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

JOSEPH WHITE

Petitioner,

No. CIV S-09-2900 GEB EFB (TEMP) P

vs.

MATTHEW CATE,

Respondent.

FINDINGS AND RECOMMENDATIONS

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Petitioner is a state prisoner proceeding pro se with an application for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On June 28, 2010, respondent filed a motion to dismiss. On February 2, 2011, the court ordered petitioner to file an opposition or statement of non-opposition in response to the motion to dismiss within twenty-one days. The court apprised petitioner that failure to comply with the order would result in a recommendation that this action be dismissed under Rule 41(b) of the Federal Rules of Civil Procedure. More than twenty-one days has now passed, and petitioner has not filed an opposition or statement of non-opposition to the motion.

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1 IT IS THEREFORE RECOMMENDED that this case be dismissed. *See* Fed. R. Civ. P.  
2 41(b); Rule 12, Rules Governing § 2254 Cases.

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

14 DATED: March 2, 2011.

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16 EDMUND F. BRENNAN  
17 UNITED STATES MAGISTRATE JUDGE  
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