

1      **WO**  
2  
3  
4  
56      **IN THE UNITED STATES DISTRICT COURT**  
7      **FOR THE DISTRICT OF ARIZONA**  
8

9      Darrel Peter Pandeli,

No. CV-17-01657-PHX-JJT

10     Petitioner,

**ORDER**

11     v.

DEATH PENALTY CASE

12     David Shinn, et al.,

13     Respondents.

15     Darrel Pandeli is an Arizona death row inmate seeking federal habeas relief. Before  
 16   the Court is his motion for stay and abeyance. (Doc. 114; *see* Docs. 109, 110.) He asks the  
 17   Court to stay this habeas proceeding and hold it in abeyance while he returns to state court  
 18   to exhaust claims alleging ineffective assistance of trial counsel at resentencing and  
 19   ineffective assistance of post-conviction counsel—Claims 1 and 4 of his habeas petition.  
 20   (*Id.*) He also asks the Court to appoint his federal habeas counsel to represent him on his  
 21   return to state court. (*Id.* at 16–17.) Respondents oppose a stay. (Docs. 111, 115.)

22     **I. BACKGROUND**

23     The nude body of Holly Iler was found in a Phoenix alley on the morning of  
 24   September 24, 1993. She had been beaten, her throat had been slashed, and her nipples had  
 25   been removed. Pandeli confessed to the murder. He also admitted that he had previously  
 26   killed another woman, Teresa Humphreys, whose body was found on a sidewalk in Phoenix  
 27   in January 1992. She had been stabbed several times in the chest and back, her throat had  
 28   been slashed, and she suffered defensive wounds to her hands.

1        In 1996 Pandeli was convicted of second-degree murder for killing Humphreys and  
2 sentenced to 20 years in prison. He was convicted of first-degree murder and sentenced to  
3 death in 1998 for the Iler murder. The Arizona Supreme Court affirmed the conviction and  
4 death sentence. *State v. Pandeli (Pandeli I)*, 200 Ariz. 365, 382–83, 26 P.3d 1136, 1153–  
5 54 (2001). In 2002, the United States Supreme Court remanded the case for further  
6 consideration in light of *Ring v. Arizona*, 536 U.S. 584 (2002), which held that a jury must  
7 make the factual findings that render a defendant eligible for the death penalty. *Pandeli*  
8 *v. Arizona (Pandeli II)*, 536 U.S. 953 (2002) (mem.). The Arizona Supreme Court  
9 vacated Pandeli’s death sentence and remanded the case to the trial court for a new  
10 sentencing hearing. *State v. Pandeli (Pandeli III)*, 204 Ariz. 569, 572, 65 P.3d 950, 953  
11 (2003).

12        Resentencing began in February 2006. The State sought to prove two aggravating  
13 circumstances: that Pandeli had been “previously convicted of a serious offense” and that he  
14 committed the murder in an “especially heinous . . . or depraved manner.” The jury found both  
15 aggravating circumstances and rendered a verdict of death. The Arizona Supreme Court  
16 affirmed. *State v. Pandeli*, 215 Ariz. 514, 161 P.3d 557 (2007) (*Pandeli IV*).

17        Pandeli pursued postconviction relief (“PCR”) in state court. The trial court, after  
18 an evidentiary hearing, granted relief on several of Pandeli’s ineffective assistance of  
19 counsel claims, including a claim of ineffective presentation of mitigating evidence. The  
20 Arizona Supreme Court granted the State’s petition for review and reversed. *State v.*  
21 *Pandeli (Pandeli V)*, 242 Ariz. 175, 394 P.3d 2 (2017).

22        Pandeli then sought habeas relief in this court, filing his petition in April 2018. (Doc.  
23 29.) Briefing on the petition was completed in January 2019. (Doc. 77.) In March 2019,  
24 Pandeli filed his notice of a request for evidentiary development. Briefing was completed  
25 on that motion in September 2019. (Doc. 109.)

26        On August 23, 2022, Pandeli filed a motion seeking leave to file a motion to stay and  
27 abey, which the Court granted. (Docs. 109, 113.) Pandeli then filed the pending motion. (Doc.  
28

1 114.) If granted, a stay would allow him to return to state court to present “new claims and  
 2 facts supporting his claims of ineffective assistance of counsel.” (*Id.* at 22.)

3 **II. APPLICABLE LAW**

4 **A. Exhaustion and Procedural Default**

5 Federal courts may not grant a writ of habeas corpus unless “the applicant has  
 6 exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A).  
 7 The exhaustion requirement is “grounded in principles of comity” as it gives the States “the  
 8 first opportunity to address and correct alleged violations of state prisoner’s federal rights.”  
 9 *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). To exhaust a claim, a petitioner must  
 10 fairly present it to the highest available state court and give that court the opportunity to  
 11 resolve it. *See Duncan v. Henry*, 513 U.S. 364, 365 (1995).

12 In *Coleman*, the Supreme Court held that a state prisoner who fails to comply with  
 13 state-law procedural requirements in presenting his claims is barred by the adequate and  
 14 independent state ground doctrine from obtaining a writ of habeas corpus in federal court.  
 15 *Coleman*, 501 U.S. at 731–32; *see Dickens v. Ryan*, 740 F.3d 1302, 1317 (9th Cir. 2014)  
 16 (“An unexhausted claim will be procedurally defaulted, if state procedural rules would now  
 17 bar the petitioner from bringing the claim in state court.”).

18 A default may be excused only if “a constitutional violation has probably resulted  
 19 in the conviction of one who is actually innocent,” or if the petitioner demonstrates cause  
 20 for the default and prejudice resulting from it. *Murray v. Carrier*, 477 U.S. 478, 496 (1986).  
 21 To demonstrate cause, the petitioner must establish that “some objective factor external to  
 22 the defense impeded counsel’s efforts to comply with the State’s procedural rule.” *Id.* at  
 23 488. “[T]o establish prejudice, [a petitioner] must show not merely a substantial federal  
 24 claim, such that ‘the errors . . . at trial created a possibility of prejudice,’ but rather that the  
 25 constitutional violation ‘worked to his actual and substantial disadvantage.’” *Shinn v.*  
 26 *Ramirez*, 142 S. Ct. 1718, 1734–35 (2022) (quoting *United States v. Frady*, 456 U.S. 152,  
 27 170 (1982)).

28

1       In *Martinez v. Ryan*, the Supreme Court held for the first time that ineffective  
 2 assistance of PCR counsel may serve as cause to excuse the default of a claim of ineffective  
 3 assistance of trial counsel. 566 U.S. 1, 17 (2012); *see also Trevino v. Thaler*, 569 U.S. 413,  
 4 423 (2013).

5       **B. Stay and Abeyance**

6       A district court is authorized to stay a petition in “limited circumstances” to allow a  
 7 petitioner to present unexhausted claims to the state court without losing the right to federal  
 8 habeas review pursuant to the relevant one-year statute of limitations.<sup>1</sup> *Rhines v. Weber*,  
 9 544 U.S. 269, 273–77 (2005). Under *Rhines*, “a district court must stay a mixed petition  
 10 only if: (1) the petitioner has ‘good cause’ for his failure to exhaust his claims in state court;  
 11 (2) the unexhausted claims are potentially meritorious; and (3) there is no indication that  
 12 the petitioner intentionally engaged in dilatory litigation tactics.” *Wooten v. Kirkland*, 540  
 13 F.3d 1019, 1023 (9th Cir. 2008) (citing *Rhines*, 544 U.S. at 278).

14       The *Rhines* “good cause” standard does not require “extraordinary circumstances.”  
 15 *Id.* at 1024 (citing *Jackson v. Roe*, 425 F.3d 654, 661–62 (9th Cir. 2005)). However, courts  
 16 “must interpret whether a petitioner has ‘good cause’ for a failure to exhaust in light of the  
 17 Supreme Court’s instruction in *Rhines* that the district court should only stay mixed  
 18 petitions in ‘limited circumstances.’” *Id.* (citing *Jackson*, 425 F.3d at 661). Courts must  
 19 also “be mindful that AEDPA aims to encourage the finality of sentences and to encourage  
 20 petitioners to exhaust their claims in state court before filing in federal court.” *Id.* (citing  
 21 *Rhines*, 544 U.S. at 276–77).

22       **III. DISCUSSION**

23       As Respondents acknowledge, Pandeli’s petition is mixed, containing both exhausted  
 24 and unexhausted claims. (*See* Doc. 111 at 5.) Therefore, the *Rhines* analysis applies.

---

25  
 26  
 27  
 28       <sup>1</sup> The Anti-terrorism and Effective Death Penalty Act of 1996 (“AEDPA”) establishes a  
       one-year statute of limitations for the filing of habeas petitions. 28 U.S.C. § 2244(d)(1).

1           A. Good cause

2           Pandeli makes two arguments in support of his contention that good cause exists for  
 3 a *Rhines* stay. First, he asserts that *Ramirez* “upended the settled expectations and course  
 4 of dealing between the parties.” (Doc. 109 at 2.) In the wake of *Martinez*, the Ninth Circuit  
 5 held that federal habeas courts may take new evidence to determine whether a defaulted  
 6 claim of ineffective assistance of trial counsel was substantial. *Dickens*, 740 F.3d at 1321.  
 7 In *Dickens*, the court explained that 28 U.S.C. § 2254(e)(2) did not bar the district court  
 8 from holding an evidentiary hearing, because a petitioner seeking to show cause based on  
 9 ineffective post-conviction counsel is “not asserting a ‘claim’ for relief as that term is used  
 10 in § 2254(e)(2).”<sup>2</sup> *Id.* The Ninth Circuit later expanded *Dickens*, holding that new evidence  
 11 could also be used to support the merits of a claim. *Jones v. Shinn*, 943 F.3d 1211 (9th Cir.  
 12 2021), *overruled by Ramirez*, 142 S. Ct. 1718.

13           In *Ramirez*, however, the Supreme Court held that in adjudicating a *Martinez* claim,  
 14 “a federal habeas court may not conduct an evidentiary hearing or otherwise consider  
 15 evidence beyond the state-court record based on ineffective assistance of state post-  
 16 conviction counsel” unless the petitioner satisfies the stringent requirements of 28 U.S.C.  
 17 § 2254(e)(2). 142 S. Ct. at 1734. Until *Ramirez*, in other words, petitioners like Pandeli  
 18 had the opportunity to present new evidence in federal court pursuant to *Martinez*.

19           Pandeli argues that with the path to presenting new evidence in federal court cut off  
 20 by *Ramirez*, it is imperative that he be allowed an opportunity to offer the evidence in state  
 21 court. He also contends that in *Ramirez*, “the State induced the Supreme Court to adopt an  
 22 interpretation of 28 U.S.C. § 2254(e)(2) that upended the settled expectations of the parties.  
 23

---

24           <sup>2</sup> Section 2254(e)(2) provides that if a petitioner failed to develop the factual basis of a  
 25 claim in state court, he is not entitled to a federal evidentiary hearing unless the claim  
 26 “relies on a new rule of constitutional law . . . or a factual predicate that could not have  
 27 been previously discovered through the exercise of due diligence . . . and the facts  
 28 underlying the claim would be sufficient to establish by clear and convincing evidence that  
 but for constitutional error, no reasonable factfinder would have found the applicant guilty  
 of the underlying offense.”

1 . . ." (Doc. 109 at 3.) According to Pandeli, the State represented "that if the petitioner had  
 2 a 'good claim' then he/she could seek a *Rhines* stay to go back to state court to raise that  
 3 issue in a second state PCR petition," thereby reconciling *Martinez* and *Ramirez* by  
 4 recognizing a state forum for the presentation of new evidence, whereas Respondents had  
 5 previously argued that claims not raised in state court were technically exhausted. As  
 6 Pandeli notes, Respondents fail to address this argument. (Doc 116 at 2; *see* Doc. 111.)

7 Pandeli also argues that PCR counsel's ineffective performance is good cause for a  
 8 stay. (Doc. 109 at 3–4.) The Ninth Circuit has held that the ineffective assistance of post-  
 9 conviction counsel can constitute good cause to obtain a stay for purposes of exhausting a  
 10 claim in state court. *Blake v. Baker*, 745 F.3d 977, 982–83 (9th Cir. 2014). “[G]ood cause  
 11 turns on whether the petitioner can set forth a reasonable excuse, supported by sufficient  
 12 evidence, to justify [the failure to exhaust].” *Id.* The good cause standard under *Rhines*  
 13 “cannot be any more demanding than a showing of cause under *Martinez* to excuse state  
 14 procedural default.” *Dixon v. Baker*, 847 F.3d 714, 721 (9th Cir. 2017). A district court is  
 15 required to consider whether post-conviction counsel’s alleged ineffectiveness provided a  
 16 reasonable excuse, supported by sufficient evidence, to justify petitioner’s failure to  
 17 exhaust claims. *Bolin v. Baker*, 994 F.3d 1154 (9th Cir. 2021).

18 Pandeli bears the burden of supporting his good cause argument with more than  
 19 “bald assertion[s].” *Blake*, 745 F.3d at 982. The petitioner in *Blake*, for example, argued  
 20 that he did not exhaust his ineffective assistance of trial counsel claim because state post-  
 21 conviction counsel failed to discover evidence that the petitioner suffered extreme abuse  
 22 as a child, as well as organic brain damage and psychological disorders. *Id.* at 982–83. He  
 23 supported this argument with evidence of his abusive upbringing and history of mental  
 24 illness. In light of this showing, the Ninth Circuit found that the district court abused its  
 25 discretion in denying a stay and remanded the case. *Id.* at 983–84.

26 Pandeli similarly has carried his burden. In his motion for a stay and in his habeas  
 27 petition, Pandeli points to specific deficiencies in PCR counsel’s performance. (See Doc.  
 28 114 at 3–15.) He alleges that PCR counsel failed to present first-hand evidence of Pandeli’s

1 traumatic upbringing; failed to present a complete picture of Pandeli’s PTSD; and failed to  
 2 secure neuroimaging as evidence of Pandeli’s brain damage. These allegations are  
 3 supported by new evidence, including declarations from lay witnesses detailing Pandeli’s  
 4 abusive background, declarations from members of Pandeli’s defense and PCR teams, and  
 5 expert reports. Accordingly, Pandeli has done more than make a bare allegation of  
 6 ineffective assistance by PCR counsel. *See Letner v. Davis*, No. 118CV01459NONESAB,  
 7 2020 WL 2792980, at \*4 (E.D. Cal. May 29, 2020), *report and recommendation*  
 8 *adopted*, 2020 WL 3893691 (E.D. Cal. July 10, 2020) (collecting cases); *Ervine v. Warden*,  
 9 *San Quentin State Prison*, No. 2:15-CV-1916 TLN DB, 2018 WL 372754, at \*3 (E.D. Cal.  
 10 Jan. 10, 2018), *report and recommendation adopted*, 2018 WL 1173959 (E.D. Cal. Mar.  
 11 6, 2018); *Blake*, 745 F.3d at 983–84.

12 Respondents contend that good cause is absent because Pandeli had no basis for his  
 13 delay in seeking a stay. (Doc. 111 at 5–6.) This argument is unpersuasive. As described  
 14 above, until the decision in *Ramirez, Martinez* provided an opportunity for habeas  
 15 petitioners to present, with respect to defaulted claims, new evidence in federal court. It  
 16 was not necessary, therefore, to seek a *Rhines* stay with respect to an unexhausted claim of  
 17 ineffective assistance of trial counsel.

18 The district court in *Guevara-Pontifes v. Baker*, No. 3:20-cv-00652-ART-CSD,  
 19 2022 WL 4448259 (D. Nev. September 23, 2022), addressed similar arguments. There the  
 20 petitioner sought a stay to exhaust a claim of ineffective assistance of trial counsel, arguing,  
 21 as Pandeli does here, that postconviction counsel’s ineffectiveness in failing to raise the  
 22 claim constituted good cause under *Rhines*. *Id.* at \*3. The court held that *Ramirez* did not  
 23 “concern the good cause requirements for a *Rhines* stay” and did not “foreclose a petitioner  
 24 from demonstrating good cause for a stay based on post-conviction counsel’s failure to  
 25 raise an unexhausted claim in state court.” *Id.* at \*4. The court also rejected the argument  
 26 that a stay would be futile based on Nevada’s procedural default bars. *Id.* at \*4–5 (citing  
 27 *Brown v. McDaniel*, 130 Nev. 565, 331 P.3d 867 (Nev. 2014)). The court explained that if  
 28 the stay were granted the petitioner “can argue to the Nevada Supreme Court, that in light

1 of the Supreme Court’s decision in *Ramirez*, it should overrule *Brown* and permit the use  
 2 of the principles set forth in *Martinez* for purposes of overcoming state procedural bars.”  
 3 *Id.* at \*5. The court granted the *Rhines* stay, finding that the allegation of ineffective  
 4 assistance of postconviction counsel constituted “good cause.”

5 The Court agrees with the analysis in *Guevara-Pontifes*. The alleged ineffective  
 6 assistance of PCR counsel constitutes good cause under *Rhines*. The propriety of a stay is  
 7 magnified by the decision in *Ramirez* and its limitations on the presentation of new  
 8 evidence in federal habeas court.

9 **B. Potentially meritorious**

10 Claim 1 consists of the several challenges to the performance of resentencing counsel.  
 11 Pandeli specifically alleges that counsel failed to effectively investigate, develop, and present  
 12 various types of mitigating evidence; failed to challenge the State’s evidence, including  
 13 failing to cross-examine the State’s mental health expert, Dr. Bayless, and Chris Pandeli,  
 14 Pandeli’s brother, and to prepare for other witnesses; failed to challenge the (F)(2)  
 15 aggravating factor and the State’s allegation of relishing in support of the (F)(6) factor; failed  
 16 to effectively address the State’s rebuttal evidence; failed to file a *Miranda* motion; failed to  
 17 adequately voir dire the jurors; and failed to address a number of jury instruction issues.  
 18 These allegations meet the potentially meritorious standard.<sup>3</sup>

19 A claim is potentially meritorious unless “it is perfectly clear that the [petitioner]  
 20 does not raise even a colorable federal claim.” *Cassett v. Stewart*, 406 F.3d 614, 624 (9th  
 21 Cir. 2005); *see Dixon*, 847 F.3d at 722–23 (finding claim met second prong of *Rhines* test  
 22 because it was not “plainly meritless”). Having reviewed the claims and the supporting

---

23  
 24 <sup>3</sup> Claim 4, by contrast, does not satisfy the “potentially meritorious” requirement because  
 25 ineffective assistance of PCR counsel is not a colorable federal claim. There is no  
 26 independent constitutional right to an attorney in PCR proceedings, so “a petitioner cannot  
 27 claim constitutionally ineffective assistance of counsel in such proceedings.” *Coleman*, 501  
 28 U.S. at 752; *see Ramirez*, 142 S. Ct. at 1735; 28 U.S.C. § 2254(i). *Martinez* modified  
*Coleman* but did not establish an independent constitutional right to effective PCR counsel.  
 However, because Pandeli has demonstrated that at least one of his claims is not plainly  
 meritless, he is entitled to a stay under *Rhines*. *Dixon*, 847 F.3d at 722.

1 evidence, the Court concludes that the allegations in Claim 1 are “colorable” and not  
 2 “hopeless.” *Cruz v. Mitchell*, No. 13-cv-2792-JST, 2015 WL 78779 at \*3, (N.D. Cal. Jan.  
 3 5, 2015) (finding unexhausted claims potentially meritorious where they were not “vague,  
 4 conclusory or patently frivolous” but rather were “well-supported by specific averments  
 5 and numerous exhibits” and by legal authority).

6 Pandeli’s claim of ineffective assistance of counsel at resentencing is sufficiently  
 7 supported by argument and evidence. Although it remains unclear at this stage whether the  
 8 claim eventually will warrant federal habeas relief, Pandeli has satisfied the less  
 9 demanding standard required to obtain a stay under *Rhines*. *See Dixon*, 847 F.3d at 723  
 10 (explaining that a habeas petitioner’s burden to show a claim is not “plainly meritless” does  
 11 not require him to “conclusively establish” that his claim has merit).

12 The second *Rhines* criterion is satisfied.

13 **C. Dilatory litigation tactics**

14 Respondents contend that “the record suggests that Pandeli may be engaging in  
 15 dilatory tactics.” (Doc. 111 at 8.) They cite the length of time (four years) between the  
 16 filing of the habeas petition and answer and Pandeli’s request for a stay and the three  
 17 months between the *Ramirez* decision and the filing of the stay motion. (*Id.* at 8–9.)

18 These circumstances are not indicative of intentional delay. As already discussed,  
 19 *Ramirez* changed the law so that *Martinez* no longer afforded petitioners seeking to excuse  
 20 the default of ineffective assistance claims an opportunity to present new evidence in  
 21 federal court. Pandeli cannot be faulted for relying on *Martinez* and its progeny, including  
 22 *Dickens*, as he did in briefing Claim 1 (*see* Doc. 29 at 61–62), instead of moving for a stay.

23 The third *Rhines* criterion is satisfied.

24 **III. APPOINTMENT OF COUNSEL**

25 Pandeli has asked the Court to authorize his federal habeas counsel to represent him  
 26 in state court. The Criminal Justice Act provides for appointed counsel to represent their  
 27 client in “other appropriate motions and procedures.” 18 U.S.C. § 3599(e).

28

1       The Supreme Court interpreted § 3599 in *Harbison v. Bell*, 556 U.S. 180 (2009),  
 2 holding that the statute “authorizes federally appointed counsel to represent their clients in  
 3 state clemency proceedings and entitles them to compensation for that representation.” *Id.* at  
 4 194. The Court explained that “subsection (a)(2) triggers the appointment of counsel for  
 5 habeas petitioners, and subsection (e) governs the scope of appointed counsel’s duties.” *Id.*  
 6 at 185. The Court noted, however, that appointed counsel is not expected to provide each of  
 7 the services enumerated in section (e) for every client. Rather, “counsel’s representation  
 8 includes only those judicial proceedings transpiring ‘subsequent’ to her appointment.” *Id.* at  
 9 188. “Moreover, subsection (a)(2) provides for counsel only when a state petitioner is unable  
 10 to obtain adequate representation.” *Id.* at 189.

11       *Harbison* addressed the concern that under the Court’s interpretation of § 3599,  
 12 federally appointed counsel would be required to represent their clients in state retrial or  
 13 state habeas proceedings that occur after counsel’s appointment because such proceedings  
 14 are also “available post-conviction process.” *Id.* The Court explained that § 3599(e) does  
 15 not apply to those proceedings because they are not “properly understood as a ‘subsequent  
 16 stage’ of judicial proceedings but rather as the commencement of new judicial  
 17 proceedings.” *Id.* at 189. As to state post-conviction proceedings, the Court noted, “State  
 18 habeas is not a stage ‘subsequent’ to federal habeas. . . . That state postconviction litigation  
 19 sometimes follows the initiation of federal habeas because a petitioner has failed to exhaust  
 20 does not change the order of proceedings contemplated by the statute.” *Id.* at 189–90; *see*  
 21 *Irick v. Bell*, 636 F.3d 289, 292 (6th Cir. 2011); *Lugo v. Sec’y, Florida Dep’t of Corr.*, 750  
 22 F.3d 1198, 1213 (11th Cir. 2014) (explaining “a state prisoner is not entitled, as a matter  
 23 of statutory right, to have federally paid counsel assist him in the pursuit and exhaustion of  
 24 his state postconviction remedies. . . .”).

25       In *Harbison*, the Court also noted, however, that “a district court may determine on  
 26 a case-by-case basis that it is appropriate for federal counsel to exhaust a claim in the course  
 27 of her federal habeas representation.” 556 U.S. at 190 n.7. In determining whether  
 28 appointment of federal counsel was appropriate, courts have consistently taken into

1 account the petitioner's access to state-appointed counsel. *See, e.g., Johnson v. Kerestes*,  
2 No. CIV.A. 13-3197, 2015 WL 2069216, at \*8 (E.D. Pa. May 4, 2015) ("[I]t would not be  
3 appropriate for this Court to exercise its discretion to authorize the [Federal Community  
4 Defender Organization] to pursue Petitioner's state proceedings within the scope of its  
5 federally funded duties. Petitioner is entitled, under state law, to counsel who would assist  
6 in pursuing his [post-conviction] petition and appeal and it is not 'appropriate' for this  
7 Court to direct the FCDO to litigate this action in place of a state-appointed  
8 counsel."); *Pickens v. Shoop*, No. 1:19-CV-558, 2022 WL 2802411, at \*4 (S.D. Ohio July  
9 18, 2022) ("[T]he Sixth Circuit has applied *Harbison* to hold that § 3599 applies to state  
10 proceedings only when adequate representation is not otherwise available.") (citing *Irick*,  
11 636 F.3d at 291); *Hill v. Mitchell*, No. 98-452, 2009 WL 2898812, at \*4-6 (S.D. Ohio  
12 Sept. 4, 2009).

13 Based on the above, the Court finds that is appropriate to appoint federal counsel to  
14 represent Pandeli in state court only if state-appointed counsel is unavailable. *See Irick*,  
15 636 F.3d at 291. To that end the Court will appoint federal counsel for the purpose of filing  
16 a notice of PCR. Counsel may also seek appointment in state court. If that request is denied,  
17 and state-appointed counsel is unavailable, the Court will authorize appointment of federal  
18 counsel.

19 **IV. CONCLUSION**

20 For the reasons stated above, Pandeli's motion satisfies the criteria for a stay under  
21 *Rhines*. Accordingly,

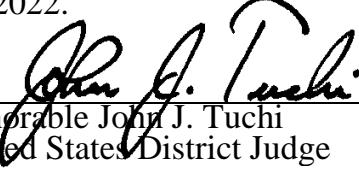
22 **IT IS HEREBY ORDERED** granting Pandeli's Motion for a Stay and  
23 Abeyance (Doc. 114).

24 **IT IS FURTHER ORDERED** that this action is stayed and held in abeyance  
25 pending exhaustion of Claim1 of Pandeli's habeas petition.

26 **IT IS FURTHER ORDERED** granting in part and denying in part Pandeli's  
27 request for federal habeas counsel to represent him in state court. Counsel are appointed  
28 for the purpose of filing a notice of PCR and to request appointment in state court. Within

1 ten days of the date of the state court's order addressing the request for counsel, counsel  
2 shall notify the Court if their request for appointment was granted or if other state-  
3 appointed counsel will be provided.

4 Dated this 10th day of November, 2022.

5   
6 Honorable John J. Tuchi  
7 United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28