



1 Court's habeas jurisdiction.

2 Quite simply, there is no legal basis whatsoever for entry of a default judgment in habeas  
3 corpus cases based upon a violation of a court-imposed deadline or any other reason. Title 28 U.S.C.  
4 § 2241(c)(3) provides that the writ of habeas corpus shall not extend to a prisoner unless he is "in  
5 custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2243  
6 provides that "the court shall summarily hear and determine the facts, and dispose of the matter as law  
7 and justice require." 28 U.S.C. § 2243. In Townsend v. Sam, 372 U.S. 293, 312 (1963), the Supreme  
8 Court stated as follows: "State prisoners are entitled to relief on federal habeas corpus only upon  
9 proving that their detention violates the fundamental liberties of the person, safeguarded against state  
10 action by the Federal Constitution."

11 Thus, the burden to show that he is in custody in violation of the Constitution of the United  
12 States *is on Petitioner*. The failure of State officials to file a timely response does not relieve  
13 Petitioner of his burden of proof. **Default judgments in habeas corpus proceedings are not**  
14 **available as a procedure to empty State prisons**. See, e.g., Gordon v. Duran, 895 F.2d 610, 612 (9th  
15 Cir.1990); see also Bleitner v. Welborn, 15 F.3d 652, 653 (7th Cir. 1994) (respondent's failure to  
16 timely respond to petition does not entitle petitioner to default); United States ex rel. Mattox v. Scott,  
17 507 F.2d 919, 924 (7<sup>th</sup> Cir. 1974)(holding that default judgment is not an appropriate remedy for a  
18 state's failure to answer a habeas corpus petition); Bermudez v. Reid, 733 F.2d 18 (2<sup>nd</sup> Cir. 1984).

19 **ORDER**

20 For the foregoing reasons, the Court **ORDERS** that Petitioner's motion for liberal construction  
21 (Doc. 13), is DENIED.

22  
23 IT IS SO ORDERED.

24 Dated: August 26, 2015

/s/ Jennifer L. Thurston  
25 UNITED STATES MAGISTRATE JUDGE