UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSE ANTONIO DURAN,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

No. 2:17-cv-2122 KJM AC P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed an application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 1, 2018, the magistrate judge filed findings and recommendations, which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within fourteen days. ECF No. 14. Petitioner has not filed objections to the findings and recommendations.

The court presumes that any findings of fact are correct. *See Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's conclusions of law are reviewed de novo. *See Britt v. Simi Valley Unified School Dist.*, 708 F.2d 452, 454 (9th Cir. 1983). Having reviewed the file, the court finds the recommendation to deny petitioner's motion for a stay under *Kelly v.*

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Small, 315 F.3d 1063 (9th Cir. 2003) is supported by the record and proper analysis. It will therefore be adopted. The court declines to adopt the advisement at page 2:4-7.

Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed March 1, 2018 (ECF No. 14), are adopted except for the advisement at page 2:4-7; and

2. Petitioner's motion for stay (ECF No. 8) is denied.

DATED: June 14, 2018.

UNITED STATES DISTRICT JUDGE