

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Padilla v. Arias

Padilla · No. 1:25-cv-00019-SAB-HC · Decided March 18, 2025

SUMMARY

This Findings and Recommendation from the Eastern District of California addresses Francisco Padilla’s petition for a writ of habeas corpus under 28 U.S.C. § 2254 and his motion for a Rhines stay. The court concludes that the petition is entirely unexhausted and that, although good cause was shown, the claims were plainly meritless or inadequately supported for purposes of a stay. It recommends denying the motion for a stay and dismissing the habeas petition without prejudice, and directs the clerk to randomly assign a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 18, 2025
DOCKET	1:25-cv-00019-SAB-HC
DISPOSITION	dismissed
PROCEDURAL POSTURE	Petitioner, a state prisoner proceeding pro se, filed a federal habeas petition under 28 U.S.C. § 2254 and moved to stay the action under Rhines v. Weber while he exhausted state remedies. The magistrate judge recommended denying the stay and dismissing the petition without prejudice because all claims were unexhausted and the claims were plainly meritless.
STANDARD OF REVIEW	A mixed or unexhausted federal habeas petition is subject to the exhaustion requirement in 28 U.S.C. § 2254(b)(1). A Rhines stay requires good cause for failure to exhaust, at least one unexhausted claim that is not plainly meritless, and no intentional dilatory litigation tactics. A claim is plainly meritless when it is perfectly clear that the petitioner has no hope of prevailing.
PRECEDENTIAL VALUE	nonprecedential

PARTIES

Francisco Padilla v. Roberto A. Arias

TOPICS

federal habeas corpus

post-conviction relief

comity

sentence modification

due process

PRACTICE AREAS

federal habeas corpus

state post-conviction relief

constitutional law

civil procedure

QUESTIONS PRESENTED

1. Whether Padilla satisfied the requirements for a stay and abeyance under *Rhines v. Weber* despite failing to exhaust any of his four federal habeas claims in state court.
2. Whether at least one of Padilla's unexhausted claims was not plainly meritless for purposes of a *Rhines* stay.
3. Whether the petition should be dismissed without prejudice for failure to exhaust state remedies.

HOLDINGS

1. A stay and abeyance under *Rhines* requires good cause for the failure to exhaust, at least one unexhausted claim that is not plainly meritless, and the absence of intentionally dilatory litigation tactics.
2. A state prisoner must provide the highest state court a full and fair opportunity to consider each federal claim before seeking federal habeas relief.
3. Claims seeking resentencing based solely on state law do not provide a basis for federal habeas relief.
4. Padilla failed to show that his Marsden, involuntary-plea, and ineffective-assistance claims were potentially meritorious because his allegations were vague or conclusory and the attached state-court transcripts undermined them.

KEY QUOTATIONS

“Under Rhines v. Weber, 544 U.S. 269 (2005), “stay and abeyance” is available only in limited circumstances, and only when: (1) there is “good cause” for the failure to exhaust; (2) the unexhausted claims are not “plainly meritless”; and (3) the petitioner did not intentionally engage in dilatory litigation tactics.” (at 8-11)

“A petitioner in state custody who is proceeding with a petition for writ of habeas corpus must exhaust state judicial remedies.” (at 3-5)

“federal habeas corpus relief does not lie for errors of state law.” (at 3-5)

FACTUAL BACKGROUND

Padilla is a state prisoner challenging 2019 Tulare County Superior Court convictions for which he received a sentence of twenty-five years to life. His federal petition asserted four grounds for relief, including resentencing,

denial of a Marsden motion, an involuntary plea, and ineffective assistance of counsel. He acknowledged that the claims had not been presented to the highest state court and stated that he needed inmate assistance to prepare state habeas filings.

PROCEDURAL HISTORY

Padilla filed the federal habeas petition on January 6, 2025, challenging his 2019 Tulare County Superior Court convictions and sentence. He acknowledged that none of his four grounds had been presented to the highest state court and sought a stay based on circumstances including an emergency transfer, a court summons, and the need for inmate assistance. The magistrate judge recommended denial of the stay and dismissal without prejudice, subject to review by an assigned district judge under 28 U.S.C. § 636(b)(1)(C).

DISPOSITION

dismissed

CASES CITED

- Coleman v. Thompson, 501 U.S. 722, 731 (1991)
- Rose v. Lundy, 455 U.S. 509, 518 (1982)
- O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999)
- Duncan v. Henry, 513 U.S. 364, 365 (1995)
- Picard v. Connor, 404 U.S. 270, 276 (1971)
- Rhines v. Weber, 544 U.S. 269, 277-78 (2005)
- Dixon v. Baker, 847 F.3d 714, 720, 722 (9th Cir. 2017)
- Blake v. Baker, 745 F.3d 977, 980 (9th Cir. 2014)
- Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005)
- Jackson v. Roe, 425 F.3d 654, 661-62 (9th Cir. 2005)
- Wooten v. Kirkland, 540 F.3d 1019, 1024 (9th Cir. 2008)
- Kelly v. Small, 315 F.3d 1063, 1070-71 (9th Cir. 2003)
- Calderon v. United States District Court (Taylor), 134 F.3d 981, 986 (9th Cir. 1998)
- King v. Ryan, 564 F.3d 1133, 1135 (9th Cir. 2009)
- Cassett v. Stewart, 406 F.3d 614, 624 (9th Cir. 2005)
- Wilson v. Corcoran, 562 U.S. 1, 5 (2010) (per curiam)
- Estelle v. McGuire, 502 U.S. 62, 67-68 (1991)
- Schell v. Witek, 218 F.3d 1017, 1021, 1026 (9th Cir. 2000) (en banc)
- Clark v. Broomfield, 83 F.4th 1141, 1155 (9th Cir. 2023)
- Michaels v. Davis, 51 F.4th 904, 938 (9th Cir. 2022)
- Stenson v. Lambert, 504 F.3d 873, 886 (9th Cir. 2007)
- Carter v. Davis, 946 F.3d 489, 507-08 (9th Cir. 2019)

- Bradshaw v. Stumpf, 545 U.S. 175, 183 (2005)
- Brady v. United States, 397 U.S. 742, 748 (1970)
- Doe v. Woodford, 508 F.3d 563, 570 (9th Cir. 2007)
- Iaea v. Sunn, 800 F.2d 861, 866 (9th Cir. 1986)
- United States v. Silveira, 997 F.3d 911, 913 (9th Cir. 2021)
- Hill v. Lockhart, 474 U.S. 52, 56-59 (1985)
- McMann v. Richardson, 397 U.S. 759, 771 (1970)
- United States v. Ross, 511 F.3d 1233, 1236 (9th Cir. 2008)
- Strickland v. Washington, 466 U.S. 668, 690-91 (1984)
- Wildman v. Johnson, 261 F.3d 832, 839 (9th Cir. 2001)
- Styers v. Schriro, 547 F.3d 1026, 1030 n.5 (9th Cir. 2008)
- People v. Padilla, No. F085064, 2023 WL 6934811, at *8 (Cal. Ct. App. Oct. 20, 2023)
- U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
- United States v. Raygoza-Garcia, 902 F.3d 994, 1001 (9th Cir. 2018)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 FRANCISCO PADILLA, Case No. 1:25-cv-00019-SAB-HC 11 Petitioner, FINDINGS AND
RECOMMENDATION RECOMMENDING DENIAL OF 12 v. PETITIONER’S MOTION FOR
RHINES STAY AND DISMISSAL OF PETITION 13 ROBERTO A. ARIAS, FOR WRIT OF
HABEAS CORPUS WITHOUT PREJUDICE 14 Respondent. ORDER DIRECTING CLERK OF
COURT 15 TO RANDOMLY ASSIGN DISTRICT JUDGE 16 17 Petitioner is a state prisoner
proceeding pro se with a petition for writ of habeas corpus 18 pursuant to 28 U.S.C. § 2254.

19 On January 6, 2025, Petitioner filed the instant federal petition for writ of habeas corpus 20
challenging his 2019 Tulare County Superior Court convictions for which he was sentenced to an
21 imprisonment term of twenty-five years to life. (ECF No. 1 at 1.1) Petitioner raises four
grounds 22 for relief. (Id. at 5–10.) 23 A petitioner in state custody who is proceeding with a
petition for writ of habeas corpus 24 must exhaust state judicial remedies.

28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based 25 on comity to the state court and gives
the state court the initial opportunity to correct the state’s 26 alleged constitutional deprivations.
Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. 27 Lundy, 455 U.S. 509, 518 (1982). A
petitioner can satisfy the exhaustion requirement by 1 providing the highest state court with a full
and fair opportunity to consider each claim before 2 presenting it to the federal court.

O’Sullivan v. Boerckel, 526 U.S. 838, 845 (1999); Duncan v. 3 Henry, 513 U.S. 364, 365 (1995); Picard v. Connor, 404 U.S. 270, 276 (1971). 4 Here, Petitioner acknowledges that all four grounds for relief have not been presented to 5 the highest state court. (ECF No. 1 at 5–7, 9–10, 12.) Petitioner “seeks a stay of this matter 6 pending exhaustion of state remedies due to an emergency transfer, being summoned to court, 7 and needing inmate assistance in preparing a petition for writ of habeas corpus.” (Id. at 5.)

8 Under Rhines v. Weber, 544 U.S. 269 (2005), “stay and abeyance” is available only in 9 limited circumstances, and only when: (1) there is “good cause” for the failure to exhaust; (2) the 10 unexhausted claims are not “plainly meritless”; and (3) the petitioner did not intentionally 11 engage in dilatory litigation tactics. 544 U.S. at 277–78.2 “The caselaw concerning what 12 constitutes ‘good cause’ under Rhines has not been developed in great detail.” Dixon v. Baker, 13 847 F.3d 714, 720 (9th Cir.

2017). “The Supreme Court has addressed the issue only once, when 14 it noted that a ‘petitioner’s reasonable confusion about whether a state filing would be timely 15 will ordinarily constitute ‘good cause’ for him to file in federal court.’” Blake v. Baker, 745 F.3d 16 977, 980 (9th Cir. 2014) (quoting Pace v. DiGuglielmo, 544 U.S. 408, 416 (2005)).3 The Ninth 17 Circuit has “held that good cause under Rhines does not require a showing of ‘extraordinary 18 circumstances,’ Jackson v. Roe, 425 F.3d 654, 661–62 (9th Cir.

2005), but that a petitioner must 19 do more than simply assert that he was ‘under the impression’ that his claim was exhausted, 20 Wooten v. Kirkland, 540 F.3d 1019, 1024 (9th Cir. 2008).” Dixon, 847 F.3d at 720. 21 2 The Court notes that Petitioner would not be entitled to stay under Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002), in which a three-step procedure is used: (1) the petitioner amends his petition to delete any unexhausted claims; (2) 22 the court in its discretion stays the amended, fully exhausted petition, and holds it in abeyance while the petitioner has the opportunity to proceed to state court to exhaust the deleted claims; and (3) once the claims have been 23 exhausted in state court, the petitioner may return to federal court and amend his federal petition to include the newly exhausted claims.

Kelly, 315 F.3d at 1070–71 (citing Calderon v. United States Dist. Court (Taylor), 134 F.3d 24 981, 986 (9th Cir. 1998)). Although Kelly “does not require that a petitioner show good cause for his failure to exhaust state court remedies,” King v. Ryan, 564 F.3d 1133, 1135 (9th Cir. 2009), the Kelly procedure is only 25 available for mixed petitions that contain both exhausted and unexhausted claims given that the second step requires the Court to stay and hold in abeyance an amended, fully exhausted petition.

Here, the petition is completely 26 unexhausted. Accordingly, Petitioner is not entitled to a Kelly stay. 3 In Pace, the Supreme Court noted that a solution to the “predicament” of “a ‘petitioner trying in good faith to 27 exhaust state remedies... litigat[ing] in state court for years only to find

out at the end that he was never “properly filed,” and thus that his federal habeas petition is time barred” is “filing a ‘protective’ petition in federal court and asking the federal court to stay and abey the federal habeas proceedings until state remedies are exhausted.” 544 1 “A petitioner who is without counsel in state postconviction proceedings cannot be 2 expected to understand the technical requirements of exhaustion and should not be denied the 3 opportunity to exhaust a potentially meritorious claim simply because he lacked counsel.” Dixon, 4 847 F.3d at 720.

Thus, the Ninth Circuit has found that for federal habeas petitioners who 5 conducted their state post-conviction proceedings pro se, “the first element of the Rhines test can 6 easily be established to the extent that they were without counsel.” Dixon, 847 F.3d at 722.

Here, 7 Petitioner states that he needs inmate assistance in preparing a petition for writ of habeas corpus 8 and appears to indicate that he filed the instant federal petition as a protective petition. (ECF No. 9 1 at 5.)

As it appears that Petitioner has been conducting his state post-conviction proceedings 10 pro se, the Court finds that Petitioner has satisfied Rhines’s good cause requirement. 11 “A federal habeas petitioner [also] must establish that at least one of his unexhausted 12 claims is not ‘plainly meritless’ in order to obtain a stay under Rhines.” Dixon, 847 F.3d at 722.

13 “In determining whether a claim is ‘plainly meritless,’ principles of comity and federalism 14 demand that the federal court refrain from ruling on the merits of the claim unless ‘it is perfectly 15 clear that the petitioner has no hope of prevailing.’” Id. (quoting *Cassett v. Stewart*, 406 F.3d 16 614, 624 (9th Cir. 2005)). 17 In Grounds One and Two, Petitioner raises various arguments and contends that he “has 18 set forth a prima facie for resentencing under Penal Code Section 1176.2[.]” (ECF No. 1 at 18, 19 22.)

To the extent Petitioner asserts that he is entitled to resentencing relief, that is an issue of 20 state law and errors of state law generally do not warrant federal habeas corpus relief. See 21 *Wilson v. Corcoran*, 562 U.S. 1, 5 (2010) (per curiam) (“[I]t is only noncompliance with federal 22 law that renders a State’s criminal judgment susceptible to collateral attack in the federal 23 courts.”); *Estelle v. McGuire*, 502 U.S. 62, 67–68 (1991) (“We have stated many times that 24 ‘federal habeas corpus relief does not lie for errors of state law.’ Today, we reemphasize that it is 25 not the province of a federal habeas court to reexamine state-court determinations on state-law 26 questions.” (citations omitted)).

Therefore, Grounds One and Two are plainly meritless. 27 In Ground Three, Petitioner asserts that the trial court erred in denying his Marsden 1 ignorant to tangible matters before the superior court due to the failure of his attorney” and 2 “could not properly and adequately consider the options open to him” because his attorney “did 3 not present options” but only subjected Petitioner to “two plus hours of manipulation.” (Id.)

4 Under California law, a motion for the appointment of substitute counsel, typically based on a claim “that appointed counsel’s representation has in some 5 significant measure fallen below the level required by the Sixth Amendment,” *Schell v. Witek*, 218 F.3d 1017, 1021 (9th Cir. 2000) (en banc), is called a 6 “Marsden motion.” The “ultimate constitutional question” upon review in federal court “is not whether the trial court ‘abused its discretion,’” but whether the denial 7 of a Marsden motion “actually violated [the petitioner’s] constitutional rights” because the conflict “bec[a]me so great that it resulted in a total lack of 8 communication or other significant impediment that resulted in turn in an attorney-client relationship that fell short of that required by the Sixth 9 Amendment.” *Id.* at 1026.

10 *Clark v. Broomfield*, 83 F.4th 1141, 1155 (9th Cir. 2023). “A defendant is ‘entitled to substitute 11 counsel if an “irreconcilable conflict” between a defendant and his counsel prevents counsel 12 from rendering effective assistance.’” *Clark*, 83 F.4th at 1155 (quoting *Michaels v. Davis*, 51 13 F.4th 904, 938 (9th Cir. 2022)). “‘An irreconcilable conflict’ claim has been recognized ‘only 14 where there is a complete breakdown in communication between the attorney and client, and the 15 breakdown prevents effective assistance of counsel.’” *Clark*, 83 F.4th at 1155 (quoting *Stenson 16 v. Lambert*, 504 F.3d 873, 886 (9th Cir.

2007)). “Disagreements over strategic[] or tactical 17 decisions do not rise to [the] level of a complete breakdown in communication.” *Clark*, 83 F.4th 18 at 1155 (quoting *Carter v. Davis*, 946 F.3d 489, 507–08 (9th Cir. 2019)). Petitioner’s allegations 19 do not demonstrate that there was “a total lack of communication” or “a complete breakdown in 20 communication.” *Clark*, 83 F.4th at 1155.

Accordingly, Petitioner has not established that his 21 irreconcilable conflict claim is not plainly meritless. 22 “A guilty plea operates as a waiver of important rights, and is valid only if done 23 voluntarily, knowingly, and intelligently, ‘with sufficient awareness of the relevant 24 circumstances and likely consequences.’” *Bradshaw v. Stumpf*, 545 U.S. 175, 183 (2005) 25 (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)). “The test for determining whether a 26 plea is valid is ‘whether the plea represents a voluntary and intelligent choice among the 27 alternative courses of action open to the defendant.’” *Doe v. Woodford*, 508 F.3d 563, 570 (9th 1 defendant is ‘induced by promises or threats which deprive [the plea] of the nature of a voluntary 2 act.’” *Doe*, 508 F.3d at 570 (quoting *Iaea v. Sunn*, 800 F.2d 861, 866 (9th Cir.

1986)). “A guilty 3 plea is not knowingly and voluntarily made if it was the result of ineffective assistance of 4 counsel under ‘the two-part *Strickland v. Washington* test.’” *United States v. Silveira*, 997 F.3d 5 911, 913 (9th Cir. 2021) (quoting *Hill*, 474 U.S. at 56–58). That is, “whether counsel’s advice 6 ‘was within the range of competence demanded of attorneys in criminal cases,’” and “there is a 7 reasonable probability that, but for counsel’s errors, he would not have

pleaded guilty and would 8 have insisted on going to trial.” Hill, 474 U.S. at 56, 59 (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)).

10 Petitioner’s allegations are vague, conclusory, and offer no specific facts from which the 11 Court can determine whether counsel was ineffective or improperly coerced Petitioner into 12 pleading no contest. Petitioner does not identify of which “tangible matters before the superior 13 court” he was ignorant due to counsel’s failures and does not identify how and in what manner 14 counsel subjected Petitioner to “two plus hours of manipulation.” (ECF No. 1 at 24.)

The plea 15 colloquy transcript attached to the petition undercuts Petitioner’s claim. Petitioner answered in 16 the negative when asked whether “anybody promised you anything else or threatened you in any 17 way to get you to enter pleas on this case.” (ECF No. 1 at 39.) Petitioner answered in the 18 affirmative when asked whether he “had enough time to talk to your lawyer” and whether he was 19 “satisfied with [counsel’s] services.” (Id. at 43.)

See United States v. Ross, 511 F.3d 1233, 1236 20 (9th Cir. 2008) (“Statements made by a defendant during a guilty plea hearing carry a strong 21 presumption of veracity in subsequent proceedings attacking the plea.”). Petitioner’s counsel 22 answered in the affirmative when asked whether counsel advised Petitioner “of the nature of the 23 charges, the consequences of his plea, any possible defenses he might have” and whether it is 24 counsel’s “belief [Petitioner] understands these matters.” (Id. at 44.)

Accordingly, Petitioner has 25 not established that his involuntary plea claim is not plainly meritless. 26 In Ground Four, Petitioner asserts ineffective assistance of counsel, alleging that counsel 27 did “not respond to request,” did not provide full discovery, did not find Petitioner’s alibi 1 evidence in favor of Petitioner.” (ECF No. 1 at 27.) Again, Petitioner’s allegations are vague, 2 conclusory, and offer no specific facts from which the Court can determine whether counsel was 3 ineffective.

Petitioner does not identify what type of request counsel failed to respond to and 4 what favorable evidence counsel failed to address. The fact that counsel did not provide 5 Petitioner with full discovery does not demonstrate that counsel was acting “outside the wide 6 range of professionally competent assistance.” Strickland v. Washington, 466 U.S. 668, 690 7 (1984).

As to the fact that counsel did not find Petitioner’s alibi witness or hire an identity 8 expert, the Marsden hearing transcript attached to the petition undercuts Petitioner’s claims. 9 Petitioner did not mention the alibi witness, who he only identified as a “Mr. Martinez,” until 10 after the plea, which occurred on the day trial was supposed to start. (ECF No. 1 at 77–80.)

11 Although the defense team “went and looked for them,” the search for the alibi witness “didn’t 12 turn up to be fruitful.” (ECF No. 1 at 78.) See Strickland, 466 U.S. at 691 (“counsel has a duty to 13 make reasonable investigations or to make a reasonable decision that makes particular 14

investigations unnecessary”). Further, there was video evidence and counsel stated that “the 15 evidence was somewhat overwhelming as to the identification as to [Petitioner.]” (ECF No. 1 at 16 78.)

Petitioner makes no allegations that an identity expert could be found and would have 17 testified on his behalf. See *Wildman v. Johnson*, 261 F.3d 832, 839 (9th Cir. 2001) (speculation 18 that an expert could be found and would have testified on defendant’s behalf is insufficient to 19 establish ineffective assistance of counsel claim). Regarding Senate Bill 1437, Petitioner was 20 denied relief in the state court, *People v. Padilla*, No. F085064, 2023 WL 6934811, at *8 (Cal.

21 Ct. App. Oct. 20, 2023),⁴ and “a defendant claiming ineffective assistance of counsel for failure 22 to file a particular motion must not only demonstrate a likelihood of prevailing on the motion, 23 but also a reasonable probability that the granting of the motion would have resulted in a more 24 favorable outcome in the entire case,” *Styers v. Schriro*, 547 F.3d 1026, 1030 n.5 (9th Cir.

2008). 25 /// 26 4 The Court “may take notice of proceedings in other courts, both within and without the federal judicial system, if 27 those proceedings have a direct relation to matters at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (internal quotation marks and citation omitted)). See also *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir.

2018) (“A court may take judicial notice of undisputed 1 II. 2 RECOMMENDATION & ORDER 3 Accordingly, the Court HEREBY RECOMMENDS that Petitioner’s motion to stay be 4 | DENIED and the petition for writ of habeas corpus be DISMISSED without prejudice. 5 Further, the Clerk of Court is DIRECTED to randomly assign this action to a District 6 | Judge. 7 This Findings and Recommendation is submitted to the assigned United States District 8 | Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local 9 | Rules of Practice for the United States District Court, Eastern District of California.

Within 10 | THIRTY (30) days after service of the Findings and Recommendation, Petitioner may file 11 | written objections with the Court, limited to fifteen (15) pages in length, including any 12 | exhibits. Such a document should be captioned “Objections to Magistrate Judge’s Findings and 13 | Recommendation.” The assigned United States District Court Judge will then review the 14 | Magistrate Judge’s ruling pursuant to 28 U.S.C. § 636(b)(1)(C).

The parties are advised that 15 | failure to file objections within the specified time may waive the right to appeal the District 16 | Court’s order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 18 19 IT IS SO ORDERED. DAM Le 20 | Dated: _March 18, 2025 _ OO STANLEY A. BOONE 21 United States Magistrate Judge 22 23 24 25 26 27 28

