

1 On November 14, 2019, petitioner filed a motion for summary judgment requesting that the court
2 grant summary judgment on the pleadings due to respondent's failure to timely file a response to
3 the habeas petition. ECF No. 10. Although, petitioner is correct that respondent filed his motion
4 to dismiss late (by one day given that November 9 occurred on a Saturday), respondent has now
5 responded. Respondent has filed a motion in accordance with the court's order and accordingly,
6 the court will address the merits of the petition upon competition of the parties' briefing. This
7 case should be decided on its merits rather than a one-day unexcused late filing.

8 Accordingly, IT IS HEREBY ORDERED that the Clerk shall assign a district judge to
9 this action.

10 Further, IT IS HEREBY RECOMMENDED that the motion for summary judgment (ECF
11 No. 10) be denied.

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

20 Dated: November 28, 2019

21 /s/ Gregory G. Hollows
22 UNITED STATES MAGISTRATE JUDGE
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