

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. EDCV 17-1249-MWF (KS) Date: August 28, 2018Title *Hector Ayala v. Brandon Price*Present: The Honorable: Karen L. Stevenson, United States Magistrate JudgeShaRon Lorenzo
Deputy Clerk (Relief)Court Reporter / Recorder

Attorneys Present for Plaintiffs:

Attorneys Present for Defendants:

Proceedings: (IN CHAMBERS) ORDER TO SHOW CAUSE RE: DISMISSAL

On June 14, 2017, Petitioner, a California state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”). (Dkt. No. 1.) On June 20, 2017, the Petition was transferred to the Central District (Dkt. No. 2) and on April 25, 2018, the Petition was transferred to the calendar of United States Magistrate Judge Karen L. Stevenson (Dkt. No. 6).

On May 1, 2018, the Court informed Petitioner that the Petition appeared to be barred by the statute of limitations – that is, that it was filed more than a year after his conviction became final. (Dkt. No. 7.) The Court ordered Petitioner to file, no later than June 1, 2018, a First Amended Petition that included specific factual allegations demonstrating that either the Petition is timely or that Petitioner is entitled to equitable tolling. (*Id.*) Petitioner then sought, and received, multiple extensions of time based on the medical condition of a fellow prisoner who is helping Petitioner in this case. (*See* Dkt. Nos. 8-18.) Finally, on July 18, 2018, the Court ordered Petitioner to file the First Amended Petition no later than August 11, 2018 and cautioned that no further extensions of time would be granted. (Dkt. No. 18.)

More than two weeks have now passed since Petitioner’s First Amended Petition was due, and Petitioner has neither filed the First Amended Petition nor otherwise communicated with the Court about his case. Accordingly, the action is now subject to dismissal both as an untimely petition and for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. However, in the interests of justice, Petitioner shall receive one final opportunity to file a First Amended Petition. Accordingly, **IT IS HEREBY ORDERED that, no later than September 18, 2018, Petitioner shall file either:**

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- (1) a **First Amended Petition that complies with the Court’s May 1, 2018 Order; or**
(2) a **signed application for an enlargement of time and competent evidence, such as a declaration signed under penalty of perjury, demonstrating extraordinary and compelling circumstances warranting an extension. The medical condition of a prisoner who is not a party to this suit is not extraordinary and compelling circumstances warranting further delay.**

Alternatively, if Petitioner does not wish to proceed with this action at this time, he may file a signed document entitled “Notice Of Voluntary Dismissal” and the action will be dismissed without prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Petitioner is advised that his failure to timely comply with this Order will result in a recommendation to dismiss this case.

IT IS SO ORDERED.

Initials of Preparer

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