UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY ALLEN HARMS, Petitioner, v. EDWARD SILVA, Respondent.	No. 2:25-cv-01048 DC CSK ORDER

Petitioner is a state prisoner, proceeding through counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On July 17, 2025, the Court granted petitioner's motion to stay this action while he exhausted his unexhausted claims in state court pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002). (ECF No. 9.) The Court ordered petitioner to file a status report within 90 days of the date of the order, and every 90 days thereafter, advising the court of what steps he has taken to exhaust his claims in state court. (Id.)

On October 9, 2025, petitioner filed his first status report. (ECF No. 11.) Petitioner stated that on May 22, 2025, petitioner filed a petition for writ of habeas corpus in the Sacramento County Superior Court. (Id.) Petitioner stated that on July 9, 2025, the Sacramento County Superior Court filed an order for extension of time to adequately address the issues set forth in the petition. (Id.) Petitioner stated that he was diligently working on his petition for writ of habeas corpus to be filed in the Sacramento County Superior Court and anticipated having it filed within

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

the next few weeks. (Id. at 2.) On January 7, 2026 petitioner filed his second status report. (ECF No. 13.) The second status report is virtually identical to the first status report. (Id.)

After reviewing petitioner's status reports, it appears that on July 9, 2025, the Sacramento County Superior Court granted petitioner an extension of time to file an amended petition clarifying the issues raised in the petition filed May 22, 2025. According to the status reports, petitioner has still not filed the amended petition. In Kelly, the Ninth Circuit suggested "the district court may require Petitioner to file his new state petition within 30 days" and "[i]f petitioner fails to act within the allotted time, the stay may be vacated[.]" Kelly, 315 F.3d at 1071. Accordingly, within thirty days of the date of this order, petitioner shall file the habeas corpus petition discussed in the status reports in the Sacramento County Superior Court. Within forty-five days of the date of this order, petitioner shall file a status report addressing the date he filed the habeas corpus petition in the Sacramento County Superior Court and clarifying whether this petition is an amendment to the petition filed May 22, 2025.

Accordingly, IT IS HEREBY ORDERED that:

1. Within thirty days of the date of this order, petitioner shall file the habeas corpus petition discussed in the status reports in the Sacramento County Superior Court;

2. Within forty-five days of the date of this order, petitioner shall file the status report discussed in this order; and

3. If petitioner fails to comply with this order, this Court will recommend that the stay of this action be vacated.

Dated: January 12, 2026

CHI SOO KIM
UNITED STATES MAGISTRATE JUDGE

Harm1048.osc/2