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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LUIS MELENDEZ,

Petitioner,

v.

BEN CURRY, Warden,

Respondent.

No. C 08-4670 WHA (PR)

**ORDER GRANTING MOTION TO
PROCEED WITH EXHAUSTED
CLAIM; DISMISSING
UNEXHAUSTED CLAIM; TO SHOW
CAUSE**

(Docket No. 13)

This is a habeas case filed pro se by a state prisoner. Respondent's motion to dismiss the petition as mixed was granted, and petitioner was directed to elect whether to chose from among three possible courses of action. He has filed a motion to elect to dismiss the unexhausted claim, and proceed solely on the basis of the only exhausted claim in the petition, claim number one. Accordingly, petitioner's motion (docket number 13) is **GRANTED**, and the unexhausted claim in the petition (claim number three) is **DISMISSED**.¹

Respondent shall file with the court and serve on petitioner, within ninety days of the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted based on the first claim in the petition. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition.

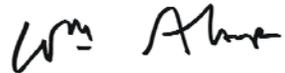
¹The second claim was dismissed previously because it is not cognizable.

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If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the court and serving it on respondent within thirty days of the date the answer is filed.

IT IS SO ORDERED.

Dated: April 12, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE