UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MIGUEL ANGEL LOMELI,

Petitioner,

v.

WARDEN RAYMOND MADDEN,

Respondent.

Case No. 2:15-CV-8198-DOC (SK)

ORDER TO SHOW CAUSE WITHIN 30 DAYS RE: MIXED PETITION

On February 2, 2017, the Court ordered Petitioner to show cause why his First Amended Petition (FAP) should not be dismissed because he had failed to exhaust all his federal habeas claims. (ECF No. 34). The Court allowed Petitioner to discharge the Order to Show Cause (OSC) by filing a Second Amended Petition (SAP) containing only the three claims that he had exhausted in state court. On February 17, 2017, Petitioner filed a SAP correctly asserting the second and third exhausted claims. However, Petitioner appears to have ignored the Court's instructions as to his first claim, which challenges under *Batson v. Kentucky*, 476 U.S. 79, 97 (1986), peremptory strikes made against three prospective jurors. The Court informed Petitioner previously that this *Batson* claim remains unexhausted

insofar as it challenges the peremptory strikes of Prospective Juror Nos. 5178 and 7098. (ECF Nos. 25, 34). The OSC explained that Petitioner appears to have exhausted this *Batson* claim only as to Prospective Juror No. 2544. Nonetheless, the SAP once again appears to raise a *Batson* claim regarding all three prospective jurors, without any attempt to surmount the exhaustion problem.

THEREFORE, **within 30 days of the date of this Order**, Petitioner is ordered to show cause why the SAP should not be dismissed since the Petition still appears mixed on its face with an unexhausted *Batson* claim as to two out of the three prospective jurors. Absent any reason to consider the *Batson* claim exhausted as to Prospective Juror Nos. 5178 and 7098, which Petitioner has failed to provide, Petitioner may discharge this second OSC by filing a Third Amended Petition containing only the three exhausted claims previously described in the Court's first OSC.

If within 30 days of the date of this Order, Petitioner does not file an amended petition with fully exhausted claims, or if he otherwise fails to provide a timely and satisfactory response to this Order, the Court will recommend immediate dismissal of the entire petition and this action. If Plaintiff intends to file an amended petition, it must be complete in itself without reference to the original petition, the FAP, or the SAP, and bear the designation "Third Amended Petition" along with the case number assigned to this action.

IT IS SO ORDERED.

DATED: April 03, 2017

HON. STEVE KIM
U.S. MAGISTRATE JUDGE