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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES COLE,  
  
                                Petitioner,  
  
                                v.  
  
UNITED STATES OF AMERICA,  
  
                                Respondent.

No. 1:18-cv-00731-LJO-JLT (HC)  
  
**ORDER CONSTRUING PETITIONER’S  
MOTION TO WITHDRAW PETITION AS  
NOTICE OF VOLUNTARY DISMISSAL  
(Doc. No. 5)**  
  
**ORDER DISMISSING PETITION FOR  
WRIT OF HABEAS CORPUS**  
  
**ORDER DIRECTING CLERK OF COURT  
TO CLOSE CASE**  
  
**[NO CERTIFICATE OF APPEALABILITY  
IS REQUIRED]**

Petitioner is a federal prisoner proceeding in propria persona with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. On June 6, 2018, the Magistrate Judge assigned to the case issued Findings and Recommendation to dismiss the petition for lack of jurisdiction. (Doc. No. 4.) This Findings and Recommendation was served upon all parties and contained notice that any objections were to be filed within twenty-one days from the date of service of that order. On June 18, 2018, Petitioner filed a motion to withdraw the petition.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure,<sup>1</sup> “the [petitioner] may

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<sup>1</sup> Rule 12 of the Rules Governing Section 2254 Cases provides that “[t]he Federal Rules of Civil Procedure, to the extent that they are not inconsistent with any statutory provision or these rules, may be applied to a proceeding under

1 dismiss an action without a court order by filing: a notice of dismissal before the opposing party  
2 serves either an answer or a motion for summary judgment . . . .” The filing of a notice of voluntary  
3 dismissal is “effective on filing, no court order is required, the parties are left as though no action  
4 had been brought, and the district court lacks jurisdiction to do anything about it.” *Commercial*  
5 *Space Management Co., Inc., v. Boeing Co., Inc.*, 193 F.3d 1074, 1078 (9th Cir. 1999). In this case,  
6 Petitioner is requesting the petition be withdrawn. The Court hereby CONSTRUES his motion as  
7 a notice of voluntary dismissal under Rule 41(a)(1). Respondent has not yet filed an answer or  
8 motion for summary judgment. Therefore, under Rule 41(a)(1), the petition must be dismissed.

9 In the event a notice of appeal is filed, a certificate of appealability is not required because  
10 this is not a final order in a habeas proceeding in which the detention complained of arises out of  
11 process issued by a State court. *Forde v. U.S. Parole Commission*, 114 F.3d 878 (9th Cir. 1997);  
12 *see Ojo v. INS*, 106 F.3d 680, 681-682 (5th Cir. 1997); *Bradshaw v. Story*, 86 F.3d 164, 166 (10th  
13 Cir. 1996).

14 Accordingly, the Court orders as follows:

- 15 1. Petitioner’s motion to withdraw the petition is CONSTRUED as a notice of  
16 voluntary dismissal;
- 17 2. The petition for writ of habeas corpus is DISMISSED;
- 18 3. The Clerk of Court is DIRECTED to CLOSE the case; and,
- 19 4. In the event a notice of appeal is filed, no certificate of appealability is required.

20 This order terminates the action in its entirety.

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22 IT IS SO ORDERED.

23 Dated: July 10, 2018

/s/ Lawrence J. O’Neill  
24 UNITED STATES CHIEF DISTRICT JUDGE

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these rules.”