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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

DAE HENDERSON, Jr.,  
  
                                Petitioner,  
  
                                v.  
  
HUNTER ANGLEA, Warden of Sierra  
Conservation Center  
  
                                Respondent.

No. 1:18-cv-00143-AWI-SKO HC

**FINDINGS AND RECOMMENDATION  
TO DENY MOTION TO STAY  
PROCEEDINGS AND COMPEL  
ARBITRATION**

**(Doc. 21)**

Petitioner, Dae Henderson, Jr., is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently before the Court is Petitioner’s motion to stay proceedings to compel arbitration. Respondent has not filed a response to the motion.

Petitioner requests the Court stay these proceedings and compel Respondent to “perform under agreement to arbitrate.” (Doc. 21 at 1.) Respondent contends the claims in this case are “subject to arbitration” and Respondent is “in default in proceeding under arbitration.” Id. at 2.

The Supreme Court has held that "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody." Preiser v. Rodriguez, 411 U.S. 475, 484 (1973). A petitioner must demonstrate that the adjudication of his claim in state court "resulted in a decision

1 that was contrary to, or involved an unreasonable application of, clearly established Federal law,  
2 as determined by the Supreme Court of the United States; or resulted in a decision that was based  
3 on an unreasonable determination of the facts in light of the evidence presented in the State court  
4 proceeding." 28 U.S.C. §§ 2254(d)(1), (2).

5  
6 In his second amended petition for writ of habeas corpus, Petitioner claims the prosecutor  
7 in his criminal case initiated criminal proceedings without presenting an indictment to a Grand  
8 Jury. (Doc. 14 at 4.) As Petitioner's claim that the state violated his constitutional rights is not  
9 subject to arbitration, the Court recommends denying Petitioner's motion to stay proceedings and  
10 compel arbitration.

11 These Findings and Recommendations will be submitted to the United States District  
12 Judge assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty**  
13 **(30) days** after being served with these Findings and Recommendations, either party may file  
14 written objections with the Court. The document should be captioned "Objections to Magistrate  
15 Judge's Findings and Recommendations." Replies to the objections, if any, shall be served and  
16 filed within **fourteen (14) days** after service of the objections. The parties are advised that failure  
17 to file objections within the specified time may constitute waiver of the right to appeal the District  
18 Court's order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v.*  
19 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

22  
23 IT IS SO ORDERED.

24 Dated: May 14, 2018

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE