

1 a dismissal of a case when a litigant does not keep the court apprised on his address.” (*Id.*, citing
2 *Carey v. King*, 856 F.2d 1439 (9th Cir. 1988).) Therefore, the magistrate judge recommended the
3 action be dismissed without prejudice. (*Id.* at 3.) The Court served the Findings and
4 Recommendations upon Petitioner at the only address of record. The Postal Service also returned
5 the Findings and Recommendations on June 26, 2024.

6 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this
7 case. Having carefully reviewed the matter, the Court concludes the findings that Petitioner
8 failed to prosecute the action and failed to comply with the Local Rules are supported by the
9 record and proper analysis. Importantly, however, the magistrate judge did not provide any
10 analysis related to the propriety of terminating sanctions in this action. The Court must make
11 additional findings regarding terminating sanctions for Petitioner’s failure to prosecute and failure
12 to comply with the Local Rules. *See, e.g., Malone v. U.S. Postal Service*, 833 F.2d 128, 131-132
13 (9th Cir. 1987) (“The district court abuses its discretion if it imposes a sanction of dismissal
14 without first considering the impact of the sanction and the adequacy of less drastic sanctions.”
15 [citation omitted].)

16 To determine whether to impose terminating sanctions, the Court must consider several
17 factors, including: “(1) the public’s interest in expeditious resolution of litigation; (2) the court’s
18 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
19 favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions.”
20 *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute);
21 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992); *Thompson v. Housing Authority of*
22 *Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

23 The public’s interest in expeditiously resolving this litigation and the Court’s interest in
24 managing the docket weigh in favor of dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983,
25 990 (9th Cir. 1999) (“The public’s interest in expeditious resolution of litigation always favors
26 dismissal”); *Ferdik*, 963 F.2d at 1261 (recognizing that district courts have inherent interest in
27 managing their dockets without being subject to noncompliant litigants). This Court cannot, and
28 will not hold, this case in abeyance where it is unable to communicate with Petitioner. *See*

1 *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652 (9th Cir. 1991). Thus, these factors weigh in
2 favor of dismissal.

3 To determine whether the defendant suffer prejudice, the Court must examine whether
4 Petitioner’s actions impair the ability of the case to move forward or “threaten to interfere with
5 the rightful decision of the case.” *Malone*, 833 F.2d at 131 (citing *Rubin v. Belo Broadcasting*
6 *Corp.*, 769 F.2d 611, 618 (9th Cir. 1985)). Significantly, a presumption of prejudice arises when
7 a petitioner unreasonably delays the prosecution of an action. *See Anderson v. Air West*, 542 F.2d
8 522, 524 (9th Cir. 1976). Therefore, this factor also weighs in favor of dismissal.

9 The Court “abuses its discretion if it imposes a sanction of dismissal without first
10 considering the impact of the sanction and the adequacy of less drastic sanctions.” *United States*
11 *v. Nat’l Medical Enterprises, Inc.*, 792 F.2d 906, 912 (9th Cir. 1986). However, a court’s
12 warning to a party that the failure to obey could result in dismissal satisfies the “consideration of
13 alternatives” requirement. *See Malone*, 833 F.2d at 133; *Ferdik*, 963 F.2d at 1262. The Ninth
14 Circuit explained, an individual “can hardly be surprised” by a sanction of dismissal “in response
15 to willful violation of a pretrial order.” *Malone*, 833 F.2d at 133. As the magistrate judge noted,
16 the Court warned Petitioner that the action would be dismissed without prejudice if he did not
17 keep the Court informed of his mailing address. (Doc. 6 at 2, citing Doc. 2-2 at 5, ¶13.)
18 Importantly, the Court need only issue one warning to satisfy the requirements considering
19 alternative sanctions. *Ferdik*, 963 F.2d at 1262. Consequently, this factor weighs in favor of
20 dismissal of the action. *See id.*; *Henderson*, 779 F.2d at 1424.

21 Given Petitioner’s failure to prosecute the action and failure to comply with the Local
22 Rules, the policy favoring disposition of cases on their merits is outweighed by the factors in
23 favor of dismissal. *See Malone*, 833 F.2d at 133, n.2 (explaining that although “the public policy
24 favoring disposition of cases on their merits... weighs against dismissal, it is not sufficient to
25 outweigh the other four factors”). Thus, the factors identified by the Ninth Circuit weigh in favor
26 of terminating sanctions.

27 Based upon the foregoing, the Court **ORDERS**:

- 28 1. The Findings and Recommendations dated June 17, 2024 (Doc. 6) are **ADOPTED**.

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- 2. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED** without prejudice.
- 3. The Clerk of the Court is to **CLOSE** the case.

IT IS SO ORDERED.

Dated: July 9, 2024


UNITED STATES DISTRICT JUDGE