

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF  
CALIFORNIA

Leroy Tate Jr. v. Edward Borla

Tate v. Borla · No. 1:25-cv-01583-SAB-HC · Decided November 26, 2025

SUMMARY

The document is a magistrate judge’s findings and recommendation in Leroy Tate Jr.’s federal habeas corpus action. It recommends dismissal of the petition as an unauthorized successive petition, denial of the application for leave to file a successive petition, and denial of the motion to stay, and directs random assignment to 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               | November 26, 2025                                                                                                                                                                                                                                                                                                                                                            |
| DOCKET                | 1:25-cv-01583-SAB-HC                                                                                                                                                                                                                                                                                                                                                         |
| DISPOSITION           | dismissed                                                                                                                                                                                                                                                                                                                                                                    |
| PROCEDURAL POSTURE    | Petitioner filed a federal petition for a writ of habeas corpus challenging his state murder conviction, an application for leave to file a second or successive petition, and a motion for stay and abeyance. A magistrate judge issued findings and a recommendation that the petition be dismissed as unauthorized and that both motions be denied.                       |
| STANDARD OF REVIEW    | Under Rule 4 governing section 2254 cases, the court conducts preliminary review and may dismiss a habeas petition before ordering a response when it plainly appears from the petition and attached exhibits that the petitioner is not entitled to relief. The district court lacks subject-matter jurisdiction over an unauthorized second or successive habeas petition. |
| PARTIES               | Leroy Tate Jr. v. Edward Borla                                                                                                                                                                                                                                                                                                                                               |

QUESTIONS PRESENTED

- Whether the federal habeas petition was a second or successive petition requiring prior authorization from the Ninth Circuit under 28 U.S.C. § 2244(b)(3)(A).

2. Whether the district court had subject-matter jurisdiction to consider the petition absent authorization from the court of appeals.
3. Whether the petitioner's direct application to the district court for leave to file a second or successive petition should be denied.
4. Whether the petitioner's motion for a stay and abeyance under *Rhines v. Weber* should be granted.

#### **HOLDINGS**

1. The petition was a second or successive habeas petition because it challenged the same 2004 conviction that was the subject of a prior federal habeas proceeding, and it therefore had to be dismissed because petitioner had not obtained authorization from the Ninth Circuit.
2. The district court lacked subject-matter jurisdiction over the unauthorized second or successive petition.
3. The application for leave to file a second or successive petition in the district court had to be denied because authorization must first be sought from the court of appeals.
4. The motion for stay and abeyance was denied because the petition was an unauthorized successive petition that the district court lacked jurisdiction to consider.

#### **KEY QUOTATIONS**

“*Before a second*” (at 2)

#### **FACTUAL BACKGROUND**

Petitioner Leroy Tate Jr. is a California state prisoner confined at the California Training Facility and serving a thirty-years-to-life sentence for a murder conviction sustained in Kings County Superior Court. He challenged his 2004 conviction in a federal habeas petition, asserting that the prosecution was commenced under a repealed state constitutional authority. Tate had previously sought federal habeas relief in the Eastern District of California concerning the same conviction, and the prior petition had been dismissed as untimely.

#### **PROCEDURAL HISTORY**

Tate was serving a thirty-years-to-life sentence for a Kings County murder conviction. He filed this federal habeas petition on November 18, 2025, asserting that his prosecution was commenced under a repealed state constitutional authority. The court determined that Tate had previously sought federal habeas relief concerning the same conviction and that the present petition was successive and unauthorized because he had not obtained authorization from the Ninth Circuit. The magistrate judge recommended dismissal, denial of the application for authorization, and denial of the stay motion, while directing random assignment of a district judge and allowing objections.

#### **DISPOSITION**

dismissed

