURT 8 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA 10 11 No. C 09-03948 CW (PR) JOSE REYES GUERRA, 12 ORDER OF DISMISSAL Petitioner, 13 v. 14 LARRY SMALL, Acting Warden, 15 Respondent. 16 Petitioner, a state prisoner, filed the present petition for a 17 18 writ of habeas corpus pursuant to 28 U.S.C. § 2254. He states that 19 his petition for a writ of habeas corpus is still pending before 20 the California Supreme Court. 21 The California Supreme Court's official website shows that Petitioner's state habeas petition was filed on February 10, 2010, 22

Petitioner's state habeas petition was filed on February 10, 2010,
and that there has not been any final decision from the California
Supreme Court. <u>See Guerra (Jose Reyes) on H.C.</u>, Cal. S. Ct. No.
S180191.

The exhaustion requirement applicable to federal habeas petitions is not satisfied if there is a pending post-conviction proceeding in state court. <u>See</u> 28 U.S.C. § 2254(b)-(c); <u>Sherwood</u>

1 v. Tomkins, 716 F.2d 632, 634 (9th Cir. 1983). If a post-2 conviction challenge to a criminal conviction is pending in state 3 court, a potential federal habeas petitioner must await the outcome of the challenge before his state remedies are considered 4 5 See id. Moreover, the rule in Sherwood applies whether exhausted. or not the issue raised in the pending state petition is included 6 7 in the federal petition, see id., for the reason that a pending 8 state court challenge may result in the reversal of the 9 petitioner's conviction, thereby mooting the federal petition. See 10 id. (citations omitted).

11 As Petitioner has a petition currently pending in the 12 California Supreme Court, the instant petition for a writ of habeas 13 corpus is DISMISSED without prejudice to refiling once all state court post-conviction challenges to Petitioner's conviction have 14 been completed, and all claims Petitioner wishes to raise in 15 federal court have been presented to the Supreme Court of 16 17 California. See 28 U.S.C. § 2254(b)-(c); Rose v. Lundy, 455 U.S. 18 509, 522 (1982) (holding every claim raised in federal habeas 19 petition must be exhausted).

20 The Clerk of the Court shall enter judgment and close the 21 file.

IT IS SO ORDERED.

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CLAUDIA WILKEN UNITED STATES DISTRICT JUDGE

United States District Court For the Northern District of California

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24 Dated: 2/25/10

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1 2	UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
3	JOSE REYES GUERRA,
4	Plaintiff, Case Number: CV09-03948 CW
5	V. CERTIFICATE OF SERVICE
6	LARRY SMALL et al,
7	Defendant.
8	/
9 10	I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.
11	That on February 25, 2010, 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
12	envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.
13	In the Clerk's office.
14	
15	Jose Reyes Guerra F-57686 D2-136
16	Calipatria State Prison P.O. Box 5002
17	Calipatria, CA 92233-5002
18	Dated: February 25, 2010 Richard W. Wieking, Clerk
19	By: Sheilah Cahill, Deputy Clerk
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United States District Court For the Northern District of California