

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

ESMELING LOPEZ BAHENA,
Petitioner,
v.
PEOPLE OF THE STATE OF
CALIFORNIA,
Respondent.

Case No. [21-cv-02131-LB](#)

ORDER TO SHOW CAUSE

Re: ECF Nos. 1, 2, 6

INTRODUCTION

Esmeling Lopez Bahena, an inmate at the Salinas Valley State Prison, filed this *pro se* action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He consented to proceed before a magistrate judge. (ECF No. 5.)¹ His petition is now before the court for review pursuant to 28 U.S.C. § 2243 and Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. This order requires the respondent to respond to the petition, dismisses a request to file a late appeal, and grants the *in forma pauperis* application.

¹ Citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

1 barred by the statute of limitations, there is no need for the court to decide whether the petition is
2 late and whether any lateness should be excused. The motion will be dismissed as premature.

3 **CONCLUSION**

4 For the foregoing reasons,

5 1. The petition warrants a response.

6 2. The clerk shall electronically serve a copy of this order upon the respondent and the
7 respondent's attorney, the Attorney General of the State of California, at the following email
8 address: SFAWTParalegals@doj.ca.gov. The petition and any exhibits thereto are available via the
9 Electronic Case Filing (ECF) system for the Northern District of California. The clerk also shall
10 serve by mail a copy of this order on the petitioner.

11 3. The respondent must file and serve upon the petitioner, on or before **July 16, 2021**, an
12 answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing
13 cause why a writ of habeas corpus should not be issued. The respondent must file with the answer
14 a copy of all portions of the court proceedings that have been previously transcribed and that are
15 relevant to a determination of the issues presented by the petitioner.

16 4. If the petitioner wishes to respond to the answer, he must do so by filing a traverse with the
17 court and serving it on the respondent on or before **August 27, 2021**.

18 5. The petitioner is responsible for prosecuting this case. The petitioner must promptly keep
19 the court informed of any change of address and must comply with the court's orders in a timely
20 fashion. The petitioner is cautioned that he must include the case name and case number for this
21 case on the first page of any document he submits to the court for consideration in this case.

22 6. The petitioner's request to file a late habeas petition is DISMISSED as premature. (ECF
23 No. 2.)

24 7. The petitioner's application to proceed *in forma pauperis* is GRANTED. (ECF No. 6.)

25 **IT IS SO ORDERED.**

26 Dated: April 28, 2021



27
28 LAUREL BEELER
United States Magistrate Judge