

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

3  
4 CESAR RODRIGUEZ,

No. 08-03830 CW

5                                    Petitioner,

ORDER OF DISMISSAL

6                                    v.

7 JIM MACDONALD, Warden,

8                                    Respondent.  
\_\_\_\_\_ /

9  
10                                    Petitioner, a state prisoner, filed this pro se petition for a  
11 writ of habeas corpus challenging the validity of his state  
12 conviction. Respondent filed an answer, in which he argued that  
13 the petition should be dismissed for failure to exhaust.

14 Petitioner filed a traverse.

15                                    In an Order dated November 2, 2010, the Court found that  
16 Petitioner filed a "mixed petition" composed of one exhausted claim  
17 and four unexhausted claims. A district court must dismiss "mixed  
18 petitions" containing both exhausted and unexhausted claims. See  
19 Rose v. Lundy, 455 U.S. 509, 522 (1982) (general rule is that a  
20 federal district court must dismiss a federal habeas petition  
21 containing any claim as to which state remedies have not been  
22 exhausted). Petitioner was directed to respond within fourteen  
23 days and "submit a request to dismiss his unexhausted claims and  
24 proceed with his exhausted Apprendi claim or a request to stay the  
25 petition while he returns to state court to exhaust his unexhausted  
26 claims." (Nov. 2, 2010 Order at 6.) The Court further stated: "If  
27 he does neither, the Court will dismiss the petition for failure to  
28

1 exhaust State judicial remedies." (Id.)

2 Fourteen days have passed, and Petitioner has not responded to  
3 the Court's November 2, 2010 Order. Accordingly, the petition is  
4 DISMISSED for failure to exhaust state judicial remedies. The  
5 Clerk of the Court shall terminate all pending motions and close  
6 the file.

7 IT IS SO ORDERED.

8 Dated: 11/22/2010

  
\_\_\_\_\_  
CLAUDIA WILKEN  
United States District Judge

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 NORTHERN DISTRICT OF CALIFORNIA

4 CESAR RODRIGUEZ,

5 Plaintiff,

6 v.

7 JOHN F SALAZAR et al,

8 Defendant.

Case Number: CV08-03830 CW

**CERTIFICATE OF SERVICE**

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,  
10 Northern District of California.

11 That on November 22, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said  
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located  
14 in the Clerk's office.

15 Cesar Rodriguez F-30844  
16 Suni A202  
17 La Palma Correctional Center  
18 5501 N. LaPalma Rd.  
19 Eloy, AZ 85131

20 Dated: November 22, 2010

Richard W. Wieking, Clerk  
By: Nikki Riley, Deputy Clerk