

1 is a genuine need for trial.”). Thus, its purpose is to prevent the need for trial over facts that are
2 not legitimately in dispute. Petitioner has filed a petition for writ of habeas corpus. “[T]he writ
3 of habeas corpus is not a proceeding in the original criminal prosecution but an independent civil
4 suit.” Riddle v. Dyche, 262 U.S. 333, 335-336 (1923); see also Keeney v. Tamayo-Reyes, 504
5 U.S. 1, 14 (1992) (O’Connor, J., dissenting). Modern habeas corpus procedure has the same
6 function as an ordinary appeal. Anderson v. Butler, 886 F.2d 111, 113 (5th Cir. 1989); O’Neal v.
7 McAnnich, 513 U.S. 440, 442 (1995). In a habeas proceeding, the petitioner does not proceed to
8 “trial.” Since the passage of AEDPA, a habeas petitioner is rarely entitled to an evidentiary
9 hearing. Cullen v. Pinholster, 563 U.S. 170, 203 (2011). Whatever beneficial role summary
10 judgment may have played in habeas proceedings prior to AEDPA is now virtually non-existent.
11 For all practical purposes, summary judgment is equivalent to the Court’s making a determination
12 on the merits of a habeas petition. Thus, motions for summary judgment are inappropriate in
13 federal habeas proceedings. See, e.g., Johnson v. Siebel, 2015 WL 9664958, at *1 n.2 (C.D.Cal.
14 Aug. 4, 2015); Mulder v. Baker, 2014 WL 4417748, at *1–*2 (D.Nev. Sept. 8, 2014); Gussner v.
15 Gonzalez, 2013 WL 458250, at *3–*5 (N.D.Cal. Feb. 5, 2013); Ordway v. Miller, 2013 WL
16 1151985, at *1 (E.D.Cal. Mar. 19, 2013).

17 **ORDER**

18 The Clerk of Court is **DIRECTED** to assign a District Judge to the case.

19 **RECOMMENDATION**

20 For the foregoing reasons, the Court **RECOMMENDS** that the motion for summary
21 judgment be **DENIED**.

22 This Findings and Recommendation is submitted to the United States District Court Judge
23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the
24 Local Rules of Practice for the United States District Court, Eastern District of California. Within
25 twenty-one days after being served with a copy of this Findings and Recommendation, any party
26 may file written objections with the Court and serve a copy on all parties. Such a document
27 should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Replies
28 to the Objections shall be served and filed within ten court days after service of the Objections.

1 The Court will then review the Magistrate Judge's ruling pursuant to 28 U.S.C. § 636 (b)(1)(C).
2 The parties are advised that failure to file objections within the specified time may waive the right
3 to appeal the Order of the District Court. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4
5 IT IS SO ORDERED.

6 Dated: May 19, 2017

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28