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**IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

CARMEN MONTENEGRO,  
Petitioner,  
v.  
D.J. ADAMS, Warden,  
Respondent.

Case No. ED CV 16-2273 SVW (MRW)

**ORDER DISMISSING ACTION  
WITHOUT PREJUDICE**

The Court summarily dismisses this unexhausted habeas action pursuant to 28 U.S.C. §§ 2243 and 2254(b).

\* \* \*

1. This is a habeas action involving a state prisoner. Petitioner was convicted of murder at jury trial in 2014. She received a prison term of 25 years to life.

2. The state appellate court affirmed her conviction in May 2016. The gist of her appellate claims involved the sufficiency of the evidence at trial and various jury instruction issues.



1 also Rule 4 of Rules Governing Section 2254 Cases in United States District  
2 Courts (petition may be summarily dismissed if petitioner plainly not entitled to  
3 relief); Local Civil Rule 72-3.2 (magistrate judge may submit proposed order for  
4 summary dismissal to district judge “if it plainly appears from the face of the  
5 petition [ ] that the petitioner is not entitled to relief”).

6 8. Under federal law, a prisoner must exhaust (that is, present) her or his  
7 claims in the California Supreme Court before seeking relief in federal court.  
8 28 U.S.C. § 2254(b)(1)(A); Rose v. Lundy, 455 U.S. 509 (1982). This Court can  
9 only issue a writ of habeas corpus on a showing that the state’s highest court issued  
10 a decision that was contrary to or an unreasonable application of clearly  
11 established federal law. 28 U.S.C. § 2254(d)(1).

12 9. According to the petition, Petitioner does not allege that she exhausted  
13 any constitutional claim by presenting it to the state supreme court before filing in  
14 federal court. As a result, Petitioner’s pleading is defective and subject to  
15 dismissal on its face.

16 10. Moreover, when the magistrate judge gave Petitioner an opportunity  
17 to cure the apparent defect with the petition or to submit a valid request for a stay,  
18 Petitioner failed to comply with the Court’s direction. In the face of a second order  
19 from the magistrate judge regarding the status of the action, Petitioner failed to file  
20 any response. (Docket # 11.)

1           11.    The unexhausted petition is subject to summary dismissal. 28 U.S.C.  
2 §§ 2243, 2254(b); Local Civil Rule 72-3.2. The action is therefore DISMISSED  
3 without prejudice.

4           IT IS SO ORDERED.

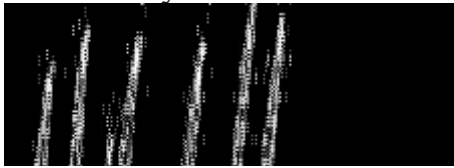


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6 Dated: March 20, 2017

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7 HON. STEPHEN V. WILSON  
8 UNITED STATES DISTRICT JUDGE

9 Presented by:



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13 HON. MICHAEL R. WILNER  
14 UNITED STATES MAGISTRATE JUDGE