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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HERIBERTO MENDOZA,  
  
                                Petitioner,  
  
                    v.  
  
SULLIVAN, Warden,  
  
                                Respondent.

No. 2:19-cv-02183 GGH P

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, a former state prisoner proceeding pro se, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §2254. The matter was referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and Local Rule 302(c).

On October 29, 2019, this case was transferred from the Northern District of California where it was originally filed as Case No. 3:19-cv-05663-JSC. ECF Nos. 7, 8. On November 7, 2019, as part of its screening process, this court issued an order dismissing petitioner’s habeas petition for failure to exhaust state court remedies and provided petitioner thirty days to file a motion for stay and abeyance pursuant to Rhines v. Weber, 544 U.S. 269 (2005). ECF No. 10. Petitioner was further warned that a failure to comply with the court’s order and deadlines would result in a recommendation that this action be dismissed. Id. Petitioner has not responded to the court’s orders, nor taken any action to prosecute this case.

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IT IS HEREBY ORDERED that the Clerk shall assign a district judge to the case.

Further, IT IS HEREBY RECOMMENDED that this action be dismissed, without prejudice, for lack of prosecution and for failure to comply with the court’s order. See Fed. R. Civ. P. 41(b); Local Rule 110.

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

Dated: December 30, 2019

/s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE