

Vilath Xayasomloth T-78900  
Ironwood State Prison  
P.O. Box 2199 (C2-249)  
Blythe Ca 92226

**FILED**

2008 JUL -2 PM 4:55

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY     ds     DEPUTY

**NUNC PRO TUNC**  
**JUN 26 2008**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

VILATH XAYASOMLOTH,  
Petitioner

08-0260 BEN (AJB)

v.

NOTICE OF MOTION AND  
MOTION TO DENY RESPONDENT'S  
MOTION TO DISMISS  
PETITIONER'S HABEAS CORPUS

D. DEXTER, Warden  
Respondent

PLEASE TAKE NOTICE THAT PETITIONER, Vilath Xayasomloth, In Pro Per hereby moves the United States District Court, Southern District, to DENY Respondent's Motion to Dismiss Petitioner's Writ of Habeas Corpus. Petitioner maintains as outlined in his declaration attached to the memorandum of points and authorities that his delay in filing the instant petition was due to an impediment created by State action(s). As su, pursuant to 28 USC 2244(d)(1)(B) the instant Petition is timely and he is entitled to proceed or at minimus an evidentiary hearing would be appropriate in order for this court to reach a decision whether this matter has already been adjudicated by the lower state courts.

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1 Secondly, Respondent contends that Petitioner's issues are  
2 unexhausted. His argument (memorandum of points and authorities  
3 P8 L4& L 19-21) is based on a pending petition in the California  
4 State's highest court; as such, until that proceeding has concluded  
5 the instant petition must be dismissed.

6 Petitioner maintains that his issues have been exhausted thru  
7 direct appeal and or collateral proceedings. The current state  
8 habeas does not bound the instant court because it was submitted  
9 11 days ( Feb 21, 2008) after the federal petition was submitted  
10 (Feb 11, 2008 see R MP&A P2 Line 25 & P3 L2) its filing was basically  
11 to further petitioner's argument regarding firmly established  
12 California Supreme Court precedent. A review of the federal  
13 petition application page 10 question 23 denotes NO PENDING  
14 petition in any court, therefore, Respondent's "pending" argument  
15 is without merit in [t]his court, it might be possible it could be  
16 submitted in the state court however, consistent with the state  
17 court's practices no doubt the petition will be denied without any  
18 motion from Respondent.

19 This motion is based on this notice of motion, the accompanying  
20 memorandum of points and authorities, declaration of petitioner,  
21 and records lodged with this court.

22  
23 Date: JUNE 24, 2008

Respectfully Submitted,

*Vilath Xayasomloth*

Vilath Xayasomloth, Petitioner

In Pro Per