

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Gregory Allen Harms v. Edward Silva

Harms v. Silva · No. 2:25-cv-01048 DC CSK · Decided January 12, 2026

SUMMARY

The United States District Court for the Eastern District of California directs a state prisoner proceeding under 28 U.S.C. § 2254 to file his unexhausted habeas petition in Sacramento County Superior Court within 30 days. The court also orders a status report within 45 days and warns that noncompliance may result in a recommendation to vacate the stay under Kelly v. Small.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	January 12, 2026
DOCKET	2:25-cv-01048 DC CSK
DISPOSITION	other
PROCEDURAL POSTURE	Petitioner sought federal habeas relief under 28 U.S.C. § 2254. After the court stayed the action to permit exhaustion of unexhausted claims, the court issued an order directing petitioner to file a state habeas petition and a status report.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Gregory Allen Harms v. Edward Silva

TOPICS

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

PRACTICE AREAS

- habeas corpus
- post-conviction relief
- civil procedure

QUESTIONS PRESENTED

1. Whether the court should require petitioner to file the state habeas petition within a specified period as a condition of continuing the stay.
2. What consequence should follow if petitioner fails to comply with the filing and status-report requirements.

HOLDINGS

1. The court required petitioner to file the habeas corpus petition discussed in his status reports in the Sacramento County Superior Court within thirty days of the order.
2. The court required petitioner to file, within forty-five days, a status report stating when the state habeas petition was filed and clarifying whether it amended the petition filed May 22, 2025.
3. If petitioner fails to comply with the filing and reporting requirements, the court will recommend that the stay of the federal habeas action be vacated.

KEY QUOTATIONS

“If petitioner fails to act within the allotted time, the stay may be vacated[.]” (at 2)

FACTUAL BACKGROUND

Petitioner is a state prisoner pursuing federal habeas relief through counsel. The federal court stayed the proceeding so petitioner could exhaust unexhausted claims in state court. Although petitioner reported filing a state habeas petition on May 22, 2025, and receiving an extension of time to clarify or amend it, the court determined from the status reports that the amended petition had still not been filed.

PROCEDURAL HISTORY

The court granted petitioner’s motion to stay on July 17, 2025, under the procedure described in *Kelly v. Small*, pending exhaustion of unexhausted claims in state court. The court required periodic status reports. Petitioner filed reports on October 9, 2025, and January 7, 2026, but the latter was virtually identical to the former and indicated that petitioner had not yet filed the amended state petition. The court therefore ordered petitioner to file the state petition within thirty days and a further status report within forty-five days, warning that noncompliance would result in a recommendation that the federal stay be vacated.

DISPOSITION

other

CASES CITED

- *Kelly v. Small*, 315 F.3d 1063 (9th Cir. 2002)

OPINION

Silva

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 GREGORY ALLEN HARMS, No. 2:25-cv-01048 DC CSK

12 Petitioner, 13 v. ORDER

14 EDWARD SILVA,

15 Respondent. 16

17 Petitioner is a state prisoner, proceeding through counsel, with a petition for writ of 18 habeas corpus pursuant to 28 U.S.C. § 2254. On July 17, 2025, the Court granted petitioner's 19 motion to stay this action while he exhausted his unexhausted claims in state court pursuant to 20 Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002). (ECF No. 9.) The Court ordered petitioner to file 21 a status report within 90 days of the date of the order, and every 90 days thereafter, advising the 22 court of what steps he has taken to exhaust his claims in state court. (Id.) 23 On October 9, 2025, petitioner filed his first status report. (ECF No. 11.) Petitioner stated 24 that on May 22, 2025, petitioner filed a petition for writ of habeas corpus in the Sacramento 25 County Superior Court. (Id.) Petitioner stated that on July 9, 2025, the Sacramento County 26 Superior Court filed an order for extension of time to adequately address the issues set forth in the 27 petition. (Id.) Petitioner stated that he was diligently working on his petition for writ of habeas 28 corpus to be filed in the Sacramento County Superior Court and anticipated having it filed within 1 || the next few weeks. (Id. at 2.) On January 7, 2026 petitioner filed his second status report. (ECF 2 | No. 13.) The second status report is virtually identical to the first status report. (Id.) 3 After reviewing petitioner's status reports, it appears that on July 9, 2025, the Sacramento 4 || County Superior Court granted petitioner an extension of time to file an amended petition 5 || clarifying the issues raised in the petition filed May 22, 2025. According to the status reports, 6 || petitioner has still not filed the amended petition. In Kelly, the Ninth Circuit suggested "the 7 || district court may require Petitioner to file his new state petition within 30 days" and "[i]f 8 || petitioner fails to act within the allotted time, the stay may be vacated[.]" Kelly, 315 F.3d at 9 | 1071. Accordingly, within thirty days of the date of this order, petitioner shall file the habeas 10 || corpus petition discussed in the status reports in the Sacramento County Superior Court. Within 11 | forty-five days of the date of this order, petitioner shall file a status report addressing the date he 12 || filed the habeas corpus petition in the Sacramento County Superior Court and clarifying whether 13 || this petition is an amendment to the petition filed May 22, 2025. 14 Accordingly, IT IS HEREBY ORDERED that: 15 1. Within thirty days of the date of this order, petitioner shall file the habeas corpus 16 || petition discussed in the status reports in the Sacramento County Superior Court; 17 2. Within forty-five days of the date of this order, petitioner shall file the status report 18 || discussed in this order; and 19 3. If petitioner fails to comply with this order, this Court will recommend that the stay of 20 || this action be vacated. 21 22 || Dated: January 12, 2026 A aA Aan Spe |

CHI SOO KIM

24 UNITED STATES MAGISTRATE JUDGE

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