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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MILORAD OLIC,
Petitioner,
v.
JOE A. LIZARAGA.,
Respondent.

No. 2:14-cv-02120 KJM GGH

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding pro se, has filed a petition for a writ of habeas corpus under to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to Local Rule 302(c)(21).

On February 9, 2016, the district court declined to adopt the Magistrate Judge’s findings and recommendations recommending dismissal for failure to oppose respondent’s motion to dismiss and giving petitioner an opportunity to prosecute this action based on petitioner’s January 4, 2016 filing which the court construed as an “overdue opposition.” ECF No. 48. On March 25, 2016 the Magistrate Judge issued new findings and recommendations recommending that respondent’s motion to dismiss be granted on the merits, finding that to grant petitioner’s claim would not necessarily result in earlier release under controlling law at the time, and therefore that petitioner could not state a cognizable habeas claim. ECF No. 51. On September 8, 2016 the district court declined to adopt the findings and recommendations and referred the motion to

1 dismiss back to the Magistrate Judge for consideration of the Ninth Circuit’s recent opinion in
2 Nettles v. Grounds, 830 F.3d 922 (9th Cir. 2015)(*en banc*). ECF No. 57.

3 On January 9, 2017 the undersigned filed an Order discussing *inter alia* Nettles which was
4 served on all parties. In this order, the undersigned found that petitioner failed to overcome the
5 barriers to his habeas petition described in the Order and prior Findings and Recommendations,
6 and was given the further opportunity of attempting to persuade the court that Nettles does not bar
7 habeas jurisdiction in this case, converting his pending action into a civil action under 28 U.S.C. §
8 1983, or dismissing his habeas petition without prejudice to refiling his claim as a section 1983
9 claim. ECF No. 61. On January 23, 2017 petitioner declined to elect a section 1983 remedy, and
10 disputed whether Nettles had any impact on his case. ECF No. 62.

11 ***Conclusion***

12 The undersigned remains persuaded that Nettles bars consideration of this action as a
13 habeas action. Accordingly, the undersigned adopts the discussion in the January 9, 2017 order
14 as its Findings and Recommendations herein. The undersigned finds that Nettles bars
15 consideration of this case as a habeas corpus case; it should be dismissed..

16 These findings and recommendations are submitted to the United States District Judge
17 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
18 after being served with these findings and recommendations, any party may file written
19 objections with the court. The document should be captioned “Objections to Magistrate Judge’s
20 Findings and Recommendations.” Any response to the objections shall be filed and served within
21 fourteen days after service of the objections. Failure to file objections within the specified time
22 may waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th
23 Cir. 1991).

24 Dated: February 8, 2017

25 /s/ Gregory G. Hollows
26 UNITED STATES MAGISTRATE JUDGE
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