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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BLUFFORD HAYES, Jr.,  
Petitioner,  
v.  
ROBERT NEUSCHMID,  
Respondent.

No. 2:19-cv-01279-TLN-EFB

**ORDER**

Petitioner Blufford Hayes Jr. (“Petitioner”), a state prisoner proceeding pro se,<sup>1</sup> has filed this Application for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On June 25, 2020, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within fourteen (14) days. (ECF No. 36.)

<sup>1</sup> The Court notes Petitioner was briefly represented pro bono by counsel Richard Such (see ECF Nos. 16, 17), during which time, counsel for Petitioner filed the Amended Petition (ECF No. 18) that is the subject of the motion for reconsideration (ECF No. 31) and the Findings and Recommendations currently under review (ECF No. 36). Thereafter, Petitioner filed a motion seeking to designate Mr. Such as his Court-appointed attorney, which the Court denied. (See ECF Nos. 20, 30.) As of the date of the instant Order, Petitioner is once more proceeding pro se.

1 Respondent Robert Neuschmid (“Respondent”) has filed objections to the findings and  
2 recommendations and Petitioner has filed a response thereto. (ECF Nos. 37, 38.)

3 The Court reviews de novo those portions of the proposed findings of fact to which  
4 objection has been made. 28 U.S.C. § 636(b)(1); *McDonnell Douglas Corp. v. Commodore*  
5 *Business Machines*, 656 F.2d 1309, 1313 (9th Cir. 1981), cert. denied, 455 U.S. 920 (1982); see  
6 also *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed  
7 findings of fact to which no objection has been made, the Court assumes its correctness and  
8 decides the motions on the applicable law. See *Orand v. United States*, 602 F.2d 207, 208 (9th  
9 Cir. 1979). The magistrate judge’s conclusions of law are reviewed de novo. See *Britt v. Simi*  
10 *Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

11 Having carefully reviewed the entire file under the applicable legal standards, the Court  
12 finds the Findings and Recommendations to be supported by the record and by the magistrate  
13 judge’s analysis.

14 In its objections, Respondent argues the magistrate judge erred by arguing a point in  
15 Petitioner’s favor that Petitioner purportedly conceded — namely, that Mr. Such already knew the  
16 facts and theories of the case at the time of filing of the original Petition. (ECF No. 37 at 7.) This  
17 is a mischaracterization of the Findings and Recommendations. Read in context, the portion of  
18 the Findings and Recommendations referenced by Respondent relates to the magistrate judge’s  
19 analysis appropriately supporting the determination that three months between the initial and  
20 Amended Petition did not constitute undue delay. (See ECF No. 36 at 5.) Respondent’s  
21 objections are therefore overruled.

22 Accordingly, IT IS HEREBY ORDERED that:

- 23 1. The Findings and Recommendations filed June 25, 2020 (ECF No. 36), are adopted in  
24 full;
- 25 2. Respondent’s “Motion to Dismiss Amended Petition for Writ of Habeas Corpus, Due  
26 to Undue Delay and Bad Faith Warranting Denial of Leave to Amend” (ECF No. 31) is construed  
27 as a Motion for Reconsideration and, so construed, is GRANTED; and

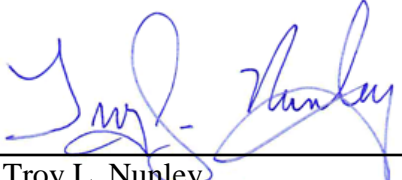
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3. Upon reconsideration of the Order granting Petitioner leave to amend (ECF No. 17),  
the Order is AFFIRMED.

IT IS SO ORDERED.

DATED: November 24, 2020



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Troy L. Nunley  
United States District Judge