

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

OPINION

(HC) Aluizo v. Gamboa

PER CURIAM.

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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

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