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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROLANDO ARISMENDEZ,

Petitioner,

v.

M.L. MUNIZ,

Respondents.

No. 2:17-cv-0792 MCE CKD P

ORDER

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On October 19, 2017, respondent filed a motion to dismiss. This court issued an order to show cause on December 4, 2017 describing various procedural defects with the pending federal habeas petition. ECF No. 13. Petitioner was ordered to file either: 1) a notice of voluntary dismissal if he intended to pursue habeas corpus relief in the Yolo County Superior Court instead of federal court; or, 2) a motion to stay and abey the federal habeas petition along with an amended § 2254 petition. Id. To date, petitioner has failed to respond to either the motion to dismiss or the court’s order to show cause.

In light of the lengthy prison sentence being challenged in the present § 2254 petition and petitioner’s pro se status, the court sua sponte grants petitioner one last fourteen day extension of time in which to respond to the court’s December 4, 2017 order to show case and respondent’s motion to dismiss. Petitioner is warned that his failure to respond to this court’s order will result

1 in a recommendation that his federal habeas corpus petition be dismissed for failing to prosecute.
2 See Local Rule 110; Fed. R. Civ. P. 41(b).

3 If petitioner’s federal habeas corpus application is dismissed, even without prejudice, he
4 may forever lose the ability to have any federal constitutional claims reviewed on the merits due
5 to the one year statute of limitations governing such applications. See 28 U.S.C. § 2244(d)(1).
6 Other than advising petitioner of this additional potential consequence for failing to respond, the
7 court expresses no ultimate opinion about the timeliness of a subsequently filed federal habeas
8 corpus petition. See Sossa v. Diaz, 729 F.3d 1225 (9th Cir. 2013) (holding that petitioner was
9 entitled to equitable tolling of the statute of limitations because he “reasonably relied on the
10 magistrate judge’s extensions of time to file his [amended] habeas petition.”).

11 Accordingly, IT IS HEREBY ORDERED that petitioner is granted, sua sponte, 14 days
12 from the date of this order in which to file a response to this court’s December 4, 2017 order to
13 show cause as well as an opposition to respondent’s motion to dismiss.

14 Dated: April 10, 2018

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17 CAROLYN K. DELANEY
18 UNITED STATES MAGISTRATE JUDGE
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