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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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IVAN DOMINGUEZ,

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Petitioner,

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vs.

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BRIAN E. WILLIAMS, et al.,

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Respondents.

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Case No. 2:12-cv-01609-APG-NJK

**ORDER**

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Before the court are petitioner's motion for an order staying and holding these proceedings in abeyance (#45), respondents' opposition (#55), and petitioner's reply (#60). The court denies the motion.

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The court had granted in part respondents' motion to dismiss, ruling that grounds 11, 12, 13, 15, and 16 of the first amended petition (#31) were unexhausted.<sup>1</sup> Order (#48). To obtain a stay of this action, petitioner must show that he has "good cause for his failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the petitioner engaged in intentionally dilatory litigation tactics." Rhines v. Weber, 544 U.S. 269, 278 (2005). Good cause is the issue; respondents do not dispute that the unexhausted grounds have potential merit, nor do they dispute that petitioner has not been dilatory.

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Rhines did not define "good cause." Later, the Supreme Court held, in the context of procedural default:

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<sup>1</sup>The court also ruled that grounds 5 through 10 were unexhausted in part, due to incorporation of facts from the fully unexhausted grounds.

1 [W]hen a State requires a prisoner to raise an ineffective-assistance-of-trial-counsel claim in  
2 a collateral proceeding, a prisoner may establish cause for a default of an  
3 ineffective-assistance claim in two circumstances. The first is where the state courts did not  
4 appoint counsel in the initial-review collateral proceeding for a claim of ineffective  
5 assistance at trial. The second is where appointed counsel in the initial-review collateral  
6 proceeding, where the claim should have been raised, was ineffective under the standards of  
7 Strickland v. Washington, 466 U.S. 668 (1984).

8 Martinez v. Ryan, 132 S. Ct. 1309, 1318 (2012) (emphasis added).<sup>2</sup> Then, the court of appeals  
9 expanded Martinez to requests for stays under Rhines. “[W]e hold that the Rhines standard for  
10 [ineffective-assistance-of-counsel]-based cause is not any more demanding than the cause standard  
11 articulated in Martinez. Blake v. Baker, 745 F.3d 977, 984 (9th Cir. 2014).

12 The court is not persuaded that Blake is inapplicable in this case. Blake was represented by  
13 counsel in his initial state post-conviction habeas corpus petition, and, to the extent that it makes a  
14 difference, his sentence was death. Id. at 979. Petitioner was not sentenced to death, and, more  
15 importantly for this analysis, he proceeded pro se in his state post-conviction proceedings.

16 However, these distinctions do not make a difference because of the principle behind Blake. The  
17 court of appeals noted:

18 Unlike a successful showing of cause under Coleman[ v. Thompson, 501 U.S. 722 (1991)]  
19 and Martinez, an IAC-based showing of good cause under Rhines only permits a petitioner  
20 to return to state court—not bypass the state court as would be the case under Coleman—to  
21 exhaust his unexhausted claims. Because a Rhines stay and abeyance does not undercut the  
22 interests of comity and federalism embedded in our habeas jurisprudence, a Rhines  
23 petitioner arguing IAC-based good cause is not required to make any stronger a showing of  
24 cause than a Coleman/Martinez petitioner.

25 Blake, 745 F.3d at 983-84. That principle applies with equal force to a person who was not  
26 represented in his state post-conviction habeas corpus petition as to a person who was so  
27 represented.

28 The court also is not persuaded by respondents’ argument that this application of Blake  
would undermine the statement in Rhines that stays should be granted only in “limited  
circumstances.” The court of appeals addressed that argument in Blake and noted that a petitioner

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<sup>2</sup>Martinez has been expanded to claims of ineffective assistance of appellate counsel and  
when, in the absence of a requirement that a claim of ineffective assistance counsel be raised in a  
post-conviction habeas corpus petition, the state provides no meaningful opportunity to raise a  
claim of ineffective assistance of counsel on direct appeal. These expansions are not relevant to this  
case.

1 seeking a stay must still also show that the unexhausted claims have potential merit and that the  
2 petitioner has not been intentionally dilatory. Those two factors are not at issue right now.


3 IT IS THEREFORE ORDERED that petitioner's motion for an order staying and holding  
4 these proceedings in abeyance (#45) is **GRANTED**.

5 IT IS FURTHER ORDERED that this action is **STAYED** pending exhaustion of the  
6 unexhausted claims. Petitioner shall return to this court with a motion to reopen within forty-five  
7 (45) days of issuance of the remittitur by the Nevada Supreme Court at the conclusion of the state  
8 court proceedings. Further, petitioner or respondents otherwise may move to reopen the action and  
9 seek any relief appropriate under the circumstances.

10 IT FURTHER IS ORDERED that the clerk of court shall administratively close this action  
11 until such time as the court grants a motion to reopen the action.

12 Dated: April 13, 2105.

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ANDREW P. GORDON  
United States District Judge