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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DANIEL CERVANTES,

Petitioner,

v.

TIM PEREZ,

Respondent.

Case No. 1:16-cv-00033-LJO-EPG-HC

**FINDINGS AND RECOMMENDATION TO
DISMISS PETITION FOR WRIT OF
HABEAS CORPUS WITHOUT PREJUDICE**

Petitioner Daniel Cervantes filed a federal petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has not responded to the Court’s order and mail has been returned as undeliverable more than sixty-three days ago. Therefore, for the reasons described below, the Court will recommend this case be dismissed without prejudice for failure to prosecute and failure to obey the Court’s order.

I.

BACKGROUND

On January 6, 2016, Petitioner filed the instant federal habeas petition challenging his 2012 Kern County Superior Court residential burglary and receiving stolen property convictions for which he was sentenced to an imprisonment term of eight years. (ECF No. 1). On May 16, 2018, the Court issued an order of reassignment and served the order on Petitioner. (ECF No. 15). On May 24, 2018, the order of reassignment was returned to the Court as undeliverable with a notation of “discharged.”

1 On June 19, 2018, Respondent submitted the most current address Respondent has on file
2 for Petitioner. The address was located in the state parole office’s files, but Petitioner has been
3 discharged from parole. (ECF No. 17). On June 21, 2018, the Court issued an order directing
4 Petitioner to file a change of address within thirty days, and served the order by mail at the
5 address provided by Respondent. (ECF No. 19). Over thirty days have passed, and Petitioner has
6 failed to respond to the Court’s order.

7 **II.**

8 **DISCUSSION**

9 Pursuant to Federal Rule of Civil Procedure 41(b), a district court may dismiss an action
10 for failure to prosecute, failure to comply with the Federal Rules of Civil Procedure, failure to
11 comply with the court’s local rules, or failure to comply with the court’s orders. See, e.g.,
12 Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991) (recognizing federal court’s inherent power
13 to “act *sua sponte* to dismiss a suit for failure to prosecute”); Hells Canyon Preservation Council
14 v. U.S. Forest Serv., 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an
15 action pursuant to Federal Rule of Civil Procedure 41(b) *sua sponte* for a plaintiff’s failure to
16 prosecute or comply with the rules of civil procedure or the court’s orders).

17 It is Petitioner’s responsibility to keep the court apprised of his current address at all
18 times. See Local Rule 183(b). Absent notice of a party’s change of address, service of documents
19 at the prior address of the party is fully effective. Local Rule 182(f). Furthermore, if mail
20 directed to a *pro se* petitioner is returned by the U.S. Postal Service, and if the petitioner fails to
21 notify the court within sixty-three days thereafter of a current address, the court may dismiss the
22 action without prejudice for failure to prosecute. Local Rule 183(b).

23 Petitioner has not notified the Court of his current address. It has been over sixty-three
24 days since mail was returned by the U.S. Postal Service with a notation of “discharged.” Further,
25 Petitioner has not responded to the Court’s June 21, 2018 order, which was mailed to the most
26 current address Respondent has on file for Petitioner. Therefore, the petition should be dismissed
27 without prejudice for failure to prosecute and failure to obey the Court’s order.

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1 **III.**

2 **RECOMMENDATION**

3 Accordingly, the Court HEREBY RECOMMENDS that the petition for writ of habeas
4 corpus be DISMISSED WITHOUT PREJUDICE for failure to prosecute and failure to obey the
5 Court's order.

6 This findings and recommendation is submitted to the assigned United States District
7 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
8 Rules of Practice for the United States District Court, Eastern District of California. Within
9 fourteen (14) days after service of the findings and recommendation, any party may file written
10 objections with the Court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's findings and recommendation." Replies to the objections shall
12 be served and filed within fourteen (14) days after service of the objections. The assigned United
13 States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28 U.S.C.
14 § 636(b)(1)(C). The parties are advised that failure to file objections within the specified time
15 may waive the right to appeal the District Court's order. Wilkerson v. Wheeler, 772 F.3d 834,
16 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

17 IT IS SO ORDERED.

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19 Dated: August 8, 2018

20 /s/ Eric P. Groj
21 UNITED STATES MAGISTRATE JUDGE
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