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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DE ANDRE D. MILES,
Petitioner,
v.
R.L. GOWER,
Respondent.

No. 2:15-cv-1938 JAM DB P

FINDINGS AND RECOMMENDATIONS

By order filed May 4, 2016, petitioner’s petition was dismissed and thirty days leave to file an amended petition was granted. On August 25, 2016, based on petitioner’s change in address, the May 4, 2016 order was re-served on petitioner. On November 14, 2016, petitioner had still not filed an amended petition, so the undersigned ordered that petitioner was to file an amended petition within 20 days. Twenty days from that date have now passed, and petitioner has not filed an amended petition, or otherwise responded to the court’s order.

Pursuant to Federal Rule of Civil Procedure 41(b), a petitioner’s failure to comply with a court order can result in dismissal of his action. See also Rules Governing Section 2254 Cases, Rule 12. In the May 4 order, petitioner was advised that his failure to file a timely amended petition would result in a recommendation that this action be dismissed. In the November 14 order, petitioner was advised of this again.


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Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice pursuant to Federal Rule 41(b) for petitioner’s failure to comply with a court order.

These findings and recommendations will be submitted to United States District John A. Mendez, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. The document should be captioned “Objections to Magistrate Judge's Findings and Recommendations.” Any response to the objections shall be filed and served within seven days after service of the objections. The parties are advised that failure to file objections within the specified time may result in waiver of the right to appeal the district court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

Dated: December 7, 2016



DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

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