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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JESUS GALINDO,

Petitioner,

vs.

JOHN DOE,

Respondent.

) Case No. CV 13-2366 MRW

) ORDER DISMISSING ACTION

\_\_\_\_\_ )  
The Court summarily dismisses the action pursuant to the successive habeas petition rule contained in 28 U.S.C. § 2244, Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, and Federal Rule of Civil Procedure 41.

\* \* \*

This is a state habeas action. In 2006, a jury convicted Petitioner of robbery and a firearm enhancement. Under California’s Three Strikes sentencing law, the trial court sentenced Petitioner to a term of forty years to life in prison. (Docket

1 # 13 at 3.) The state appellate court affirmed Petitioner’s conviction on direct  
2 appeal. The state supreme court denied review.

3 In 2008, Petitioner sought federal habeas review in this Court. See Galindo  
4 v. Gonzales, CV 08-6280 RSWL (JC) (C.D. Cal.). The Court denied relief and  
5 dismissed the action with prejudice in July 2010. Petitioner did not appeal that  
6 decision.

7 Petitioner filed the present action in April 2013. The current habeas petition  
8 was not accompanied by a certificate from the Ninth Circuit Court of Appeals  
9 authorizing a successive habeas action pursuant to 28 U.S.C. § 2244(b). On that  
10 basis, the Attorney General moved to dismiss the action. (Docket # 13.) In a  
11 subsequent filing, Petitioner “conced[ed] that he did not comply with the Section  
12 2244(b) requirements.” (Docket # 20.) Petitioner informed the Court that he had  
13 had a request pending with the Ninth Circuit for permission to proceed with the  
14 action. The Court stayed the action pending the Ninth Circuit’s consideration of  
15 the request. (Docket # 21.)

16 In January 2014, the Ninth Circuit issued an order denying Petitioner’s  
17 request to pursue this successive habeas action. (Docket # 22 (copy of order).)  
18 The Court issued an order requiring Petitioner to show cause why the action should  
19 not be summarily dismissed as successive. (Id.) Petitioner, a self-described  
20 “litigious inmate” (Docket # 1 at 14), failed to respond to the Court’s OSC by the  
21 required date.

22 \* \* \*

23 Petitioner’s current habeas action fails to satisfy the successive petition  
24 provisions of AEDPA. Federal law prohibits a state prisoner from filing  
25 successive habeas actions without advance permission from the United States  
26 Court of Appeals. See 28 U.S.C. § 2244(b); Burton v. Stewart, 549 U.S. 147  
27 (2007) (dismissing successive petition for failure to obtain authorization from court  
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1 of appeals). The Ninth Circuit expressly denied his application for such  
2 authorization in this action. The case must be dismissed on that basis.

3 Moreover, his conviction is obviously untimely under the one-year  
4 limitations period for federal review contained in 28 U.S.C. § 2244(d). If it  
5 “appears from the application that the applicant or person detained is not entitled”  
6 to habeas relief, a court may dismiss a habeas action without ordering service on  
7 the responding party. 28 U.S.C. § 2243; see also Rule 4 of Rules Governing  
8 Section 2254 Cases in United States District Courts (petition may be summarily  
9 dismissed if petitioner plainly not entitled to relief); Local Civil Rule 72-3.2  
10 (magistrate judge may submit proposed order for summary dismissal to district  
11 judge “if it plainly appears from the face of the petition [ ] that the petitioner is not  
12 entitled to relief”). Petitioner’s AEDPA filing period clearly expired several years  
13 before the commencement of this action. His untimely action is subject to  
14 dismissal on that ground.

15 Finally, Petitioner failed to respond to a court order requiring him to show  
16 cause regarding the status of the action. Rule 41(b) provides that “[i]f the plaintiff  
17 fails to prosecute or to comply with these rules or a court order, a defendant may  
18 move to dismiss the action or any claim against it.” Dismissal also may be ordered  
19 by the Court sua sponte. See Link v. Wabash R.R., 370 U.S. 626, 629-30 (1962).  
20 Dismissal of a civil action under Rule 41 may be appropriate to advance the  
21 public’s interest in the expeditious resolution of litigation, the court’s need to  
22 manage its docket, and to avoid the risk of prejudice to defendants. See Omstead  
23 v. Dell, Inc., 594 F. 3d 1081, 1084 (9th Cir. 2010); Ferdik v. Bonzelet, 963 F.2d  
24 1258, 1263 (9th Cir. 1992) (analyzing factors supporting dismissal of Section 1983  
25 actions). Given the nonviability of Petitioner’s current claims, his apparent lack of  
26 interest in pursuing the action, and the interests of the Court and the Attorney  
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1 General in disposing of frivolous actions, Rule 41 provides an additional basis for  
2 dismissing the action.

3 The action is therefore DISMISSED with prejudice.

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6 DATED: February 18, 2014

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8 HON. MICHAEL R. WILNER  
9 UNITED STATES MAGISTRATE JUDGE  
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