

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**CIVIL MINUTES - GENERAL**

Case No. CV 15-7868-BRO (AS) Date June 30, 2016

Title Jose A. Barrios v. Warren L. Montgomery, Warden

Present: The Honorable Alka Sagar, United States Magistrate Judge

Alma Felix

N/A

Deputy Clerk

Court Reporter / Recorder

Attorneys Present for Petitioner:

Attorneys Present for Respondent:

N/A

N/A

**Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE**

On October 7, 2015, Jose A. Barrios (“Petitioner”) filed a Petition for Writ of Habeas Corpus by a Person in State Custody, pursuant to 28 U.S.C. § 2254 (“Petition”). (Docket Entry No. 1). On April 21, 2016, Respondent filed a motion to dismiss the Petition, contending that Ground Two of the Petition (specifically, Petitioner received ineffective assistance of counsel based on his trial counsel’s “failure to object to irrelevant drug use admitted evidence”, see Petition at 5, Attachment at 5c) is unexhausted and therefore the Petition is a “mixed petition.” (Docket Entry No. 20). Respondent also filed a Notice of Lodging with lodged documents in support of the motion to dismiss. (Docket Entry No. 21). On April 21, 2016, the Court issued an Order directing Petitioner to file an opposition to the Motion to Dismiss no later than May 23, 2016. (Docket Entry No. 22).

Although Petitioner attempted to file an opposition to the motion to dismiss, the document was returned to him unfiled based on his missing signature. On May 24, 2016, the Court ordered Petitioner to re-file the document with the required signature and date. (Docket Entry No. 23). As of today’s date, Petitioner has failed to file an Opposition to the Motion to Dismiss or any response to the Court’s April 21, 2016 Order requiring Petitioner to file an Opposition to the Motion to Dismiss.

Accordingly, Petitioner is **HEREBY ORDERED TO SHOW CAUSE** why this action should not be dismissed as a mixed petition, pursuant to Rose v. Lundy, 455 U.S. 509, 522 (1982). Petitioner may file a response to this Order by filing - **no later than July 20, 2016** - an Opposition to the Motion to Dismiss, or a Declaration, under penalty of perjury, stating

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why Plaintiff is unable to file an opposition, or a request for voluntary dismissal of this action.

**Petitioner is warned that failure to comply with this Order will result in a recommendation that this action being dismissed with prejudice for his failure to prosecute and/or comply with Court orders pursuant to Fed.R.Civ.P. 41(b) and/or dismissal without prejudice as a mixed petition.**

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