

OCT 03 2016

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE GRIMALDI,

Petitioner-Appellant,

v.

K. HOLLAND,

Respondent-Appellee.

No. 14-56888

D.C. No. 2:14-cv-03729-JVS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
James V. Selna, District Judge, Presiding

Submitted September 27, 2016\*\*

Before: TASHIMA, SILVERMAN, and M. SMITH, Circuit Judges.

California state prisoner Jose Grimaldi appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 habeas petition. We have jurisdiction under 28 U.S.C. § 2253. We review de novo a dismissal for failure to exhaust, *see*

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Rhoades v. Henry*, 638 F.3d 1027, 1034 (9th Cir. 2010), and we vacate and remand.

Grimaldi contends that the district court erred in dismissing his habeas petition as unexhausted because it had discretion to stay the proceedings. After the district court dismissed Grimaldi's petition, this court held in *Mena v. Long*, 813 F.3d 907, 912 (9th Cir. 2016), that "a district court has the discretion to stay and hold in abeyance fully unexhausted petitions under the circumstances set forth in *Rhines [v. Weber]*, 544 U.S. 269 (2005)." We, therefore, vacate and remand for the district court to determine in the first instance whether Grimaldi is entitled to a stay and for any further proceedings.

We express no opinion as to the merits of Grimaldi's claims, or whether the procedural requirements of 28 U.S.C. § 2244(d) are satisfied or Grimaldi is entitled to equitable tolling.

All pending motions are denied as moot.

**VACATED and REMANDED.**