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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALEJANDRO ALVE,

Petitioner,

vs.

L.E. SCRIBNER,

Respondent.

CASE NO. 08-CV-0162 W (LSP)

**ORDER (1) DECLINING TO  
ADOPT MAGISTRATE  
JUDGE'S REPORT &  
RECOMMENDATION; (2)  
GRANTING RESPONDENT'S  
NOTICE OF WITHDRAWAL  
OF MOTION AND MOTION  
TO STAY (Doc. Nos. 14, 16)**

**I. BACKGROUND**

On January 25, 2008 Petitioner Alejandro Alve ("Petitioner") commenced this 28 U.S.C. § 2254 habeas corpus proceeding. (Doc. No. 1.) On April 10, 2008 Respondent L.E. Scribner ("Respondent") moved to dismiss Petitioner's petition, arguing that it was time-barred by 28 U.S.C. § 2254's one-year statute of limitations. (Doc. No. 6.) On June 26, 2008, however, Respondent filed a notice of withdrawal of the motion to dismiss, admitting that Petitioner was entitled to more statutory tolling than previously believed and concluding that Petitioner's petition was, in fact, timely. (*Linnea Piazza Decl.* ¶ 9.) Respondent also requested that the Court stay the proceedings in light of the pending Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008), reh'g en banc granted, No. 06-55392 (9th Cir. filed May 16, 2008) decision, which may resolve certain jurisdictional and standard of review questions underlying the petition.

1           Nevertheless, on June 30, 2008 Magistrate Judge Leo S. Papas filed a Report and  
2 Recommendation (“Report”) recommending that the Court dismiss Petitioner’s petition  
3 as untimely. (Doc. No. 16.) The Report acknowledged but disregarded Respondent’s  
4 motion to withdraw. On July 15, 2008 Petitioner objected to the Report, arguing that  
5 Respondent had withdrawn its motion and that he timely filed his petition under  
6 California and Ninth Circuit law. Because both Petitioner and Respondent agree that  
7 the petition was timely filed, the Court **DECLINES** to adopt the Magistrate Judge’s  
8 Report and **STAYS** the petition pending the Hayward’s outcome.

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10 **II.    LEGAL STANDARD & ANALYSIS**

11           Respondent argues that staying this case is appropriate because judicial order and  
12 economy would be advanced. (*Resp.’s Not. of Withdrawal* 2–4.) Moreover, Respondent  
13 argues, a stay would not unfairly delay Petitioner in pursuing his claims. (*Id.* 4.)  
14 Petitioner’s only docketed response takes the form of his objections to the Report, where  
15 he simply argues that he timely filed his petition and that the Report should be  
16 “vacated.” (*Pet.’s Obj.* 5.) However, in his objections Petitioner acknowledges  
17 Respondent’s notice to withdraw and thus must be aware of Respondent’s motion to  
18 stay. (*Id.* 1–3.) Petitioner offers no objections or opposition to Respondent’s motion to  
19 stay.

20           A district court has discretionary power to stay proceedings in its own court under  
21 Landis v. North American Co., 299 U.S. 248, 254 (1936). In determining whether to  
22 grant a stay, a court should consider the possible damage that may result, the hardship  
23 or inequity that a party may suffer, and the orderly course of justice, in terms of  
24 simplifying or complicating the issues, proof, and questions of law that could result from  
25 issuing the stay. Lockyer v. Mirant Corp., 398 F.3d 1098, 1109, 1111 (9th Cir. 2005).  
26 A court can take into account the existence of similar cases pending in the same  
27 district, and the probability that more are likely to be filed. *Id.* Staying cases that are  
28 on the forefront of an issue provides a necessary delay, allowing for resolution of the

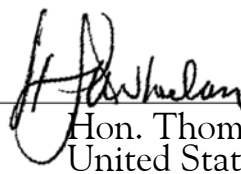
1 issues and resulting in uniform treatment of like suits. Id.

2 Here, the pending Hayward decision deals with two issues central to resolving this  
3 petition: (1) whether California has created a federally protected liberty interest in  
4 parole for life inmates, and (2) if a liberty interest is created, what process is due under  
5 clearly established Supreme Court authority. Staying this case pending Hayward's  
6 resolution could ultimately narrow the issues, clarify the Court's standard of review, and  
7 reduce the need for supplemental or inconsistent briefings. Furthermore, the Ninth  
8 Circuit and other courts have stayed many cases pending Hayward's eventual resolution.  
9 See, e.g., Tolliver v. Carey, no. 07-15347 (9th Cir.); Boatman v. Brown, no. 05-16199  
10 (9th Cir.); Alvarez v. Davison, no. 06-56678 (9th Cir.); Owen v. Vaughn, 07-56747  
11 (9th Cir.). Finally, Petitioner will not be unfairly delayed in pursuing his claims because  
12 any resulting Hayward decision would in any event require additional briefing or prompt  
13 the losing party to file an appeal. As mentioned above, Petitioner has not submitted any  
14 objections to Respondent's request to stay the proceedings.

15 Accordingly, the Court **DECLINES TO ADOPT** the Magistrate Judge's Report  
16 and **STAYS** Petitioner's pending 28 U.S.C. § 2254 petition until the decision in  
17 Hayward v. Marshall, 512 F.3d 536 (9th Cir. 2008), reh'g en banc granted, No. 06-  
18 55392 (9th Cir. filed May 16, 2008) is made final. Respondent shall re-initiate these  
19 habeas corpus proceedings **within sixty (60) days** after the Hayward decision becomes  
20 final.

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22 **IT IS SO ORDERED.**

23  
24 DATED: September 10, 2008

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26   
27 Hon. Thomas J. Whelan  
28 United States District Judge