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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Rogelio Sanchez Orozco,

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No. CV-10-1514-PHX-JAT (MEA)

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Petitioner,

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ORDER

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vs.

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Charles L. Ryan, et al.,

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Respondents.

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On July 16, 2010, Petitioner Rogelio Sanchez Orozco, who is confined in the Arizona State Prison Complex-Florence, filed a *pro se* Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1), a “Motion For Appointment Of Counsel” (Doc. 3), and a “Motion For Court Appointed Interpreter” (Doc. 4). The \$5.00 filing fee has been paid.

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The Court will deny Petitioner’s Motions without prejudice and call for an answer to the Petition.

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I. Petition

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Named as Respondent in the Petition is Charles L. Ryan. The Attorney General of the State of Arizona is named in the Petition as an Additional Respondent.

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In his Petition, Petitioner challenges his August 20, 2003 judgment of conviction entered in the Maricopa County Superior Court in matter CR-2003-005560-001 DT for the following counts: (1) Sexual Conduct; (2) Sexual Conduct; (3) Sexual Abuse; (4) Child

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1 Molestation; (5) Sexual Conduct; (6) Sexual Conduct; (7) Sexual Conduct; (8) Child
2 Molestation; (9) Child Molestation; (10) Sexual Conduct; (11) Sexual Conduct; and
3 (12) Child Molestation.

4 Petitioner alleges he was sentenced to terms of imprisonment for these counts as
5 follows: (1) 20 years; (2) 20 years; (3) 5 years; (4) 17 years; (5) 20 years; (6) 20 years; (7)
6 20 years; (8) 17 years; (9) 17 years; (10) 20 years; (11) 20 years; and (12) 17 years.

7 Petitioner presents 11 grounds in the Petition in support of his request for habeas
8 relief:

9 (1) “Whether, the State’s trial court erred in denying the
10 Petitioner’s timely motion for change of counsel, thus
11 violat[ing] the Petitioner’s right to effective assistance of
12 counsel under the Fifth, Sixth, and Fourteenth Amendments of
the United States Const. And Art. 2, §§ 4 and 24 of the AZ.
Const. where Petitioner requested change of counsel prior to
retrial?”;

13 (2) “Whether the Petitioner’s trial counsel ineffectively
14 represented him, when his defense counsel failed to investigate,
15 and to produce evidence available and material to an issue in
support of defense requested by the Petitioner?”;

16 (3) “Whether the Petitioner’s trial attorney ineffectively
17 represented [] the Petitioner - When that counsel failed to call to
18 testify a relevant, competent, available, and favorable witness
19 for his defense, thus such counsel’s failure violated Petitioner’s
U.S. Constitutional Sixth, and Fourteenth Amendment[] rights
to ‘Compulsory Process Clause’ to compel the attendance of
witnesses in his own behalf?”;

20 (4) “Whether the Petitioner’s trial counsel ineffectively
21 represented him - When that counsel failed to call at retrial to
22 a[n] exculpatory or al[i]bi witness available, and competent to
23 testify in his behalf, thus that trial’s appointed counsel violated
the Petitioner’s U.S. Constitutional Sixth and Fourteenth
Amendment[] rights to competent counsel and his right to
‘Compulsory Process Clause’ to compel the attendance of
witnesses in his behalf[?]”;

24 (5) “The Petitioner[’s] State[] conviction or sentence violated
25 the United States treaty, a federal law under the Vienna
26 Convention on Consular Relations (VCCR) - When the
27 Petitioner was detained, and arrested by (state) police, and
police denied his right to access to a consular officer, upon
Petitioner’s request”;

1 (6) “Whether the Petitioner’s trial counsel was ineffective,
2 and denied the Petitioner’s right to effective assistance of
3 counsel under Fifth, Sixth, and Fourteenth Amendments of the
4 United States Constitution, and Art. 2 §§ 4, and 24 of the Ariz.
5 Constitution[?]”;

6 (7) “Whether the Petitioner’s trial attorney rendered
7 ineffective assistance of counsel in waiving the Petitioner’s 5th
8 Amendment right to remain silent, self incrimination, without
9 Petitioner’s consent[?]”;

10 (8) “Whether the Petitioner’s trial attorney rendered the
11 ineffective assistance of counsel - When that counsel fail[ed] to
12 object at trial to prosecutor misconduct at closing arguments?”;

13 (9) “Whether the Petitioner’s Constitutional or fundamental
14 rights of Compulsory Process, Confrontation, due process, and
15 assistance of counsel embodied in Fift[h], Sixth, and Fourteenth
16 Amendment[s] of the United States Constitution and Arizona
17 Constitution were violated - When his trial counsel fail[ed] to
18 conduct a pretrial investigation, and raise at trial relevant
19 evidence to explain [to] the jury why the alleged victims, and
20 alleged victim’s mother (state’s witnesses) fabricate the sexual
21 allegations?”;

22 (10) “Whether the Petitioner’s conviction or sentence was in
23 violation of the Unite[d] States Federal Constitution, and Ariz.
24 Const. - Where the Petitioner’s appellate counsel rendered the
25 ineffective assistance of counsel for counsel’s failure to raise
26 and pursue the more potential, and obvious issues on the
27 Petitioner’s direct appeal, issues of Constitutional importance
28 which required reversal?”; and,

(11) “Whether the Petitioner’s trial counsel was ineffective in
failing to raise a pre-trial challenge to the State’s Grand Jury or
Grand Juror[?] This violated Petitioner’s procedural right, and
right to counsel, as guaranteed by Amendments 6 and 14 to the
U.S. Constitution, whether Petitioner’s counsel waived appellate
consideration of the claim?”

Petitioner affirmatively alleges that he has presented the issues in all of his grounds
to the Arizona Court of Appeals, and that he has presented the issues in Grounds I, II, III, and
IV to the Arizona Supreme Court. The Court will require an answer to the Petition.

II. Pending Motions

A. Motion for Appointment of Counsel

On July 16, 2010, Petitioner filed a “Motion For Appointment Of Counsel” (Doc. 3),
in which he requests that the Court appoint an experienced counsel for him in this habeas

1 proceeding. “Indigent state prisoners applying for habeas corpus relief are not entitled to
2 appointed counsel unless the circumstances of a particular case indicate that appointed
3 counsel is necessary to prevent due process violations.” Chaney v. Lewis, 801 F.2d 1191,
4 1196 (9th Cir. 1986) (citing Kreiling v. Field, 431 F.2d 638, 640 (9th Cir. 1970); Eskridge
5 v. Rhay , 345 F.2d 778, 782 (9th Cir. 1965)). However, the Court has discretion to appoint
6 counsel when “the interests of justice so requires.” 18 U.S.C. § 3006A(a)(2).

7 Petitioner has not made the necessary showing for appointment of counsel at this time.
8 Accordingly, Petitioner’s Motion will be denied without prejudice. If, at a later date, the
9 Court determines that an evidentiary hearing is required, counsel will be appointed in
10 accordance with Rule 8(c) of the Rules Governing Section 2254 Proceedings.

11 **B. Motion for Court Appointed Interpreter**

12 On July 16, 2010, Petitioner also filed a “Motion For Court Appointed Interpreter”
13 (Doc. 4), in which he requests that the Court appoint a qualified “Spanish-speaking” court
14 interpreter to assist him in this habeas proceeding. Petitioner’s Motion will be denied
15 without prejudice. In the event that an evidentiary hearing is held in this matter, Petitioner
16 may request that a court interpreter be in attendance.

17 **III. Warnings**

18 **A. Address Changes**

19 Petitioner must file and serve a notice of a change of address in accordance with Rule
20 83.3(d) of the Local Rules of Civil Procedure. Petitioner must not include a motion for other
21 relief with a notice of change of address. Failure to comply may result in dismissal of this
22 action.

23 **B. Copies**

24 Petitioner must serve Respondents, or counsel if an appearance has been entered, a
25 copy of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a
26 certificate stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Petitioner
27 must submit an additional copy of every filing for use by the Court. LRCiv 5.4. Failure to

1 comply may result in the filing being stricken without further notice to Petitioner.

2 **C. Possible Dismissal**

3 If Petitioner fails to timely comply with every provision of this Order, including these
4 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,
5 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to
6 comply with any order of the Court).

7 **IT IS ORDERED:**

8 (1) Petitioner’s “Motion For Appointment Of Counsel” (Doc. 3) and “Motion For
9 Court Appointed Interpreter” (Doc. 4) are both **denied without prejudice**.

10 (2) The Clerk of Court **must serve** a copy of the Petition (Doc. 1) and this Order
11 on the Respondent and the Attorney General of the State of Arizona by certified mail
12 pursuant to Rule 4, Rules Governing Section 2254 Cases.

13 (3) Respondents **must answer** the Petition within 40 days of the date of service.
14 Respondents must not file a dispositive motion in place of an answer but may file an answer
15 limited to relevant affirmative defenses, including but not limited to, statute of limitations,
16 procedural bar, or non-retroactivity. If the answer is limited to affirmative defenses, only
17 those portions of the record relevant to those defenses need be attached to the answer.
18 Failure to set forth an affirmative defense in an answer may be treated as a waiver of the
19 defense. Day v. McDonough, 126 S. Ct. 1675, 1684 (2006). If not limited to affirmative
20 defenses, the answer must fully comply with all of the requirements of Rule 5 of the Rules
21 Governing Section 2254 Cases.

22 (4) Petitioner **may file** a reply within 30 days from the date of service of the
23 answer.

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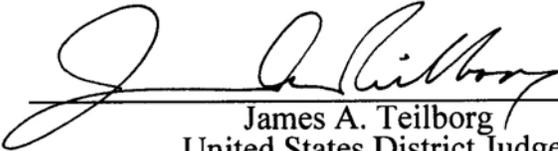
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1 (5) This matter is **referred** to Magistrate Judge Mark E. Aspey pursuant to Rules
2 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings and a report and
3 recommendation.

4 DATED this 23rd day of August, 2010.

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8 James A. Teilborg
9 United States District Judge
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