

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Aluizo v. Gamboa

Aluizo · No. 1:25-cv-00513-CDB (HC) · Decided June 13, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Carlos Santana Aluizo’s 28 U.S.C. § 2254 habeas petition with prejudice as untimely under AEDPA. The court concludes that the limitations period expired before the petition was filed, that a later state habeas filing did not revive or toll the period, and that neither delayed commencement nor equitable tolling applies.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 13, 2025
DOCKET	1:25-cv-00513-CDB (HC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. After preliminary screening, the magistrate judge issued findings and recommendations that the petition be dismissed with prejudice as time-barred after the petitioner failed to respond to an order to show cause.
STANDARD OF REVIEW	Under Rule 4 of the Rules Governing § 2254 Cases, the court conducts preliminary review and may dismiss a petition when it plainly appears that the petitioner is not entitled to relief. The court may raise timeliness sua sponte but must provide fair notice and an opportunity to respond before dismissing on that basis.
PRECEDENTIAL VALUE	Nonprecedential magistrate judge findings and recommendations; adoption by the assigned district judge is not shown.

TOPICS

- federal habeas corpus
- statute of limitations
- post-conviction relief
- state post-conviction relief
- pleadings

PRACTICE AREAS

federal habeas corpus

post-conviction relief

criminal procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the court could raise the timeliness of the § 2254 petition sua sponte after giving petitioner notice and an opportunity to respond.
2. Whether the federal habeas petition was barred by the one-year statute of limitations under 28 U.S.C. § 2244(d).
3. Whether statutory or equitable tolling excused the untimely filing.

HOLDINGS

1. A district court may raise the timeliness of a state prisoner's habeas petition sua sponte, but must provide fair notice and an opportunity to present a position before dismissing on that basis.
2. The petition was untimely because the one-year limitations period began after the conviction became final on February 14, 2023, expired no later than February 16, 2024, and the federal petition was not filed until April 27, 2025.
3. Equitable tolling was unavailable because petitioner did not demonstrate diligent pursuit of his rights or an extraordinary circumstance that prevented timely filing.

KEY QUOTATIONS

“district courts are permitted, but not obliged, to consider, sua sponte, the timeliness of a state prisoner’s habeas petition” (at 2)

“state habeas petitions filed after the one-year statute of limitations expired do not revive the statute of limitations and have no tolling effect.” (at 3)

“the statute of limitations expired no later than February 16, 2024, and equitable tolling does not apply” (at 3)

FACTUAL BACKGROUND

Petitioner was convicted in 2021 in the Merced County Superior Court of violations of California Penal Code §§ 288.7(b) and 288(a). The California Supreme Court declined review on November 16, 2022, and the conviction became final when the period for seeking United States Supreme Court review expired on February 14, 2023. Petitioner filed his federal habeas petition on April 27, 2025, identifying a state collateral motion filed on March 19, 2025, but did not respond to the court's order to show cause regarding timeliness.

PROCEDURAL HISTORY

Petitioner challenged 2021 Merced County Superior Court convictions. He filed the federal habeas petition on April 27, 2025, and the court issued an order to show cause on May 7, 2025, concerning timeliness. Petitioner did not respond within the allotted period, so the magistrate judge recommended dismissal with prejudice and submission of the recommendation to the assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Haines v. Kerner, 404 U.S. 519, 520-21 (1972)
- Valdez v. Montgomery, 918 F.3d 687, 693 (9th Cir. 2019)
- Boyd v. Thompson, 147 F.3d 1124, 1127 (9th Cir. 1988)
- Day v. McDonough, 547 U.S. 198, 210 (2006)
- Bowen v. Roe, 188 F.3d 1157, 1159 (9th Cir. 1999)
- Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001)
- Larsen v. Soto, 742 F.3d 1083, 1088 (9th Cir. 2013)
- Holland v. Florida, 560 U.S. 631, 649 (2010)
- Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

OPINION

(HC) Aluizo v. Gamboa

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CARLOS SANTANA ALUIZO Case No. 1:25-cv-00513-CDB (HC) 12 Petitioner,
FINDINGS AND RECOMMENDATIONS

TO DISMISS ACTION WITH PREJUDICE

13 v. AS TIME-BARRED

14 MARTIN GAMBOA, Warden (Doc. 1)

15 Respondent. 14-Day Deadline

16 Clerk of the Court to Assign District Judge 17 18 Petitioner Carlos Santana Aluizo (“Petitioner”) is a state prisoner proceeding pro se with a 19 petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. (Doc. 1, “Petition”). Petitioner 20 challenges his 2021 convictions in the Merced County Superior Court for violations of California 21 Penal Code §§ 288.7(b) and 288(a). (Id. at 1). 22 Because it appears the Petition is untimely, on May 7, 2025, the Court issued an order to 23 show cause affording Petitioner an opportunity to explain why the Court should not dismiss the 24 Petition. (Doc. 4). Petitioner was granted 30 days within which to respond to the Court’s order to 25 show cause; however, more than 30 days (including three additional days pursuant to Fed. R. Civ. 26 P.6(d)) have passed and Petitioner has failed to respond to the Court’s order. Accordingly, the 27 undersigned will recommend that the action be dismissed with prejudice

as time barred.¹ 1 Preliminary Screening

2 Rule 4 of the Rules Governing § 2254 Cases requires the Court to conduct a preliminary
3 review of each petition for writ of habeas corpus. Pro se habeas corpus petitions are to be 4
liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972). However, the Court must 5
dismiss a petition “[i]f it plainly appears from the petition ... that the petitioner is not entitled to 6
relief.” Habeas Rule 4; see *Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. 7*
Thompson, 147 F.3d 1124, 1127 (9th Cir. 1988). In conducting this initial review, the Court may 8
sua sponte raise the timeliness of the petition but should only dismiss after allowing the petitioner
9 adequate notice and an opportunity to respond. *Day v. McDonough*, 547 U.S. 198, 210 (2006) 10
(holding that “district courts are permitted, but not obliged, to consider, sua sponte, the timeliness
11 of a state prisoner’s habeas petition” but “before acting on its own initiative, ... must accord the
12 parties fair notice and an opportunity to present their positions”). 13 Discussion 14 Under the
Antiterrorism and Effective Death Penalty Act (“AEDPA”), a one-year statute 15 of limitations
applies to petitions seeking habeas relief under § 2254. 28 U.S.C. § 2244(d)(1). 16 Generally, the
one-year clock starts to run on “the date on which the judgment became final by 17 the conclusion
of direct review or the expiration of the time for seeking such review.” 42 U.S.C. 18 § 2244(d)(1)
(A). Statutory tolling applies to the “time during which a properly filed application 19 for State
post-conviction or other collateral review with respect to the pertinent judgment or claim 20 is
pending.” 42 U.S.C. § 2244(d)(2). In limited circumstances, a petitioner is entitled to delayed 21
commencement of the limitations period. 42 U.S.C. § 2244(d)(1)(B)-(D). Additionally, equitable
22 tolling may be granted to a petitioner under limited circumstances if he shows that (1) he has
been 23 pursuing his rights diligently, and (2) some extraordinary circumstance stood in his way
and 24 prevented timely filing. *Holland v. Florida*, 560 U.S. 631, 649 (2010). 25 Here, Petitioner
filed his federal habeas petition on April 27, 2025.² (Doc. 1 at 15). 26 27 2 The Court applies the
mailbox rule and deems the Petition filed on the date Petitioner delivered it to the 1 Petitioner
indicates his conviction was affirmed on direct appeal in “2022”³ and the California 2 Supreme
Court declined review on November 16, 2022. (Id. at 2-3). Thus, Petitioner’s 3 conviction became
final on February 14, 2023, when his deadline to seek certiorari from the 4 United States Supreme
Court expired. *Bowen v. Roe*, 188 F.3d 1157, 1159 (9th Cir. 1999). The 5 one-year statute of
limitations to file a federal petition began to run the next day. *Patterson v. 6 Stewart*, 251 F.3d
1243, 1246 (9th Cir. 2001). The only subsequent state collateral motion 7 Petitioner identified was
filed on March 19, 2025. (Doc. 1 at 3). However, state habeas petitions 8 filed after the one-year
statute of limitations expired do not revive the statute of limitations and 9 have no tolling effect.
See *Larsen v. Soto*, 742 F.3d 1083, 1088 (9th Cir. 2013) (state petition 10 filed over one year after
conviction became final did not render subsequent federal petition 11 timely). 12 Petitioner fails to
plead facts demonstrating he is entitled to the delayed triggering events 13 in § 2244(d)(1)(B)-(D)
or equitable tolling. Moreover, although Petitioner was afforded an 14 opportunity by the Court’s
show cause order to explain how his petition complies with § 2244(d) 15 or why equitable tolling

should apply (see Doc. 4), Petitioner did not respond to the Court's order. 16 The undersigned has considered the Holland factors in light of the record and is unable to 17 conclude either that Petitioner has been pursuing his rights diligently or that some extraordinary 18 circumstance stood in his way and prevented a timely filing. Cf. *Spitsyn v. Moore*, 345 F.3d 796, 19 799 (9th Cir. 2003) (reiterating that a habeas petitioner bears a "very high" burden to trigger the 20 "extraordinary exclusion" of equitable tolling). Thus, because in this case the statute of 21 limitations expired no later than February 16, 2024, and equitable tolling does not apply, the 22 Petition should be dismissed with prejudice as untimely. 23 Findings and Recommendation 24 Accordingly, it is HEREBY RECOMMENDED that this action be DISMISSED WITH 25 PREJUDICE as time-barred. 26 These Findings and Recommendations will be submitted to the United States District 27 Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 1 | after being served with a copy of these Findings and Recommendations, a party may file written 2 | objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 3 | Magistrate Judge's Findings and Recommendations" and shall not exceed 15 pages without leave 4 | of Court and good cause shown. The Court will not consider exhibits attached to the Objections, 5 | but a party may refer to exhibits in the record by CM/ECF document and page number. Any 6 | pages filed in excess of the 15-page limitation may be disregarded by the District Judge when 7 | reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party's 8 | failure to file any objections within the specified time may result in the waiver of certain rights on 9 | appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 10 | IT IS SO ORDERED. | pated: _June 13, 2025 |
Wr by

12 UNITED STATES MAGISTRATE JUDGE

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