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6 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 VINCENT PAUL MELENDREZ,  
9  
10 Petitioner,

v.

11 MARGARET GILBERT ,  
12  
Respondent.

CASE NO. 17-984 RAJ

**ORDER DIRECTING PETITIONER  
TO FILE RESPONSE REGARDING  
REQUEST TO LIFT STAY**

13 On September 1, 2017, the Court granted petitioner's motion to stay-and-abey federal  
14 proceedings to permit him to exhaust his fourth ground for relief alleging he was denied effective  
15 assistance of counsel by counsel's failure to investigate RM's sexual partners and failing to argue  
16 that RM's prior bad acts and discipline were admissible evidence of motive for fabrication. *See*  
17 Dkt. 18 at 30, and Dkts.19 and 21. Respondent has filed a status report requesting the Court lift  
18 the stay because the state court has issued a final judgment dismissing the first personal restraint  
19 petition (PRP) that petitioner filed. Dkt. 45. Respondent argues if petitioner believes a stay  
20 should remain in place pending the resolution of the second PRP that petitioner filed in state  
21 court, he should file a motion to extend the stay and explain why the second PRP will exhaust his  
22 ineffectiveness of counsel claim.

23 When the Court granted petitioner's motion to stay-and-abey, it did not address whether

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1 petitioner's unexhausted ineffectiveness of counsel claim would be allowed to be presented in  
2 this federal habeas action. The Court will address that question when, and if, petitioner seeks  
3 leave to present his newly exhausted claims to this court in a further amended federal petition.

4 Petitioner is thus cautioned “technical exhaustion” in the state courts does not guarantee  
5 federal review. *See Mayle v. Felix*, 545 U.S. 644, 659 (2005) (newly exhausted claim that is  
6 untimely under AEDPA may be added only if it “relates back” to the original exhausted claims);  
7 *Duncan v. Walker*, 533 U.S. 167, 172-75 (2001) (AEDPA's statute of limitations is not tolled by  
8 the filing of federal habeas petition); *King v. Ryan*, 564 F.3d 1133,1140–41 (9th Cir. 2009) (a  
9 newly exhausted claim may be added to a stayed federal petition if timely under ADEPA).

10 To avoid any confusion regarding the stay of this proceeding, the Court ORDERS:

11 (1) If petitioner believes the stay of this proceeding should stay in place, he shall file  
12 a motion to continue stay with supporting reasons. The motion shall be filed no later than  
13 **February 22, 2021.**

14 (2) If petitioner believes the stay should be lifted, he shall file a motion to lift the stay  
15 and a motion for leave to file an amended federal habeas petition no later than **February 22,**  
16 **2021.**

17 DATED this 27<sup>th</sup> day of January 2021.

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21 BRIAN A. TSUCHIDA  
22 Chief United States Magistrate Judge  
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