

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF
CALIFORNIA

Nicholas Ed Buskirk v. Patrick Covello

No. 5:24-cv-01444-CV-JC, United States District Court for the Central District of California (April 16, 2025)

SUMMARY

The United States District Court for the Central District of California accepts the magistrate judge’s Report and Recommendation and grants petitioner’s motion for a stay under Kelly v. Small. Claims Eight, Nine, and Ten are dismissed without prejudice, the fully exhausted petition and action are stayed pending exhaustion of those claims, and the court imposes periodic reporting and other procedural requirements.

CASE DETAILS

COURT	United States District Court for the Central District of California
WRITING FOR THE COURT	Cynthia Valenzuela
JURISDICTION	United States District Court for the Central District of California
DECIDED	April 16, 2025
DOCKET	5:24-cv-01444-CV-JC
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed and accepted a magistrate judge's Report and Recommendation concerning a state prisoner's petition for a writ of habeas corpus under 28 U.S.C. § 2254 and his motion to stay the federal proceedings pending exhaustion of state remedies.
STANDARD OF REVIEW	The district court reviewed the magistrate judge's Report and Recommendation pursuant to 28 U.S.C. § 636.
PRECEDENTIAL VALUE	Unpublished district court order; nonprecedential
PARTIES	Nicholas Ed Buskirk v. Patrick Covello, Warden

TOPICS

- federal habeas corpus
- post-conviction relief
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should stay the federal habeas action under *Kelly v. Small* while Buskirk exhausts Claims Eight, Nine, and Ten in state court.
2. Whether Claims Eight, Nine, and Ten should be dismissed without prejudice during the stay.
3. What conditions and reporting obligations should govern the stay.

HOLDINGS

1. The court granted a stay under the procedure recognized in *Kelly v. Small*, subject to specified conditions and limitations, so that Buskirk could exhaust Claims Eight, Nine, and Ten in state court.
2. Claims Eight, Nine, and Ten were dismissed without prejudice, and the resulting fully exhausted petition and action were stayed while Buskirk exhausted those claims.
3. Buskirk was required to file status reports every sixty days, notify the court of relevant state-court decisions within the specified thirty-day periods, and comply with the one-year limitations period under 28 U.S.C. § 2244(d)(1).

FACTUAL BACKGROUND

Buskirk is a person in state custody who filed a federal habeas petition under 28 U.S.C. § 2254. Claims Eight, Nine, and Ten had not yet been exhausted in state court. He sought a stay while pursuing state habeas relief on those claims.

PROCEDURAL HISTORY

Buskirk filed a verified § 2254 petition and moved for a stay pending exhaustion of state court remedies. The magistrate judge issued a Report and Recommendation on February 14, 2025. The district court approved and accepted the recommendation, granted a *Kelly* stay subject to conditions, dismissed Claims Eight, Nine, and Ten without prejudice, and administratively closed the case during the stay.

DISPOSITION

other

CASES CITED

- *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2003)