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CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

TAM H. NGUYEN,

Petitioner,

ORDER ACCEPTING FINDINGS AND

RECOMMENDATIONS OF U.S.

V.

THERESA CISNEROS, Acting
Warden,

Respondent.

The Court has reviewed the Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that judgment be entered dismissing the Petition without prejudice. See 28 U.S.C. § 636(b)(1). On June 16, 2021, Petitioner filed Objections to the R. & R., in which he concedes the correctness of much of the Magistrate Judge's analysis.

¹ Petitioner also filed a notice of supplemental lodgment, asking the Court to "electronically" lodge a recent habeas petition he apparently filed in the superior court and the order denying it. (Notice at 1.) He says his original copies of them are "indisposed." (Id.) But this Court does not have the ability to lodge documents it does not possess. Because the existence of these documents does not change the Court's analysis, it assumes they exist and say what Petitioner says they do.

Respondent has not responded to the Objections.

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As the Magistrate Judge correctly concluded and Petitioner does not contest, all of his claims - those raised in the original Petition as well as those he reframed in his amended reply to the Answer – are unexhausted. (See Objs. at 4 (citing R. & R. at 10-12).)² And he has not shown good cause for failing to have exhausted them in the four years this action has been pending. As the Magistrate Judge pointed out, she twice told him that he did not have to wait for this Court to rule on his stay motion to go back to state court and raise the claims there. (See R. & R. at 14-15.) He has no answer for this other than to say that "the only reason he held back and did not attempt to exhaust before the Court granted the 'stay' was because he was following the rules as he interpreted them." (Objs. at 5.) Ιn light of the Magistrate Judge's clear instructions to the contrary - which Petitioner in fact did appear to understand because after she so instructed the first time he immediately went back to state court to exhaust his original claims (see R. & R. at 14) - this bare allegation doesn't demonstrate good cause. And although he's apparently now trying to exhaust his claims (see Objs. at 2-3), he's years too late.

Having reviewed de novo those portions of the R. & R. to which Petitioner objects, the Court agrees with and accepts the findings and recommendations of the Magistrate Judge. IT THEREFORE IS ORDERED that judgment be entered dismissing the Petition without prejudice. The Court takes no position on

 $^{^{2}}$ The Court uses Petitioner's pagination even though he begins his Objections with page 2.

whether any subsequently filed federal habeas petition would be timely or otherwise procedurally proper. DATED: <u>July 14, 2021</u> U.S. DISTRICT JUDGE