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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

MICHAEL URIAS,	)	No. CV 17-07688-R (DFM)
Petitioner,	)	
v.	)	ORDER SUMMARILY
SECRETARY OF THE	)	DISMISSING PETITION
CALIFORNIA DEPARTMENT OF	)	
CORRECTIONS,	)	
Respondent.	)	

On October 16, 2017, Michael Urias (“Petitioner”) initiated this action by filing a Petition for Writ of Habeas Corpus by a Person in State Custody in the United States District Court for the Eastern District of California. See Dkt. 1 (“Petition”) at 1.<sup>1</sup> Pursuant to 28 U.S.C. § 2241(d), the Petition was transferred to this Court. See Dkt. 3. The Petition alleged that “the imposition of a \$3000.00 restitution fine [was] erroneous and improper based upon an inability to pay.” Petition at 9.

On November 15, 2017, the Magistrate Judge ordered Petitioner to show

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<sup>1</sup> Citations herein use the pagination provided by CM/ECF.

1 cause why the Petition should not be dismissed because it is time-barred and  
2 because the Court lacks jurisdiction over it. See Dkt. 6 (“OSC”). Specifically,  
3 the Magistrate Judge observed that the Petition was facially untimely because  
4 the deadline to file a habeas petition in this Court was July 24, 2002, but  
5 Petitioner did not file the instant Petition until October 16, 2017, over 15 years  
6 later. See OSC at 3. The Magistrate Judge also found that Petitioner was not  
7 entitled to any later trigger date under 28 U.S.C. §§ 2244(d)(1)(B)-(D) or to any  
8 statutory tolling remedy, since at least over five years likely passed between the  
9 California Court of Appeal’s denial of Petitioner’s first petition for habeas  
10 corpus and the filing of his second. See OSC at 4-6; Evans v. Chavis, 546 U.S.  
11 189, 201 (2006) (refusing to apply tolling to an unexplained 6-month gap). The  
12 Magistrate Judge further noted that Petitioner cannot avail himself to relief  
13 under equitable tolling without any explanation as to why he failed to file his  
14 Petition in a timely manner or to take any action before the AEDPA limitation  
15 period expired. See OSC at 6.

16 On the issue of jurisdiction, the Magistrate Judge observed that the  
17 Petition alleged two grounds for federal habeas relief under 28 U.S.C. §  
18 2254(a), both of which pertained only to the trial court’s imposition of a  
19 restitution fine. See OSC at 8-9. Discussing at length the Ninth Circuit’s ruling  
20 in Bailey v. Hill, 599 F.3d 976 (9th Cir. 2010), the Magistrate Judge concluded  
21 that this Court lacks jurisdiction over the Petition because Petitioner’s lone  
22 request that the Court “reduce” the amount of his restitution lacks the requisite  
23 “nexus” to his custody so as to confer jurisdiction under § 2254(a). See OSC at  
24 7-9; Bailey, 599 F.3d at 981-82 (“§ 2254(a) does not confer jurisdiction over a  
25 state prisoner’s in-custody challenge to a restitution order imposed as part of a  
26 criminal sentence.”). Thus, the Magistrate Judge issued an order to show cause  
27 and permitted Petitioner 28 days from the filing thereof to explain why the  
28 Court should not dismiss this action with prejudice because it is time-barred

1 and/or because the Court lacks jurisdiction over it.

2 On December 1, 2017, Petitioner filed a response to the OSC. See Dkt. 7  
3 (“Response”). In it, Petitioner states that he first became aware of the  
4 restitution order in 2016 through his “prison jailhouse lawyer” at that time.  
5 Response at 2. Upon discovery of the restitution order, Petitioner claims he  
6 “instantly filed a motion and Habeas Petition” in state court. See id. at 3.  
7 Petitioner further contends that “during trial court sentencing, and previous  
8 appeals and petition(s)[,] he had no knowledge”—nor did his counsel at that  
9 time inform him—of his right to have a hearing on his ability to pay the  
10 restitution fine. Response at 4, 7. Had he known of his right, Petitioner claims,  
11 he would have raised his challenges to the imposed restitution fines earlier. See  
12 Response at 8.

13 Despite Petitioner’s new factual arguments on the issue of timeliness,  
14 Petitioner still has not shown how this Court has jurisdiction to hear his claim  
15 under 28 U.S.C § 2254(a). The Ninth Circuit has made clear that the “in  
16 custody” requirement is the “first question” courts must consider when  
17 evaluating a federal habeas corpus petition. Bailey, 599 F.3d at 978-79; see also  
18 Hensley v. Mun. Court, 411 U.S. 345, 351 (1973) (noting that habeas corpus  
19 relief is reserved only for “severe” restraints on individual liberty). Yet  
20 Petitioner nowhere explains how the trial court’s imposition of an “illegal and  
21 improper restitution fine” on him has the requisite legal “nexus” to his  
22 custody. See Petition at 4; see also Bailey, 599 F.3d at 981 (“[T]he imposition  
23 of a fine, by itself, is not sufficient to meet § 2254’s jurisdictional  
24 requirements.”). Because both of Petitioner’s grounds for federal habeas corpus  
25 relief under § 2254(a) pertain solely to the state trial court’s imposition of a  
26 restitution fine, and not to the lawfulness under federal law of Petitioner’s  
27 custody itself, this Court lacks the requisite jurisdiction to hear Petitioner’s  
28

1 claims.<sup>2</sup> As such, the Petition must be dismissed. See Bailey, 599 F.3d at 978-  
2 79.

3 **ORDER**

4 IT IS THEREFORE ORDERED that this action be summarily  
5 dismissed with prejudice for the reasons stated in the Magistrate Judge's  
6 November 15, 2017, Order to Show Cause and herein.

7 LET JUDGMENT BE ENTERED ACCORDINGLY.

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9 Dated: January 8, 2018

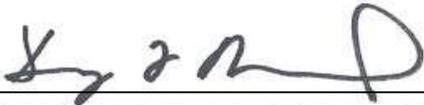


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MANUEL L. REAL  
United States District Judge

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14 Presented by:



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DOUGLAS F. McCORMICK  
17 United States Magistrate Judge

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<sup>2</sup> Because the issue of jurisdiction is dispositive of the Petition, the Court  
26 declines to address the merits of Petitioner's timeliness argument at this time.  
27 See Bailey, 599 F.3d at 978 ("Section 2254(a)'s 'in custody' requirement is  
28 jurisdictional and therefore 'it is the first question we must consider.'")  
(citation omitted).