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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Mariano Madrid,  
Petitioner

v.

Dwight Neven, et al.,  
Respondents

2:15-cv-00118-JAD-PAL

**Order Dismissing Case**

10 Pro se petitioner Mariano Madrid is serving two consecutive life sentences with the  
11 possibility of parole after 20 years after his conviction for first-degree murder with a deadly-  
12 weapon enhancement.<sup>1</sup> He filed this mixed petition for a writ of habeas corpus with exhausted  
13 and unexhausted claims, and I directed Madrid to choose one of three options: (1) abandon the  
14 unexhausted claims and proceed on the exhausted claims only; (2) dismiss this federal action and  
15 return to state court to exhaust his unexhausted claims; or (3) file a motion to stay and abey his  
16 exhausted claims and return to state court to exhaust his unexhausted claims.<sup>2</sup>

17 Madrid chose the third option, but he did not make the required showing under *Rhines v.*  
18 *Weber*<sup>3</sup> to permit me to grant him a *Rhines* stay, so I denied his motion and directed him to  
19 choose one of the other two options.<sup>4</sup> Instead of choosing one of the other two options, Madrid  
20 filed a renewed motion to stay and abey his exhausted claims that still failed to satisfy *Rhines*, so  
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24 <sup>1</sup> NEVADA DEP'T OF CORRECTIONS, <https://www.doc.nv.gov/Inmates/Home/> (last visited Nov.  
25 22, 2017) (inmate search by name Mariano Madrid or by offender ID 1006135).

26 <sup>2</sup> ECF No. 20.

27 <sup>3</sup> *Rhines v. Weber*, 544 U.S. 269 (2005).

28 <sup>4</sup> ECF No. 24.

1 I denied that as well.<sup>5</sup>


2 I gave Madrid one more opportunity to either abandon his unexhausted claims and  
3 proceed on the exhausted ones or return to state court to exhaust his unexhausted claims. Madrid  
4 decided to return to state court to exhaust his unexhausted claims,<sup>6</sup> so I dismiss this action  
5 without prejudice to his ability to file a new, separate petition for habeas corpus after he exhausts  
6 his claims in state court—subject of course to any statutes of limitations. I also decline to issue  
7 Madrid a certificate of appealability because reasonable jurists would not find my decision to  
8 dismiss this action without prejudice to be debatable or wrong.

9 Accordingly, IT IS HEREBY ORDERED that this case is **DISMISSED without**  
10 **prejudice.**

11 IT IS FURTHER ORDERED that a **certificate of appealability is DENIED.**

12 The **Clerk of Court** is directed to **ENTER JUDGMENT accordingly and CLOSE**  
13 **THIS CASE.**

14 DATED: November 27, 2017.

15   
16 U.S. District Judge Jennifer A. Dorsey

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27 <sup>5</sup> ECF No. 30.

28 <sup>6</sup> ECF No. 31.