

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

William Henry Thomas v. Warden, Folsom State Prison

Thomas v. Warden · No. 2:23-cv-02741-DAD-EFB (HC) · Decided August 18, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted the magistrate judge's findings and recommendations in a state prisoner's habeas corpus proceeding under 28 U.S.C. § 2254. The court dismissed claims two through six without prejudice, stayed consideration of claim one pending exhaustion in state court, and denied or mooted the petitioner's remaining motions.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 WILLIAM HENRY THOMAS, No. 2:23-cv-02741-DAD-EFB (HC) 12
Petitioner, ORDER ADOPTING FINDINGS AND RECOMMENDATIONS, GRANTING 13 v.
RESPONDENT'S MOTION TO DISMISS IN PART, GRANTING PETITIONER'S 14
WARDEN, FOLSOM STATE PRISON, MOTIONS TO STAY, DENYING PETITIONER'S
MOTION FOR 15 Respondent.

APPOINTMENT OF COUNSEL, AND DENYING PETITIONER'S REMAINING 16
MOTIONS AS MOOT 17 (Doc. Nos. 15, 18, 22, 24, 25, 26) 18 19 Petitioner, a state prisoner
proceeding pro se and in forma pauperis, filed an application 20 for a writ of habeas corpus
pursuant to 28 U.S.C. § 2254.

The matter was referred to a United 21 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 22 On June 13, 2025, the assigned magistrate judge issued findings and
recommendations 23 recommending that: (1) respondent's motion to dismiss (Doc. No. 18) be
granted in part, and that 24 claims two through six in petitioner's first amended petition be
dismissed without prejudice; (2) 25 claim one in petitioner's first amended petition be stayed
under Kelly v. Small, 315 F.3d at 1063, 26 070-71 (9th Cir.

2002); (3) petitioner's motion for appointment of counsel (Doc. No. 25) be 27 denied without
prejudice; (4) petitioner's motion for copy of his file (Doc. No. 25) be denied as 28 moot. (Doc.
No. 26.) 1 The pending findings and recommendations were served on the parties and contained 2
notice that any objections thereto were to be filed within fourteen (14) days after service.

(Id. at 3 3.) To date, no objections to the findings and recommendations have been filed, and the
time in 4 which to do so has now passed. 5 In accordance with the provisions of 28 U.S.C. §

636(b)(1)(C), this court has conducted a de novo review of the case.

Having carefully reviewed the entire file, the court concludes that the findings and recommendations are supported by the record and by proper analysis. Accordingly: 1. The findings and recommendations (Doc. No. 26) are adopted in full; 2. Respondent's motion to dismiss (Doc. No. 18) is GRANTED IN PART such that petitioner's claims 2-6 are dismissed without prejudice; 3.

Petitioner's motions for a stay under *Kelly v. Smalls*, 315 F.3d 1063, 1070-71 (9th Cir. 2002) (Doc. Nos. 22, 24) are GRANTED, and consideration of claim 1 is hereby stayed pending exhaustion of claims 2-6 in the state courts; 4. Petitioner shall pursue exhaustion of claims 2-6 by submitting a petition in the California Supreme Court within 30 days of the date of this order; 5.

Petitioner shall file a motion to lift the stay and a request to file an amended petition including his newly exhausted claims within 30 days of exhaustion; 6. Respondent shall file and serve either an answer or a motion in response to petitioner's petition within 60 days from the date of filing of the second amended (fully exhausted) petition. See Rule 4, Rules Governing § 2254 Cases.

Any response shall be accompanied by any and all transcripts or other documents relevant to the determination of the issues presented in the application. See Rules 4, 5, Rules Governing § 2254 Cases. 7. Petitioner's reply, if any, shall be filed and served within 30 days of service of an answer. 8. If the response to petitioner's application is a motion, petitioner's opposition or statement of non-opposition shall be filed and served within 30 days of service of the motion, and respondent's reply, if any, shall be filed within 14 days thereafter.

9. Petitioner's motion for appointment of counsel (Doc. No. 25) is DENIED; 10. Petitioner's request that the attorney general be required to respond to the petition 4 (Doc. No. 15) is DENIED as having been rendered moot and the Clerk of the Court is directed to terminate that motion in its entirety; and 11. Petitioner's request for a copy of the docket (Doc.

No. 25) is also DENIED as having been rendered moot. IT IS SO ORDERED. | Dated: _ August 15, 2025 Daa A. 2, sel 10 DALE A. DROZD UNITED STATES DISTRICT JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28