

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

MARCO GUZMAN,  
Petitioner,  
v.

Case No. 3:17-cv-00515-HDM-CBC

## ORDER

ATTORNEY GENERAL, *et al.*,  
Respondents.

11        This action is a petition for writ of habeas corpus by Marco Guzman, a Nevada  
12 prisoner serving life prison sentences, with the possibility of parole, on convictions of  
13 one count of first-degree murder with use of a deadly weapon and one count of  
14 second-degree murder with use of a deadly weapon. See Second Amended Petition for  
15 Writ of Habeas Corpus (ECF No. 27). The respondents filed a motion to dismiss on  
16 August 14, 2018 (ECF No. 28). On November 29, 2018, Guzman, represented by  
17 appointed counsel, filed an opposition to the motion to dismiss (ECF No. 32), along with  
18 a motion for leave to conduct discovery (ECF No. 33). Respondents filed a reply in  
19 support of their motion to dismiss (ECF No. 38) and an opposition to the discovery  
20 motion (ECF No. 37) on January 22, 2019. Guzman then filed a reply in support of his  
21 discovery motion on February 11, 2019 (ECF No. 39).

22 In the motion to dismiss, the respondents contend that several of the claims in  
23 Guzman's second amended habeas petition (ECF No. 27) are unexhausted in state  
24 court, or, perhaps, technically exhausted but procedurally defaulted.

25 In response to the motion to dismiss, Guzman argues that certain of his claims  
26 are exhausted, but he concedes that several others have not been presented in state  
27 court. See Opposition to Motion to Dismiss (ECF No. 32), pp. 10-22. With respect to  
28 many of the claims that have not been presented in state court, Guzman argues that the

1 claims are technically exhausted but now procedurally barred in state court, and that he  
2 can overcome the procedural default. See *id.* at 16-22. As to other claims that have not  
3 been presented in state court – Grounds 1, 9, 10 and 11 of his second amended  
4 petition, it appears – Guzman indicates that he intends to seek a stay of this action so  
5 that he may return to state court to exhaust, or further exhaust, those claims. See *id.* at  
6 1, 3, 22-28.

7 In his motion for leave to conduct discovery, Guzman seeks to conduct discovery  
8 relative to the merits of Grounds 9, 10 and 11, three of the claims that he intends to  
9 pursue further in state court. See Motion for Leave to Conduct Discovery (ECF No. 33).  
10 Guzman appears to request leave to conduct discovery regarding the merits of those  
11 claims in this Court, and then, after those discovery proceedings are concluded, seek a  
12 stay of this action so that he may return to state court to exhaust the claims. See  
13 Opposition to Motion to Dismiss (ECF No. 32), p. 2 (“Once Mr. Guzman has finished  
14 discovery and assembled all the facts in support of these claims, he would intend to  
15 request a *Rhines* stay so he can pursue those claims (and Ground One) in state  
16 court.”). The Court will deny that request.

17 A habeas petitioner does not enjoy a presumptive entitlement to discovery in  
18 habeas cases. See *Bracy v. Gramley*, 520 U.S. 899, 903-05 (1997); see also Rule 6,  
19 Rules Governing Section 2254 Cases (discovery available if good cause is shown).  
20 Here, where the three claims on which Guzman would conduct discovery are evidently  
21 unexhausted, in whole or in part, and where Guzman indicates that he intends to move  
22 for a stay so that he can further pursue those claims in state court, there is no showing  
23 of good cause to conduct the discovery requested by Guzman, at least not at this time.  
24 It is unclear at this point -- before the anticipated further state-court litigation -- whether,  
25 or to what extent, the three claims are procedurally viable. The Court will decline to  
26 allow discovery proceedings at this time regarding such claims. The Court, then, will  
27 deny the motion for discovery, without prejudice to Guzman renewing his request later  
28 in the case, if and when such discovery is appropriate.

1       Turning to the motion to dismiss, in the interest of conserving judicial resources  
2 and avoiding unnecessary delay, the Court will deny that motion without prejudice as  
3 well. In view of Guzman's intention to seek a stay of this action, and to further litigate  
4 claims in state court, the matter of the stay should be taken up forthwith. If a stay is  
5 granted, the procedural viability of all Guzman's claims – with regard to exhaustion,  
6 procedural default, timeliness, and any other procedural issue – can be better  
7 addressed when the state-court proceedings are completed and the stay lifted; it  
8 appears to the Court that this will be the better, more efficient, means of handling these  
9 issues. See, e.g., Opposition to Motion to Dismiss (ECF No. 32), p. 28 ("Assuming the  
10 Court ultimately grants a *Rhines* stay, the question whether Ground One is currently  
11 exhausted may end up being academic."). If a stay is not granted, the Court will  
12 entertain a motion to dismiss, which may include the same arguments made by the  
13 respondents in their current motion to dismiss.

14 The Court will set a schedule for the filing and briefing of Guzman's motion for  
15 stay.

16           **IT IS THEREFORE ORDERED** that Respondents' Motion to Dismiss (ECF No.  
17           28) is **DENIED** without prejudice.

18           **IT IS FURTHER ORDERED** that Petitioner's Motion for Leave to Conduct  
19           Discovery (ECF No. 33) is **DENIED** without prejudice.

20           **IT IS FURTHER ORDERED** that Petitioner will have 45 days from the date of this  
21 order to file a motion for stay. Respondents will have 30 days to respond to such  
22 motion, and then Petitioner will have 20 days to reply.

24 DATED THIS 19th day of February, 2019.

Howard D. McKibben

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HOWARD D. MCKIBBEN,  
UNITED STATES DISTRICT JUDGE