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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE CARLOS PEREZ,

Petitioner,

No. CIV S-09-2278 JAM EFB P

vs.

KELLY HARRINGTON, Warden,

Respondent.

FINDINGS AND RECOMMENDATIONS

\_\_\_\_\_ /

Petitioner is a state prisoner without counsel seeking a writ of habeas corpus. *See* 28 U.S.C. § 2254.

On October 13, 2010, respondent moved to dismiss the petition as containing unexhausted claims. On June 17, 2010, the court informed petitioner of the requirements for filing an opposition to any motion to dismiss. On December 7, 2010, the court again admonished petitioner of his obligation to file an opposition or statement of no opposition. That order gave petitioner an additional 30 days to file an opposition or statement of non-opposition and warned him that failure to do so would result in a recommendation that this action be dismissed. Petitioner was granted a further extension of thirty days to file his opposition by order filed January 12, 2011.

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1 The 30 days have passed and petitioner has not filed an opposition or a statement of no  
2 opposition nor otherwise responded to the June 30, 2010 order.

3 Accordingly, it is RECOMMENDED that this action be dismissed without prejudice.  
4 Fed. R. Civ. P. 41(b); Rule 12, Rules Governing § 2254 Cases.

5 These findings and recommendations are submitted to the United States District Judge  
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
7 after being served with these findings and recommendations, any party may file written  
8 objections with the court and serve a copy on all parties. Such a document should be captioned  
9 "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections  
10 within the specified time may waive the right to appeal the District Court's order. *Turner v.*  
11 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). In  
12 his objections petitioner may address whether a certificate of appealability should issue in the  
13 event he files an appeal of the judgment in this case. *See* Rule 11, Federal Rules Governing  
14 Section 2254 Cases (the district court must issue or deny a certificate of appealability when it  
15 enters a final order adverse to the applicant).

16 Dated: March 15, 2011.

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18 EDMUND F. BRENNAN  
19 UNITED STATES MAGISTRATE JUDGE  
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