

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

**Stewart v. Covello**

544 U.S. 269 (E.D. Cal. 2025) · No. 2:25-cv-0819 DC CKD P · Decided April 14, 2025

---

OPINION

(HC) Stewart v. Covello

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 CHARLES RANANDO STEWART, JR., No. 2:25-cv-0819 DC CKD P

12 Petitioner,

13 v. ORDER AND

14 PATRICK COVELLO, FINDINGS AND RECOMMENDATIONS

15 Respondent. 16

17 Petitioner, a California prisoner, has filed an amended petition for a writ of habeas corpus 18  
under 28 U.S.C. § 2254 and asks that the petition be stayed pursuant to Kelly v. Small, 315 F.3d  
19 1063 (9th Cir. 2003) while he exhausts state court remedies with respect to claims not  
appearing 20 in the amended petition. Good cause appearing, the court will recommend that this  
request be 21 granted. 22 Petitioner’s request for a stay under Rhines v. Weber, 544 U.S. 269  
(2005) is rendered 23 moot by the filing of the amended petition. Under Rhines, the court can stay  
a petition with 24 unexhausted claims. Because the amended petition does not contain  
unexhausted claims, a 25 Rhines stay is not appropriate. 26 Accordingly, IT IS HEREBY  
ORDERED that petitioner’s original petition for a writ of 27 habeas corpus is dismissed and this  
action proceeds on the amended petition filed April 11, 2025. 28 // 1 IT IS HEREBY  
RECOMMENDED that: 2 1. Petitioner’s request for a stay under Rhines v. Weber, 544 U.S. 269  
(2005) be denied 3 || as moot. 4 2. Petitioner’s request for a stay under Kelly v. Small, 315 F.3d  
1063 (9th Cir. 2003) 5 || (ECF No. 2) be granted. 6 These findings and recommendations are  
submitted to the United States District Judge 7 || assigned to the case, pursuant to the provisions of  
28 U.S.C. § 636(b)(1). Within fourteen days 8 | after being served with these findings and  
recommendations, petitioner may file written 9 || objections with the court. Such a document  
should be captioned “Objections to Magistrate 10 || Judge’s Findings and Recommendations.”  
Petitioner is advised that failure to file objections 11 || within the specified time may waive the  
right to appeal the District Court’s order. Martinez v. 12 | Yist, 951 F.2d 1153 (9th Cir. 1991). 13 |

Dated: April 14, 2025 / 20 } if | Ld □ a

4 CAROLYN K DELANEY

15 UNITED STATES MAGISTRATE JUDGE

16 17 18 [] stew.819.stay 19 20 21 22 23 24 25 26 27 28

---

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-eastern-district-of-california-united-states-district-court-for/2025/stewart-v-covello-rgw0dmqk>