

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JAMES BOOKER,  
  
                                Petitioner,  
  
                        v.  
  
J. LYNCH,  
  
                                Respondent.

No. 2:20-cv-01894-TLN-JDP

**ORDER**

Petitioner James Booker (“Petitioner”), a state prisoner proceeding *pro se*, has filed an 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 November 17, 2020, the magistrate judge filed findings and recommendations herein which were served on Petitioner and which contained notice to Petitioner that any objections to the findings and recommendations were to be filed within thirty days. (ECF No. 11.) On December 4, 2020, Petitioner filed Objections to the Findings and Recommendations. (ECF No. 12.)

Accordingly, 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); *see also* 28 U.S.C. § 636(b)(1).

1           Having reviewed the file under the applicable legal standards, the Court finds the Findings  
2 and Recommendations to be supported by the record and by the magistrate judge’s analysis.

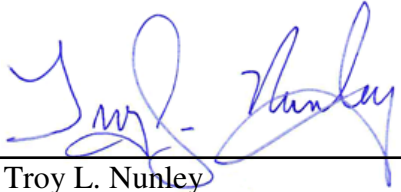
3           Petitioner’s Objections do not substantively address the findings discussed by the  
4 magistrate judge with respect to the pending Motion to Stay. (*See generally* ECF No. 12.)  
5 Instead, Petitioner discusses his underlying criminal action and reasserts his request for a *Rhines*  
6 stay. (*See id.* at 2 (citing *Rhines v. Weber*, 544 U.S. 269 (2005)).) Petitioner’s request, however,  
7 does not comport with the clear instructions set forth in the Findings and Recommendations.  
8 Specifically, Petitioner was instructed that if he wished to obtain a stay under *Rhines*, he must file  
9 an amended petition and resubmit a motion to stay which shows: “(1) good cause for his failure to  
10 exhaust before advancing to federal court, (2) that the unexhausted claims are not ‘plainly  
11 meritless,’ and (3) that he has not engaged in ‘abusive litigation tactics or intentional delay.’”  
12 (ECF No. 11 at 1–2.) Petitioner has failed to meet or discuss this criteria in his Objections. The  
13 Objections are therefore overruled.

14           Accordingly, IT IS HEREBY ORDERED that:

- 15           1. The Findings and Recommendations filed November 17, 2020 (ECF No. 11), are  
16 adopted in full; and  
17           2. Petitioner’s Motion for a Stay (ECF No. 9) is DENIED.

18           IT IS SO ORDERED.

19 DATED: January 5, 2021

20  
21  
22   
23 Troy L. Nunley  
24 United States District Judge  
25  
26  
27  
28