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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MUHAREM KURBEGOVICH,
Petitioner,
v.
UNKNOWN POLITICIANS,
Respondents.

Case No. 1:14-cv-01202-LJO-SKO-HC
FINDINGS AND RECOMMENDATIONS
TO DISMISS THE PETITION FOR
PETITIONER'S FAILURE TO FOLLOW AN
ORDER OF THE COURT, TO DECLINE TO
ISSUE A CERTIFICATE OF
APPEALABILITY, AND TO DIRECT THE
CLERK TO CLOSE THE CASE

OBJECTIONS DEADLINE:
THIRTY (30) DAYS

Petitioner is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter has been referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b) (1) and Local Rules 302 and 304.

Pending before the Court are the petition, which was filed on July 31, 2014, and two orders to Petitioner to inform the Court within thirty days of his decision to consent to, or to decline to consent to, the jurisdiction of a Magistrate Judge in the present case. The notices were served by mail on Petitioner at his address as listed in the docket on August 4, 2014, and September 22, 2014.

I. Dismissal of the Petition

Local Rule 110 provides:

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Failure of counsel or of a party to comply with these Rules or with any order of the Court may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate... dismissal of a case." Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See, e.g. Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule); Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint); Carey v. King, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules). Here, Petitioner has repeatedly failed to respond to the Court's orders regarding consent for a period of over three months.

In determining whether to dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with local rules, the Court must consider several factors: (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3) the risk of prejudice to the respondents; (4) the public policy favoring disposition of cases on

1 their merits; and (5) the availability of less drastic alternatives.
2 Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone,
3 833 F.2d at 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at
4 53.

5 The petition in this case has been pending for a lengthy
6 period; thus, the Court finds the public's interest in expeditiously
7 resolving this litigation and the Court's interest in managing the
8 docket weigh in favor of dismissal. The third factor, risk of
9 prejudice to respondents, also weighs in favor of dismissal, since a
10 presumption of injury arises from the occurrence of unreasonable
11 delay in prosecuting an action. Anderson v. Air West, 542 F.2d 522,
12 524 (9th Cir. 1976). The fourth factor -- public policy favoring
13 disposition of cases on their merits -- is greatly outweighed by the
14 factors in favor of dismissal discussed herein. Finally, the Court
15 has reviewed the "consideration of alternatives" requirement. See,
16 Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at 132-33;
17 Henderson, 779 F.2d at 1424. Because Petitioner declines to respond
18 to the Court's repeated directives and has failed to prosecute the
19 case by refusing to indicate his voluntary choice regarding
20 jurisdiction in this proceeding, there is no effective alternative
21 to dismissal.

22 The Court concludes that dismissal is appropriate.

23 II. Certificate of Appealability

24 Unless a circuit justice or judge issues a certificate of
25 appealability, an appeal may not be taken to the Court of Appeals
26 from the final order in a habeas proceeding in which the detention
27 complained of arises out of process issued by a state court. 28
28 U.S.C. § 2253(c)(1)(A); Miller-El v. Cockrell, 537 U.S. 322, 336

1 (2003). A district court must issue or deny a certificate of
2 appealability when it enters a final order adverse to the applicant.
3 Rule 11(a) of the Rules Governing Section 2254 Cases.

4 A certificate of appealability may issue only if the applicant
5 makes a substantial showing of the denial of a constitutional right.
6 § 2253(c)(2). Under this standard, a petitioner must show that
7 reasonable jurists could debate whether the petition should have
8 been resolved in a different manner or that the issues presented
9 were adequate to deserve encouragement to proceed further. Miller-
10 El v. Cockrell, 537 U.S. at 336 (quoting Slack v. McDaniel, 529 U.S.
11 473, 484 (2000)). A certificate should issue if the Petitioner
12 shows that jurists of reason would find it debatable whether: (1)
13 the petition states a valid claim of the denial of a constitutional
14 right, and (2) the district court was correct in any procedural
15 ruling. Slack v. McDaniel, 529 U.S. 473, 483-84 (2000).

16 In determining this issue, a court conducts an overview of the
17 claims in the habeas petition, generally assesses their merits, and
18 determines whether the resolution was debatable among jurists of
19 reason or wrong. Id. An applicant must show more than an absence
20 of frivolity or the existence of mere good faith; however, the
21 applicant need not show that the appeal will succeed. Miller-El v.
22 Cockrell, 537 U.S. at 338.

23 Here, it does not appear that reasonable jurists could debate
24 whether the petition should have been resolved in a different
25 manner. Petitioner has not made a substantial showing of the denial
26 of a constitutional right. Accordingly, the Court should decline to
27 issue a certificate of appealability.

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1 III. Recommendations

2 Accordingly, it is RECOMMENDED that:

3 1) The petition be DISMISSED without prejudice for Petitioner's
4 failure to follow the orders of the Court and failure to prosecute
5 the action;

6 2) The Court DECLINE to issue a certificate of appealability;
7 and

8 3) The Clerk be DIRECTED to close the action because an order
9 of dismissal would terminate the proceeding in its entirety.

10 These findings and recommendations are submitted to the United
11 States District Court Judge assigned to the case, pursuant to the
12 provisions of 28 U.S.C. § 636 (b) (1) (B) and Rule 304 of the Local
13 Rules of Practice for the United States District Court, Eastern
14 District of California. Within thirty (30) days after being served
15 with a copy, any party may file written objections with the Court
16 and serve a copy on all parties. Such a document should be
17 captioned "Objections to Magistrate Judge's Findings and
18 Recommendations." Replies to the objections shall be served and
19 filed within fourteen (14) days (plus three (3) days if served by
20 mail) after service of the objections. The Court will then review
21 the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b) (1) (C).
22 The parties are advised that failure to file objections within the
23 specified time may waive the right to appeal the District Court's
24 order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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26 IT IS SO ORDERED.

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Dated: November 6, 2014

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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