

1 expressly emphasized that Petitioner’s failure to respond could result in a recommendation that the
2 petition be dismissed. On February 5, 2016, the Order to Show Cause sent to Petitioner was returned
3 as “undeliverable, not in custody.”

4 DISCUSSION

5 In determining whether to dismiss an action for lack of prosecution, the court must consider
6 several factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
7 manage its docket; (3) the risk of prejudice to the Respondents; (4) the public policy favoring
8 disposition of cases on their merits; and, (5) the availability of less drastic alternatives. Henderson v.
9 Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986); Carey v. King, 856 F.2d 1439 (9th Cir. 1988).

10 The Court finds that the public’s interest in expeditiously resolving this litigation and the
11 Court’s interest in managing the docket weigh in favor of dismissal, as this case has been pending
12 since November 23, 2015 with no response whatever from Petitioner after that date. The third factor,
13 risk of prejudice to Respondent, also weighs in favor of dismissal, since a presumption of injury arises
14 from the occurrence of unreasonable delay in prosecuting an action. Anderson v. Air West, 542 F.2d
15 522, 524 (9th Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their
16 merits -- is greatly outweighed by the factors in favor of dismissal discussed herein. Finally, a court’s
17 warning to a party that failure to obey the court’s order will result in dismissal satisfies the
18 “consideration of alternatives” requirement. Ferdik v. Bonzelet, 963 F.2d at 1262; Malone, 833 at
19 132-33; Henderson, 779 F.2d at 1424. The Court’s order of May 24, 2005, expressly stated:
20 “Petitioner is admonished that his failure to comply with this order may result in an order dismissing
21 the petition pursuant to Local Rule 110.” (Doc. 6, p. 1). Thus, Petitioner had adequate warning that
22 dismissal would result from his noncompliance with the Court’s order. Finally, it appears that
23 Petitioner is no longer in custody of ICE, which, if true, would make the petition moot. Accordingly,
24 the Court will recommend that the petition be dismissed for failure to prosecute.

25 ORDER

26 For the foregoing reasons, the Court **ORDERS** the Clerk of the Court to assign a United States
27 District Judge to this case.

1 **RECOMMENDATION**

2 Accordingly, the Court RECOMMENDS that the Petition for Writ of Habeas Corpus be
3 DISMISSED for failure to prosecute.

4 This Findings and Recommendation is submitted to the United States District Court Judge
5 assigned to this case, pursuant to the provisions of 28 U.S.C. section 636 (b)(1)(B) and Rule 304 of the
6 Local Rules of Practice for the United States District Court, Eastern District of California. **Within 21**
7 **days** after being served with a copy, any party may file written objections with the court and serve a
8 copy on all parties. Such a document should be captioned “Objections to Magistrate Judge’s Findings
9 and Recommendation.” Replies to the objections shall be served and filed **within 10 days** (plus three
10 days if served by mail) after service of the objections. The Court will then review the Magistrate
11 Judge’s ruling pursuant to 28 U.S.C. § 636 (b)(1)(C). The parties are advised that failure to file
12 objections within the specified time may waive the right to appeal the District Court’s order. Martinez
13 v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14
15 IT IS SO ORDERED.

16 Dated: March 8, 2016

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