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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE BATRES,

Petitioner,

vs.

UNKNOWN,

Respondent.

No. CV 14-4208 JAK (FFM)

ORDER DISMISSING ACTION FOR  
LACK OF JURISDICTION

Jose Batres, a California State prisoner proceeding *pro se*, apparently wishes to challenge a state court conviction by eventually seeking federal habeas relief. Rather than filing a petition for writ of habeas corpus, Batres filed a document seeking an extension of time to comply with federal filing deadlines (the “Application”).

Under the “case or controversy” requirement of Article III, Section 2 of the United States Constitution, federal courts may not issue advisory opinions. *See Princeton University v. Schmid*, 455 U.S. 100, 102, 102 S. Ct. 867, 869 (1981). As Batres has not actually filed a federal habeas petition challenging his conviction and/or sentence, there is no case or controversy before the Court, and he essentially seeks an advisory opinion. *See Calderon v. Ashmus*, 523 U.S. 740, 118 S. Ct. 1694, 1698 (1998) (actual “controversy” in 28 U.S.C. § 2254 action is

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1 whether petitioner is entitled to have the conviction or sentence imposed by the  
2 state court set aside).

3 By the Application, Batres asks the Court to decide prospectively whether  
4 his habeas petition will be time-barred when filed at some unspecified future date,  
5 without any adverse parties before it and without any information on which to  
6 base any conclusion that such a filing properly will fall within the one-year  
7 limitations period, even as extended. The Court cannot grant Batres the  
8 prospective relief he seeks without offending the case or controversy requirement  
9 of the Constitution.

10 Should Batres hereafter file his habeas petition and should the respondent  
11 raise the one-year limitations period as a bar to relief, Batres may then make an  
12 equitable tolling argument. At that point, the Court may consider whether the  
13 Section 2244(d)(1) limitations period can be tolled.

14 Based upon the foregoing, IT IS ORDERED that Judgment be entered  
15 dismissing this action without prejudice for lack of jurisdiction.

16 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and  
17 the Judgment herein on Batres.

18 **LET JUDGMENT BE ENTERED ACCORDINGLY.**

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21 DATED: June 11, 2014



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JOHN A. KRONSTADT  
United States District Judge

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24 Presented by:

25  
26 /S/ FREDERICK F. MUMM  
27 FREDERICK F. MUMM  
28 United States Magistrate Judge