

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

BENEDETTO CIPRIANI,

Petitioner,

v.

WARDEN and D.O.C. COMMISSIONER,

Respondents.

3:09-cv-01125 (CSH)

**ORDER CLOSING CASE**

HAIGHT, Senior District Judge:

This case concerns a petition under 28 U.S.C. § 2254 for a writ of habeas corpus. The original petition was filed last July. In an Opinion and Order dated December 7, 2009 [doc. #7], the Court found that the petitioner had failed to exhaust his administrative remedies, and thus dismissed the case without prejudice to refile once his claims had become exhausted.

Counsel for petitioner in this case has advised the Court, by letter dated May 21, 2010, that petitioner's state appellate counsel is currently pursuing an appeal that may provide the relief he seeks here. Counsel states his intent to "close this case" until such times as petitioner's claims have become ripe.

Finding counsel's proposed course of action to be practical, it is hereby **ORDERED** that the Clerk of Court shall administratively close this file. Such closure shall be without prejudice to reopening at a later date, once petitioner has exhausted whatever state or administrative remedies as may be available to him. Because this Court has not yet ruled on the merits of his petition, a subsequent request to reopen this case and file an amended petition will not be construed as a "second or successive" petition within the meaning of 28 U.S.C. § 2244(b). *See Stewart v. Martinez-Villareal*, 523 U.S. 637, 643-45 (1998) (holding that where a "habeas petitioner does not receive an

adjudication of his claim,” a second request for a ruling on that claim amounts to “only one application for habeas relief,” and a district court may rule “on each claim at the time it bec[omes] ripe”); *cf. Thai v. United States*, 391 F.3d 491, 496 (2d Cir. 2004) (per curiam) (holding that a refiled habeas corpus petition under § 2255 was not a second or successive petition, where the petitioner had withdrawn the original petition but such withdrawal did “not provide a clear indication that Thai regarded his initial petition as meritless”).

It is **SO ORDERED**.

Dated: New Haven, Connecticut  
May 24, 2010

/s/ Charles S. Haight, Jr.  
Charles S. Haight, Jr.  
Senior United States District Judge