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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT EDWARD MAURY,  
Petitioner,  
v.  
RONALD DAVIS,  
Respondent.

No. 2:12-cv-1043 WBS DB  
DEATH PENALTY CASE  
FINDINGS AND RECOMMENDATIONS

Petitioner is a condemned state prisoner proceeding through counsel with a petition for writ of habeas corpus under 28 U.S.C. § 2254. Before the court is petitioner’s motion for an extension of the stay of these proceedings and motion for additional equitable tolling. (ECF No. 187.)

This is petitioner’s third motion for a stay and equitable tolling of the statute of limitations based on the effects of the COVID-19 pandemic and the restrictions resulting from it. This court recommended granting petitioner’s second motions. (See Aug. 28, 2020 Findings and Recommendations (ECF No. 183).) On October 2, the district judge adopted that recommendation. (ECF No. 186.) The stay of these proceedings is set to expire on November 26, 2020.

Petitioner again alleges that his attorneys have been diligently investigating his potential claims, but their work has been hampered by the restrictions on travel and the risks of the

1 COVID-19 virus. (See ECF Nos. 187, 189.) Respondent again argues primarily that recent Ninth  
2 Circuit case law prevents the court from granting equitable tolling prospectively. (See ECF No.  
3 188.)

4 There have been two significant changes since petitioner made his last motion. First,  
5 there has been an uptick in COVID-19 cases in California in the past month. Particularly relevant  
6 to this case is the significant increase in virus cases in Shasta County where, according to  
7 petitioner, most of the witnesses to be interviewed reside. In fact, on November 4, Shasta  
8 County's virus cases were sufficiently widespread that the state imposed the highest level of  
9 restrictions on that county. See <https://covid19.ca.gov/safer-economy/#county-status>.

10 The second change is that it appears judges in the Eastern District of California to  
11 consider the issue in the last several months have held that anticipatory equitable tolling remains  
12 appropriate. See McWhorter v. Davis, No. 1:20-cv-0215 DAD, 2020 WL 5942354 (E.D. Cal.  
13 Oct. 7, 2020); Contreras v. Davis, No. 1:19-cv-1523 AWI SAB, 2020 WL 5588589 (E.D. Cal.  
14 Sep. 18, 2020), rep. and reco. adopted, 2020 WL 6261619 (E.D. Cal. Oct. 23, 2020); Brown v.  
15 Davis, No. 1:19-CV-01796-DAD, 2020 WL 5069654 (E.D. Cal. Aug. 27, 2020); Cowan v. Davis,  
16 No. 1:19-cv-0745-DAD, 2020 WL 4698968 (E.D. Cal. Aug. 13, 2020).

17 Because the reasons for granting petitioner's motion are even stronger than they were in  
18 August when this court issued its prior findings and recommendations, and because there are no  
19 arguments from the parties that change this court's prior analyses, this court adopts the analyses  
20 of the equitable tolling and stay issues set out in the August 28 findings and recommendations.

21 For the foregoing reasons, IT IS HEREBY RECOMMENDED that petitioner's motion to  
22 stay these proceedings and equitably toll the statute of limitations (ECF No. 187) be granted as  
23 follows:

- 24 1. These proceedings be stayed through March 1, 2021; and
- 25 2. Petitioner be entitled to equitable tolling of the statute of limitations for the period from  
26 March 11, 2020 through March 1, 2021.

27 These findings and recommendations will be submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written  
2 objections with the court and serve a copy on all parties. The document should be captioned  
3 “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the  
4 objections shall be filed and served within seven days after service of the objections. The parties  
5 are advised that failure to file objections within the specified time may result in waiver of the  
6 right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 DATED: November 18, 2020

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11 /s/ DEBORAH BARNES  
12 UNITED STATES MAGISTRATE JUDGE  
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22 DB/orders-capital/maury.eq toll(3)  
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