UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

GILBERTO DIAZ-SANCHEZ, Petitioner, v. JEFFREY BEARD and NEIL MCDOWELL, Respondents.	No. 1:14-cv-01204-DAD-SKO ORDER ADOPTING FINDINGS AND RECOMMENDATIONS AND GRANTING PETITIONER'S SECOND AND THIRD MOTIONS TO MODIFY STAY AND ABEYANCE (Doc. Nos. 72, 77, 82)

Petitioner Gilberto Diaz-Sanchez is a state prisoner proceeding with counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 16, 2018, the assigned magistrate judge issued findings and recommendations, recommending that petitioner's second motion to modify the stay and abeyance in this action be granted. (Doc. Nos. 72, 77.) The findings and recommendations were served on the parties and contained notice that any objections were to be filed within thirty (30) days from the date of service of that order. To date, no party has filed objections, and the time in which to do so has now passed.

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In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and proper analysis.

In addition, while those findings and recommendations were pending, on May 29, 2019, petitioner filed a third motion to modify the stay and abeyance in this action. (Doc. No. 82.)[1] Therein, petitioner states he is in the process of exhausting his unexhausted claims in state court, and that he just recently learned that with respect to his claims associated with the rights granted by the California Legislature in Senate Bill 1437, enacted as Penal Code § 1170.95, he must submit those claims to the state trial court in the first instance. (*Id.* at 2.) Accordingly, petitioner requests a further modification of the order granting a stay so that he can continue to exhaust the additional claims before submitting all of his exhausted claims to this federal court. (*Id.*) The court finds this explanation to be reasonable and will therefore grant a further modification of the stay.

Accordingly,

1. The findings and recommendations issued on October 16, 2018 (Doc. No. 77) are adopted in full;
2. Petitioner's motions for modification of the stay (Doc. Nos. 72, 82) are granted;
3. The prior order granting the motion for stay and abeyance (Doc. No. 66) is modified to include any unexhausted claims petitioner seeks to bring pursuant to the recent holding in *Henry v. Spearman*, 899 F.3d 703 (9th Cir. 2018), and to the recent enactment of California Penal Code § 1170.95;
4. Petitioner is directed to file a status report within ninety (90) days of the date of this order advising the court the status of the state court proceedings, and shall file an additional status report every ninety (90) days thereafter; and

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[1] To date, respondent has not filed any opposition to the modification requested by petitioner's counsel.

5. Within thirty (30) days after the California Supreme Court issues a final order resolving the unexhausted claims, petitioner shall file a motion to lift the stay and an amended habeas petition setting forth all exhausted claims.

IT IS SO ORDERED.

Dated: **July 2, 2019**

Dale A. Drozd

UNITED STATES DISTRICT JUDGE