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6 UNITED STATES DISTRICT COURT  
7 FOR THE EASTERN DISTRICT OF CALIFORNIA  
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9 JOSE RAUL FLORES,  
10  
11 Petitioner,  
12 v.  
13 DEAN BORDERS,  
14 Respondent.

Case No. 1:18-cv-00690-DAD-JDP  
FINDINGS AND RECOMMENDATIONS  
TO GRANT RESPONDENT’S MOTION TO  
DISMISS  
ECF No. 10  
OBJECTIONS, IF ANY, DUE IN 14 DAYS

15 Petitioner Jose Raul Flores is proceeding without counsel on a petition for a writ of  
16 habeas corpus under 28 U.S.C. § 2254. This court issued an order requiring respondent to file a  
17 response to the petition. ECF No. 4. On August 13, 2018, respondent filed a motion to dismiss  
18 setting forth several arguments as to why this case should be dismissed. ECF No. 10.

19 Petitioner filed no response and on October 12, 2018, the court ordered petitioner to respond  
20 within 21 days. ECF No. 13. Petitioner again failed to respond.

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

2 Here, petitioner was served with respondent's March 27, 2018 motion to dismiss, ECF  
3 No. 10, and the court's October 12, 2018 order, ECF No. 13, directing him to file a response at  
4 the address petitioner had listed on the docket. Petitioner failed to respond.

5 We therefore recommend that the petition be dismissed without prejudice for failure to  
6 prosecute and failure to obey the court's order.

7 For these reasons, it is recommended that:

- 8 1. the petition be dismissed without prejudice for failure to prosecute and failure to  
9 obey the court's order; and
- 10 2. the clerk be directed to close this case.

11 These findings and recommendations will be submitted to the U.S. district judge  
12 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen  
13 (14) days of service of these findings and recommendations, plaintiff may file written  
14 objections with the court. If plaintiff files such objections, he should do so in a document  
15 captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is  
16 advised that failure to file objections within the specified time may result in the waiver of rights  
17 on appeal. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014) (citing *Baxter v.*  
18 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

19  
20 IT IS SO ORDERED.

21 Dated: November 20, 2018

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23 UNITED STATES MAGISTRATE JUDGE