

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

[NAME],

Case No. X-X-XX-XXX

Petitioner,

vs.

District Judge [NAME]

Magistrate Judge [NAME]

[NAME], Warden,

Respondent.

ORDER STAYING CASE PENDING STATE COURT PROCEEDINGS

This case is before the Court on Petitioner's Motion to Extend this Court's Abeyance Order (Doc. No. XXX).

The Motion advises that, pursuant to this Court's Order of [DATE], Petitioner has filed a successive petition under Ohio Revised Code § 2953.21 to raise his claim that he is exempt from execution under the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed. 335 (2002). The claim that Petitioner is mentally retarded is at least colorable, based on evidence already of record in this Court.

Furthermore, the state court petition appears to have been filed in accordance with the procedure adopted by the Ohio Supreme Court in *State v. Lott*, 97 Ohio St. 3d 303, 2002-Ohio-6625 (2002). Petitioner's request is in accordance with the Sixth Circuit's decision in *Palmer v. Carlton*, 276 F. 3rd 377 (6th Cir. 2002), for dealing with mixed habeas

petition in the wake of the AEDPA's adoption of a statute of limitations.

Accordingly, Petitioner's Motion is GRANTED. Petitioner shall keep this Court apprised on a quarterly basis of the status of the state court proceedings, numbering his reports in further sequence to the reports already filed (See Motion at 3, n. 2).

[DATE].

[NAME]

United States Magistrate Judge