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8	UNITED STATES DISTRICT COURT	
9	EASTERN DIST	RICT OF CALIFORNIA
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11	Ignacio Gonzalez,	No. 1:16-cv-01871-SKO HC
12	Petitioner,	
13	v.	FINDINGS AND RECOMMENDATIONS TO DISMISS PETITION FOR FAILURE
14	David Davey,	TO OBEY A COURT ORDER
15	Respondent.	COURT CLERK TO ASSIGN DISTRICT JUDGE
16 17		
17		(Doc. 1)
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20		nacio Gonzalez, a state prisoner proceeding <i>pro se</i> ,
21		uant to 28 U.S.C. § 2254. The Court referred the
22		U.S.C. § 636(b)(1) and Local Rules 302 and 304.
23	In his habeas corpus petition, Petitioner move	
24	resolution of unexhausted claims in the Califo	
25		ed Petitioner's motion for stay and abeyance, (Doc.
26	3), because the Court found that Petitioner's petition met the requirements for a stay pursuant to	
27	<i>Rhines v. Weber</i> , 544 U.S. 269 (2005). Federal district courts may stay a habeas corpus petition that has not been fully exhausted, if (1) the petitioner demonstrates good cause for failing to have	
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1 first exhausted all claims in state court; (2) the claims potentially have merit; and (3) petitioner 2 has not been dilatory in pursuing the litigation. Id. at 277-78. The Court found that because 3 nothing in the record suggests Petitioner intentionally or maliciously failed to pursue his 4 meritorious claims, good cause existed to grant a stay and abeyance under *Rhines*. (Doc. 3).

5 In granting the stay and abeyance, the Court directed Petitioner to file a status report 6 within thirty days in order to advise the Court of the status of the state court proceedings. 7 Thereafter, Petitioner was required to file a status report every ninety days. *Id.*

8 Petitioner timely filed his first status report on February 27, 2017. (Doc. 5). On June 12, 9 2017, the Court ordered Petitioner to show cause why he should not be sanctioned for failure to 10 file a status report within ninety days after filing the previous report as ordered by the Court. 11 (Doc. 6). On June 29, 2017, the Court received a notice from Pastor Rick Riley of Thief on the 12 Cross Prison Ministry, stating that Petitioner was unable to file a status report because his legal property was sequestered when he was transferred to another prison. (Doc. 7). The Court took 13 14 notice of documents pertaining to Petitioner's ongoing state proceedings filed with Pastor Riley's notice and discharged the order to show cause on July 21, 2017.¹ (Doc. 8). The Court again 15 16 ordered Petitioner to file a status report within thirty days and every ninety days thereafter. Id. 17 Petitioner timely filed a status report on August 9, 2017, stating that his petition for writ of 18 habeas corpus was denied by the Kern County Superior Court and he was appealing to the

19 California Court of Appeal. (Doc. 9). Although more than ninety days have passed since August

20 9, 2017, Petitioner has not filed a status report. Accordingly, on December 11, 2017, the Court

21 issued a second order to show cause, within 21 days, why the petition should not be dismissed for 22 failure to obey a court order. Petitioner failed to respond to the order.

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The Court has the discretion to impose any and all sanctions authorized by statute or rule 24 or within the inherent power of the Court, including dismissal of an action based on Petitioner's 25 failure to comply with a court order. F.R.Civ.P. 11; Local R. 110. Because Petitioner has failed to follow the Court's order a second time, the Court recommends dismissing the petition.

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²⁷ ¹ The Court cautioned Petitioner that while Pastor Riley may assist him in preparing documents for filing, Pastor Riley is not an attorney, and may not act on behalf of Petitioner, who is proceeding pro se. (Doc. 8); see Simon v. 28 Hartford Life, Inc., 546 F.3d 661, 664 (9th Cir. 2008).

1	Certificate of Appealability
2	A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
3	district court's denial of his petition, but may only appeal in certain circumstances. <i>Miller-El v</i> .
4	Cockrell, 537 U.S. 322, 335-36 (2003). The controlling statute in determining whether to issue a
5	certificate of appealability is 28 U.S.C. § 2253, which provides:
6 7	(a) In a habeas corpus proceeding or a proceeding under section 2255
7 8	before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
9	(b) There shall be no right of appeal from a final order in a proceeding
10	to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the
11	United States, or to test the validity of such person's detention pending removal proceedings.
12	(c) (1) Unless a circuit justice or judge issues a certificate of
13	appealability, an appeal may not be taken to the court of appeals from—
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15 16	(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
17	(B) the final order in a proceeding under section 2255.
18	(2) A certificate of appealability may issue under paragraph (1)
19	only if the applicant has made a substantial showing of the denial of a constitutional right.
20	(3) The certificate of appealability under paragraph (1) shall
21 22	indicate which specific issues or issues satisfy the showing required by paragraph (2).
22	If a court denies a habeas petition, the court may only issue a certificate of
24	appealability "if jurists of reason could disagree with the district court's resolution of his
25	constitutional claims or that jurists could conclude the issues presented are adequate to deserve
26	encouragement to proceed further." Miller-El, 537 U.S. at 327; Slack v. McDaniel, 529 U.S. 473,
27	484 (2000). Although the petitioner is not required to prove the merits of his case, he must
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1	demonstrate "something more than the absence of frivolity or the existence of mere good faith on
2	his part." <i>Miller-El</i> , 537 U.S. at 338.
3	In the present case, the Court finds that reasonable jurists would not find the Court's
4	determination that Petitioner is not entitled to federal habeas corpus relief debatable, wrong, or
5 6	deserving of encouragement to proceed further. Accordingly, the Court declines to issue a
0 7	certificate of appealability.
, 8	Recommendation
9	For the foregoing reasons, the undersigned hereby recommends that the Court dismiss the
10	petition without prejudice for failure to obey a court order and decline to issue a certificate of
11	appealability.
12	These Findings and Recommendations will be submitted to the United States District
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14	Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within thirty
15	(30) days after being served with these Findings and Recommendations, either party may file
16	written objections with the Court. The document should be captioned "Objections to Magistrate
17	Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and
18	filed within fourteen (14) days after service of the objections. The parties are advised that failure
19 20	to file objections within the specified time may constitute waiver of the right to appeal the District
20 21	Court's order. Wilkerson v. Wheeler, 772 F.3d 834, 839 ((9th Cir. 2014) (citing Baxter v.
21	Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).
23	The Court Clerk is hereby directed to assign a district judge to this action.
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25	IT IS SO ORDERED.
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27	Dated: January 3, 2018 Isl Sheila K. Oberto UNITED STATES MAGISTRATE JUDGE
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