

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Harms v. Silva

Harms · No. 2:25-cv-01048-DC-CSK (HC) · Decided July 17, 2025

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations granting Gregory Allen Harms’s motion to stay his federal habeas corpus action under Kelly v. Small. The court dismissed specified unexhausted claims without prejudice, stayed the action pending state-court exhaustion, and imposed periodic status-report and post-exhaustion filing requirements.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dena M. Coggins
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	July 17, 2025
DOCKET	2:25-cv-01048-DC-CSK (HC)
DISPOSITION	other
PROCEDURAL POSTURE	State prisoner petition for federal habeas corpus under 28 U.S.C. § 2254; the district court reviewed and adopted a magistrate judge's findings and recommendations recommending a stay under Kelly v. Small.
STANDARD OF REVIEW	De novo review of the magistrate judge's findings and recommendations under 28 U.S.C. § 636(b)(1)(C).
PRECEDENTIAL VALUE	Unknown; district court order adopting findings and recommendations.
PARTIES	Gregory Allen Harms v. Edward Silva

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the petition should be stayed under *Kelly v. Small* while Harms exhausts claims one, three, and subclaim C of claim two in state court.
2. Whether the unexhausted claims should be dismissed without prejudice and the federal action held in abeyance pending exhaustion.
3. Whether the magistrate judge's findings and recommendations should be adopted after de novo review.

HOLDINGS

1. The court granted Harms's motion for a stay under *Kelly v. Small* and stayed the action while he exhausts claims one, three, and subclaim C of claim two in state court.
2. Claims one, three, and subclaim C of claim two were dismissed without prejudice as unexhausted.
3. The district court adopted the findings and recommendations in full after de novo review.

KEY QUOTATIONS

“Petitioner’s claims one, three, and subclaim C of claim two are dismissed without prejudice as unexhausted;” (at 2)

“This case is STAYED and held in abeyance pending exhaustion of state court remedies;” (at 2)

FACTUAL BACKGROUND

Harms is a state prisoner proceeding with counsel on a § 2254 petition raising three claims. The petition alleges ineffective assistance of trial counsel, jury-instruction and sentencing errors, and denial of an impartial jury. Several claims or subclaims remained unexhausted in state court, prompting Harms to seek a stay while he pursued state remedies.

PROCEDURAL HISTORY

Harms filed a § 2254 petition asserting ineffective assistance of trial counsel, jury-instruction and sentencing errors, and denial of an impartial jury. He moved for a *Kelly* stay to exhaust claims one, three, and subclaim C of claim two in state court. The magistrate judge recommended granting the stay, no objections were filed, and the district court conducted de novo review, adopted the recommendations, dismissed the identified claims without prejudice as unexhausted, and stayed the action pending exhaustion.

DISPOSITION

other

REMAND INSTRUCTIONS

The case was referred back to the magistrate judge for proceedings consistent with the order. Harms was directed to file status reports every 90 days, and within 30 days after the state court's final order on the unexhausted claims to move to lift the stay and, if desired, file an amended federal petition.

CASES CITED

- Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002)
- Robbins v. Carey, 481 F.3d 1143 (9th Cir. 2007)

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