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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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11	SALVADOR MENDOZA,	1:09-cv-00732-BAK-SMS HC	
12	Petitioner,	ORDER REQUIRING RESPONDENT TO FILE RESPONSE	
13) V.)	ORDER SETTING BRIEFING SCHEDULE	
14)	ORDER DIRECTING CLERK OF COURT TO	
15	KELLY HARRINGTON, Warden,	SERVE DOCUMENTS ON ATTORNEY GENERAL	
16	Respondent.)		
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19 20	pursuant to 28 U.S.C. § 2254.		
20	The Court has conducted its preliminary screening of the petition. It is not clear from the		
21	face of the Petitioner whether Petitioner is entitled to relief. 28 U.S.C. § 2243. Accordingly,		
22	pursuant to Rule 4 of the Rules Governing Section 2254 Cases and Rule 16 of the Federal Rules of		
23	Civil Procedure, ¹ the Court HEREBY ORDE	K9:	
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25 26	those proceedings (A) is not specified in a federal statute, the Rules Governing Section 2254 Cases, or the Rules Governing		
26 27	Section 2255 Cases; and (B) has previously conformed to the practice in civil actions." Fed.R.Civ.P. 81(a)(4). Rule 11 also provides "[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or		
27	these rules, may be applied to a proceeding under these	e rules." Rule 11, Rules Governing Section 2254 Cases.	
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1	1.	Respondent SHALL FILE a RESPONSE to the Petition ² within SIXTY (60) days of the	
2		date of service of this order. See Rule 4, Rules Governing Section 2254 Cases; Cluchette	
3		v. Rushen, 770 F.2d 1469, 1473-1474 (9th Cir. 1985) (court has discretion to fix time for	
4		filing a response). A Response can be made by filing one of the following:	
5		A. AN ANSWER addressing the merits of the Petition. Respondent SHALL	
6		INCLUDE with the Answer any and all transcripts or other documents necessary	
7		for the resolution of the issues presented in the Petition. See Rule 5 of the Rules	
8		Governing Section 2254 Cases. Any argument by Respondent that Petitioner has	
9		procedurally defaulted a claim SHALL BE MADE in an ANSWER that also	
10		addresses the merits of the claim asserted.	
11		B. A MOTION TO DISMISS the Petition. ³ A Motion to Dismiss SHALL	
12		INCLUDE copies of all Petitioner's state court filings and dispositive rulings.	
13		See Rule 5, Rules Governing Section 2254 Cases.	
14	2.	If Respondent files an Answer to the Petition, Petitioner MAY FILE a Traverse within	
15	THIRTY (30) days of the date Respondent's Answer is filed with the Court. If no		
16		Traverse is filed, the Petition and Answer are deemed submitted at the expiration of the	
17		thirty days.	
18	3.	If Respondent files a Motion to Dismiss, Petitioner SHALL FILE an Opposition or	
19		Statement of Non-Opposition within THIRTY (30) days of the date Respondent's	
20		Motion is filed with the Court. If no Opposition is filed, the Motion to Dismiss is	
21		deemed submitted at the expiration of the thirty days. Any Reply to an Opposition to the	
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23	"Res ("CM/ECF")	spondent is advised that a scanned copy of the Petition is available in the Court's electronic case filing system .	
24		le 4 of the Rules Governing Section 2254 Cases provides that upon the court's determination that summary	
25	to Rule 4 and 5 of Rules Governing Section 2254 Cases (stating that a dismissal may obviate the need for filing an answer on the substantive merits of the petition and that the Attorney General may file a Motion to Dismiss for failure to exhaust.); also, White v. Lewis, 874 F.2d 599, 60203 (9th Cir. 1989) (providing that Motions to Dismiss pursuant to Rule 4 are proper		
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1		Motion to Dismiss SHALL be filed within EIGHT (8) days, plus three days for mailing.	
2	4.	Unless already submitted, both Respondent and Petitioner SHALL COMPLETE and	
3		RETURN to the Court within SIXTY (60) days a Consent/Decline form indicating	
4		whether the party consents or declines to consent to the jurisdiction of the United States	
5		Magistrate Judge pursuant to Title 28 U.S.C. § 636(c)(1).	
6	5.	The Clerk of the Court is DIRECTED to SERVE a copy of this order on the Attorney	
7		General or his representative.	
8		All motions shall be submitted on the record and briefs filed without oral argument	
9	unless otherwise ordered by the Court. Local Rule 78-230(h). All provisions of Local Rule 11-110		
10	are applicable to this order.		
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12	IT IS SO ORDERED.		
13	Dated: July 16, 2009 /s/ Sandra M. Snyder UNITED STATES MAGISTRATE JUDGE		
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