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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DONALD DOUGLAS BONE,	)	Case No.: 1:14-cv-01747-JLT
Petitioner,	)	
v.	)	ORDER DENYING PETITIONER’S MOTION FOR
	)	ENTRY OF DEFAULT JUDGMENT (Doc. 14)
ERIC HOLDER,	)	ORDER TO RESPONDENT TO SHOW CAUSE
Respondent.	)	WHY SANCTIONS SHOULD NOT BE IMPOSED
	)	FOR FAILURE TO COMPLY WITH THE COURT’S
	)	ORDERS

Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

**PROCEDURAL HISTORY**

The instant petition was filed on October 30, 2014, in the Central District of California. (Doc. 1). The matter was transferred to this Court on November 7, 2014. (Doc. 7). On November 25, 2014, the Court ordered Respondent to file a response to the petition within sixty days, and the Clerk of the Court docketed the due date for a response as January 29, 2015. (Doc. 11). On the same date, the Clerk of the Court served Respondent an order for consent or request for reassignment, which was due on or before December 29, 2014. To date, Respondent has not responded to either order. On February 20, 2015, Petitioner filed the instant motion for default judgment, requesting entry of default for Respondent’s failure to comply with the Court’s prior orders. (Doc. 14).

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1 **DISCUSSION**

2 A. Motion for Entry of Default Judgment

3 Petitioner contends that he is entitled to entry of judgment or to a default judgment because  
4 respondent did not timely comply with the Court-imposed deadline to submit a response to the merits  
5 of Petitioner’s claims and for submission of a request for consent or reassignment. The Court rejects  
6 this contention.

7 There is no legal basis for entry of a default judgment in habeas corpus cases. The failure to  
8 respond to claims raised in a petition for habeas corpus does not entitle the petitioner to a default  
9 judgment. See Bermudez v. Reid, 733 F.2d 18, 21 (2d Cir.), cert. denied, 469 U.S. 874, 105 S.Ct. 232,  
10 83 L.Ed.2d 161 (1984); Broussard v. Lippman, 643 F.2d 1131, 1134 (5th Cir.), cert. denied, 452 U.S.  
11 920, 101 S.Ct. 3059, 69 L.Ed.2d 425 (1981); Goodman v. Keohane, 663 F.2d 1044, 1047 n. 4 (11th  
12 Cir.1981); Allen v. Perini, 424 F.2d 134, 138 (6th Cir.), cert. denied, 400 U.S. 906, 91 S.Ct. 147, 27  
13 L.Ed.2d 143 (1970); cf. Ruiz v. Cady, 660 F.2d 337, 341 (7th Cir.1981) (within district court's  
14 discretion to enter default judgment for petitioner if government's failure to respond creates excessive  
15 delay in the proceedings).

16 Title 28 U.S.C. § 2241(c)(3) provides that the writ of habeas corpus shall not extend to a  
17 prisoner unless he is “in custody in violation of the Constitution or laws or treaties of the United  
18 States.” 28 U.S.C. § 2243 provides that “the court shall summarily hear and determine the facts, and  
19 dispose of the matter as law and justice require.” 28 U.S.C. § 2243. In Townsend v. Sam, 372 U.S.  
20 293, 312 (1963), the Supreme Court stated as follows: “State prisoners are entitled to relief on federal  
21 habeas corpus only upon proving that their detention violates the fundamental liberties of the person,  
22 safeguarded against state action by the Federal Constitution.” Thus, the burden to show he is in  
23 custody in violation of the Constitution of the United States *is on Petitioner*. The failure of State  
24 officials to file a timely response does not relieve Petitioner of his burden of proof. Default judgments  
25 in habeas corpus proceedings are not available as a procedure to empty state prisons. See, e.g., Gordon  
26 v. Duran, 895 F.2d 610, 612 (9th Cir.1990); see also Bleitner v. Welborn, 15 F.3d 652, 653 (7th Cir.  
27 1994) (respondent’s failure to timely respond to petition does not entitle petitioner to default); United  
28 States ex rel. Mattox v. Scott, 507 F.2d 919, 924 (7<sup>th</sup> Cir. 1974)(holding that default judgment is not an



**ORDER TO SHOW CAUSE**

For the foregoing reasons, Respondent is ORDERED TO SHOW CAUSE within 15 days of the date of service of this Order why sanctions should not be imposed for failure to comply with the Court's orders.

IT IS SO ORDERED.

Dated: February 24, 2015

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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