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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT GONZALES,  
Petitioner,  
v.  
ANDRE MATEVOUSIAN,  
Respondent.

No. 1:18-cv-00499-DAD-SKO HC

**FINDINGS AND RECOMMENDATIONS  
TO DENY PETITIONER’S MOTION FOR  
SUMMARY JUDGMENT**  
**ORDER DIRECTING RESPONDENT  
TO RE-SERVE THE ANSWER ON  
PETITIONER**  
**(Doc. 19)**

Petitioner, Robert Gonzales, is a federal prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner filed his petition on March 26, 2018. On June 6, 2018, as ordered, Respondent filed a response to the petition in the form of a motion to dismiss. (Doc. 18.)

Presently before the Court is Petitioner’s “Ex Parte Motion for Summary Judgment Pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, Based on Respondent’s Failure to File an Answer, as Ordered,” which was filed on June 26, 2018. (Doc. 19.) Petitioner requests that the Court grant his motion for summary judgment based on Respondent’s failure to file an answer to

1 his petition. *Id.*

2 While the Federal Rules of Civil Procedure may be applied to habeas proceedings,  
3 Petitioner's motion for summary judgment is not appropriate in this instance. *See* Rule 12, Rules  
4 Governing Section 2254 Cases. The Court ordered Respondent to address the merits of Petitioner's  
5 claims, which Respondent has done; therefore, the undersigned recommends denying Petitioner's  
6 motion.  
7

8 Petitioner's traverse is currently due on June 21, 2018.

9 Respondent's answer contains a declaration by C. Buxbaum certifying that the motion to  
10 dismiss was mailed to Petitioner on June 6, 2018. Because it appears Petitioner did not receive it,  
11 the Court will order Respondent to re-serve the answer to Petitioner by July 6, 2018.  
12

### 13 CONCLUSION AND RECOMMENDATION

14 Based on the foregoing, the undersigned recommends the Court deny Petitioner's Motion  
15 for summary judgment.

16 These Findings and Recommendations will be submitted to the United States District Judge  
17 assigned to the case, pursuant to the provisions of 28 U.S.C § 636(b)(1). Within **thirty (30) days**  
18 after being served with these Findings and Recommendations, either party may file written  
19 objections with the Court. The document should be captioned "Objections to Magistrate Judge's  
20 Findings and Recommendations." Replies to the objections, if any, shall be served and filed within  
21 **fourteen (14) days** after service of the objections. The parties are advised that failure to file  
22 objections within the specified time may constitute waiver of the right to appeal the District Court's  
23 order. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 ((9th Cir. 2014) (citing *Baxter v. Sullivan*, 923  
24 F.2d 1391, 1394 (9th Cir. 1991)).  
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27 IT IS SO ORDERED.  
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Dated: July 9, 2018

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE