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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SERGIO RAMIREZ GUZMAN,
Petitioner,
v.
RAYMOND MADDEN, Warden,
Respondent.

Case No.: 17-CV-982-CAB(WVG)

**ORDER REOPENING CASE AND
SETTING BRIEFING SCHEDULE**

On May 11, 2017, Petitioner, proceeding pro se, submitted a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. In its May 15, 2017 Order, the Court dismissed this case without prejudice because Petitioner failed to satisfy the filing fee requirement. Petitioner was instructed that to have this case reopened he had either pay the filing fee or provide adequate proof of his inability to pay no later than July 21, 2017.

On July 17, 2017, Petitioner paid the \$5.00 filing fee, pursuant to this Court’s Order. Based on this Court’s review of the Petition, the Court **ORDERS** that this case be reopened. Further, in accordance with Rule 4 of the rules governing petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and upon a preliminary review of the Petition, **IT IS ORDERED** that:

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1 1. The Clerk of this Court shall promptly (a) serve a copy of the Petition and a
2 copy of this Order on the Attorney General for the State of California, or her authorized
3 agent; and (b) serve a copy of this Order on Petitioner.

4 2. If Respondent contends the Petition can be decided without the Court's
5 reaching the merits of Petitioner's claims (e.g., because Respondent contends Petitioner
6 has failed to exhaust any state remedies as to any ground for relief alleged in the Petition,
7 or that the Petition is barred by the statute of limitations, or that the Petition is subject to
8 dismissal under Rule 9 of the Rules Governing § 2254 Cases, or that all of the claims are
9 procedurally defaulted, or that Petitioner is not in custody), Respondent shall file a motion
10 to dismiss pursuant to Rule 4 of the Rules Governing § 2254 Cases no later than **September**
11 **29, 2017**. The motion to dismiss shall not address the merits of Petitioner's claims, but
12 rather shall address all grounds upon which Respondent contends dismissal without
13 reaching the merits of Petitioner's claims is warranted.¹ At the time the motion to dismiss
14 is filed, Respondent shall lodge with the Court all records bearing on Respondent's
15 contention in this regard. A hearing date is not required for the motion to dismiss.

16 3. If Respondent files a motion to dismiss, Petitioner shall file his opposition, if
17 any, to the motion no later than **October 30, 2017**. At the time the opposition is filed,
18 Petitioner shall lodge with the Court any records not lodged by Respondent which
19 Petitioner believes may be relevant to the Court's determination of the motion.

20 4. Unless the Court orders otherwise, Respondent shall not file a reply to
21 Petitioner's opposition to a motion to dismiss. If the motion is denied, the Court will afford
22 Respondent adequate time to respond to Petitioner's claims on the merits.

23 5. If Respondent does not contend that the Petition can be decided without the
24 Court reaching the merits of Petitioner's claims, Respondent shall file and serve an answer
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27 ¹ If Respondent contends Petitioner has failed to exhaust any state remedies as to any
28 ground for relief alleged in the Petition, the motion to dismiss shall also specify the state
remedies still available to Petitioner.

1 to the Petition, as well as points and authorities in support of such answer, no later than
2 **September 29, 2017**. At the time the answer is filed, Respondent shall lodge with the
3 Court all records bearing on the merits of Petitioner’s claims. The lodgments shall be
4 accompanied by a notice of lodgment which shall be captioned “**Notice of Lodgment in**
5 **28 U.S.C. § 2254 Habeas Corpus Case — To Be Sent to Clerk’s Office**.” Respondent
6 shall not combine separate pleadings, orders or other items into a combined lodgment entry.
7 Each item shall be numbered separately and sequentially.

8 6. Petitioner may file a traverse to matters raised in the answer no later than
9 **October 30, 2017**. Any traverse by Petitioner (a) shall state whether Petitioner admits or
10 denies each allegation of fact contained in the answer; (b) shall be limited to facts or
11 arguments responsive to matters raised in the answer; and (c) shall not raise new grounds
12 for relief that were not asserted in the Petition. Grounds for relief withheld until the
13 traverse will not be considered. No traverse shall exceed ten (10) pages in length absent
14 advance leave of Court for good cause shown.

15 7. A request by a party for an extension of time within which to file any of the
16 pleadings required by this Order should be made in advance of the due date of the pleading,
17 and the Court will grant such a request only upon a showing of good cause. Any such
18 request shall be accompanied by a declaration under penalty of perjury explaining why an
19 extension of time is necessary.

20 8. Unless otherwise ordered by the Court, this case shall be deemed submitted
21 on the day following the date Petitioner’s opposition to a motion to dismiss and/or his
22 traverse is due.

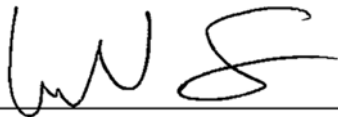
23 9. Every document delivered to the Court must include a certificate of service
24 attesting that a copy of such document was served on opposing counsel (or on the opposing
25 party, if such party is not represented by counsel). Any document delivered to the Court
26 without a certificate of service will be returned to the submitting party and disregarded by
27 the Court.

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1 10. Petitioner shall immediately notify the Court and counsel for Respondent of
2 any change of Petitioner's address. If Petitioner fails to keep the Court informed of where
3 Petitioner may be contacted, this action will be subject to dismissal for failure to prosecute.

4 **IT IS SO ORDERED.**

5 DATED: July 31, 2017

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9 Hon. William V. Gallo
10 United States Magistrate Judge
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