

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 15-7868-BRO (AS)	Date	September 9, 2016
Title	Jose A. Barrios v. Warren L. Montgomery, Warden		

Present: The Honorable	Alka Sagar, United States Magistrate Judge
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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 (alleging that 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 July 22, 2016, Petitioner filed an Opposition to the Motion to Dismiss the Petition (Docket Entry No. 25), thereby discharging the Court’s June 30, 2016 Order to Show Cause (see Docket Entry Nos. 24, 26).

On July 25, 2016, the Court issued a Minute Order rejecting Petitioner’s contention that Ground Two of the Petition, as identified above, was exhausted, and ordering Petitioner to select, by August 15, 2016, one of the following four options: (1) voluntarily dismiss the entire action without prejudice; (2) voluntarily dismiss the Petition’s unexhausted claim; (3) request a stay of this action pursuant to Rhines v. Weber, 544 U.S. 269 (2005); or (4) dismiss the Petition’s unexhausted claim, and pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2003), overruled in part on other grounds by Robbins v. Carey, 481 F.3d 1143, 1149 (9th Cir. 2007), file a motion seeking stay of the remaining exhausted claims while Petitioner

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returns to the state courts to exhaust his dismissed claim. (Docket Entry No. 26). Petitioner was expressly advised that his failure to file a timely response to the Court's July 25, 2016 Minute Order might result in a recommendation that this action be dismissed with prejudice for his failure to prosecute and/or obey Court orders pursuant to Fed.R.Civ.P. 41(b). Id. at 5-6. Petitioner further was expressly advised that his failure to select one of the four options identified in the Court's July 25, 2016 Minute Order would result in the dismissal of the Petition as a mixed petition. Id. at 6.

As of today's date, Petitioner has failed to file a Response to the Court's July 25, 2016 Minute Order.

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 availing himself of one of the four options set forth in the Court's July 25, 2016 Minute Order:

- (1) voluntary dismissal of the entire action without prejudice;
- (2) voluntary dismissal of the unexhausted claim, as identified above, and proceeding on the exhausted claims;
- (3) moving for a stay of this action pursuant to Rhines v. Weber, supra, seeking a stay of the exhausted claims while he returns to the state courts to exhaust the unexhausted claim, as identified above. (If Petitioner selects this option, he should select a backup option, in the event the Court finds that he has failed to establish good cause for his failure to exhaust the unexhausted claim, as identified above.); and
- (4) Dismissing the unexhausted claim, as identified above, and pursuant to Kelly v. Small, supra, move for a stay of this action.

Information regarding the requirements for, and potential consequences of, each of these options are explained in the Court's July 25, 2016 Minute Order, a copy of which is attached.

Petitioner must file a response to this Order withing twenty (20) days (by no later than **September 29, 2016**) .

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Petitioner is warned that failure to comply with this Order will result in a recommendation that this action be 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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Initials of
Preparer

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