

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Cabrera v. Bailey

Cabrera · No. 1:20-cv-01738-KES-HBK (HC) · Decided April 22, 2025

SUMMARY

The United States District Court for the Eastern District of California struck Petitioner Omar Cabrera’s pro se supplemental petition for a writ of habeas corpus. The court held that a represented litigant may not file pro se documents and that the attempted amendment required either the opposing party’s consent or the court’s leave.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Helena M. Barch-Kuchta
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 22, 2025
DOCKET	1:20-cv-01738-KES-HBK (HC)
DISPOSITION	other
PROCEDURAL POSTURE	While objections to findings and recommendations denying his federal habeas petition were pending, a habeas petitioner represented by counsel filed a pro se supplemental petition seeking to add facts to an ineffective-assistance-of-counsel claim.
PRECEDENTIAL VALUE	Unknown
PARTIES	Omar Cabrera v. O'Brien Bailey

TOPICS

- federal habeas corpus
- motion to amend
- pleadings
- civil procedure

PRACTICE AREAS

- habeas corpus
- civil procedure

QUESTIONS PRESENTED

- Whether a habeas petitioner represented by counsel may file a document pro se.

2. Whether the petitioner could amend his habeas petition by filing a supplemental petition without opposing-party consent or leave of court.

HOLDINGS

1. A litigant represented by counsel is not entitled to file documents with the court on his own behalf; the pro se supplemental petition was properly stricken on that basis.
2. After the time to amend as a matter of course has expired, a party may amend only with the opposing party's written consent or the court's leave; because Cabrera obtained neither, the supplemental petition was properly stricken.

KEY QUOTATIONS

“A litigant represented by counsel is not entitled to file documents with the Court on his own behalf.” (1)

“However, the time to amend as a matter of course has long since expired.” (1)

FACTUAL BACKGROUND

Cabrera was represented by counsel in his federal habeas proceeding. The court had previously found that his ineffective-assistance-of-counsel claim lacked supporting facts. During the period for filing objections to the findings and recommendations, Cabrera personally submitted a supplemental petition attempting to add new exhausted facts to that claim, without obtaining opposing counsel's written consent or leave of court.

PROCEDURAL HISTORY

The magistrate judge had recommended denial of Cabrera's habeas petition and denial of a certificate of appealability because the petition lacked facts supporting his ineffective-assistance claim. After obtaining an extension to file objections, Cabrera filed a pro se supplemental petition without counsel's filing or authorization. The court ordered the supplemental petition stricken.

DISPOSITION

other

CASES CITED

- United States v. Bosworth, 468 F. App'x 763, 764 (9th Cir. 2012)
- United States v. Arceneaux, No. 2:03-cr-371-MCE-EFB P, 2019 WL 422562, at *1 (E.D. Cal. Feb. 4, 2019)
- Vieira v. Wong, No. 1:05-cv-1492-OWW, 2009 WL 1082335, at *3 (E.D. Cal. Apr. 22, 2009)

OPINION

(HC) Cabrera v. Bailey

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 OMAR CABRERA, Case No. 1:20-cv-01738-KES-HBK (HC) 12 Petitioner, ORDER
STRIKING SUPPLEMENTAL

PETITION FOR WRIT OF HABEAS

13 v. CORPUS

14 O'BRIEN BAILEY, (Doc. No. 52). 15 Respondent. 16 17 18 On March 18, 2025, the
undersigned submitted Findings and Recommendations that 19 Petitioner Omar Cabrera's Petition
for Writ of Habeas Corpus (Doc. No. 1, "Petition) be denied 20 and Petitioner be denied a
certificate of appealability. (Doc. No. 47). Of relevance here, the 21 undersigned concluded
Petitioner failed to state a claim of ineffective assistance of counsel 22 because the Petition lacked
facts to support such a claim. (Id. at 37). Petitioner's counsel sought 23 and obtained an extension
until April 30, 2025 to file objections. (Doc. Nos. 50, 51). On April 24 17, 2025, Petitioner
submitted a pro se Supplemental Petition for Writ of Habeas Corpus "to add 25 new exhausted
'facts' to Claim Five for Ineffective Assistance of Counsel on his Federal 26 Petition." (Doc. No.
52). 27 A litigant represented by counsel is not entitled to file documents with the Court on his 28
own behalf. See *United States v. Bosworth*, 468 F. App'x 763, 764 (9th Cir. 2012) ("Because 1 |
Bosworth is represented by counsel, only counsel may submit filings"); *United States v. 2 |*
Arceneaux, No. 2:03-cr-371-MCE-EFB P, 2019 WL 422562, at *1 (E.D. Cal. Feb. 4, 2019) 3 |
(striking pro se filings when petitioner was represented by counsel); *Vieira v. Wong*, No. 1:05-cv-
4 1492-OWW, 2009 WL 1082335, at *3 (E.D. Cal. April 22, 2009) (concluding that because 5 ||
petitioner's pro se motion did not challenge his legal representation, any argument should be 6 |
advanced by counsel). This reason alone justifies striking Petitioner's pro se filing. 7 Further,
Petitioner's filing is an attempt to amend the Petition to include additional facts. 8 | However, the
time to amend as a matter of course has long since expired. See Fed. R. Civ. P. 9 | 15(a)(1).! Thus,
Petitioner can amend "only with the opposing party's written consent or the 10 | court's leave."
Fed. R. Civ. P. 15(a)(2). Petitioner's failure to obtain either leave from the Court 11 or consent from
Respondent further justifies striking the supplemental petition. 12 Accordingly, it is ORDERED:
13 The Clerk of Court shall STRIKE Petitioner's Supplemental Petition (Doc. No. 52) from 14 |
the record. 15 '© | Dated: _ April 22, 2025 Mihaw. Wh. foareh Zaskth

17 HELENA M. BARCH-KUCHTA

ig UNITED STATES MAGISTRATE JUDGE

19 20 21 22 23 24 25 26 27 ' Under Rule 12 of the Rules Governing Section 2254 Cases in the
United States District Court, the Federal Rules of Civil Procedure are to be applied to habeas
proceedings, to the exten that 28 | they are not inconsistent with the habeas statutory provisions
and habeas rules.

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