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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDREW RACHAL,
Petitioner,
v.
ROBERT W. FOX,
Respondent.

Case No. 17-cv-01254-PJH

**ORDER GRANTING MOTION TO STAY
PROCEEDINGS**

Re: Dkt. No. 4

Petitioner Andrew Mark Rachal, a California prisoner, has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before the court is petitioner’s motion to stay the federal habeas corpus proceedings. Dkt. 4.

Petitioner’s motion indicates that he filed the current federal petition to avoid a potential bar from AEDPA’s one-year statute of limitations. His petition for a writ of habeas corpus in state court was filed on December 2, 2016 and remains pending. Petitioner submits that a stay is proper under Rhines v. Weber, 544 U.S. 269 (2005), in order to allow him to first exhaust his remaining claims in state court, and then file an amended federal petition containing all the claims once the state proceedings are concluded.

The United States Supreme Court has held that district courts have discretion to stay mixed habeas petitions to allow the petitioner to exhaust all of his claims in state court. Rhines, 544 U.S. at 277–78. The district court's discretion to stay is circumscribed by AEDPA's stated purposes of reducing delay in the execution of criminal sentences and encouraging petitioners to seek relief in the state courts before filing their claims in federal court. Id. at 277. Because the use of a “stay-and-abeyance” procedure has the

1 potential to undermine these dual purposes of AEDPA, its use is appropriate when “the
2 petitioner had good cause for his failure to exhaust, his unexhausted claims are
3 potentially meritorious, and there is no indication that the petitioner engaged in
4 intentionally dilatory litigation tactics.” Id. at 278. Petitioner has met the conditions
5 outlined above and the court will grant a stay pursuant to Rhines.

6 The motion for a stay is therefore **GRANTED**. This case is **STAYED** to allow
7 petitioner to present his unexhausted issues in state court. If petitioner is not granted
8 relief in state court, he may return to this court and ask that the stay be lifted.

9 The stay is subject to the following conditions:

- 10 (1) petitioner must diligently pursue his state court habeas proceedings; and
11 (2) petitioner must notify this court **within thirty days** after the state courts have
12 completed their review of his claims or after they have refused review of his claims.

13 If either condition of the stay is not satisfied, this court may vacate the stay and act
14 on this petition. See Rhines, 544 U.S. at 278 (district court must effectuate timeliness
15 concerns of AEDPA by placing “reasonable limits on a petitioner’s trip to state court and
16 back”).

17 The clerk shall administratively close this case. The closure has no legal effect; it
18 is purely a statistical matter. The case will be reopened and the stay vacated upon
19 notification by petitioner in accordance with section (2) above.

20 **IT IS SO ORDERED.**

21 Dated: April 3, 2017



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23 PHYLLIS J. HAMILTON
24 United States District Judge
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