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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CECIL JEROME HATCHETT,  
Petitioner,  
v.  
KEN CLARK,  
Respondent.

No. 2:20-cv-02044 KJM GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this 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 September 20, 2021, the magistrate judge filed findings and recommendations, 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 days. ECF No. 21. The magistrate judge found that petitioner was not “in custody” for purposes of § 2254 because he is serving no sentence and no term of probation for the offense in question (an indecent exposure). See F&Rs at 2–3. The magistrate judge also recommends denying petitioner’s motion for default judgment. See *id.* at 4.


Petitioner objected to the findings and recommendations. ECF No. 22. He is currently serving a term of incarceration for a different offense, and he seems to contend in his objections

1 that his indecent exposure offense has resulted in harsher or lengthier conditions of confinement  
2 or losses of certain rights or privileges. *See, e.g., id.* at 2 (describing assignments to  
3 administrative segregation and losses of packages, phone calls, and property). Because the  
4 Magistrate Judge had no opportunity to consider these arguments and claims, and because  
5 respondent does not address them, the court declines to dismiss the petition for lack of  
6 jurisdiction at this time. The court does, however, adopt the Magistrate Judge's recommendation  
7 to deny the motion for default judgment for the reasons in the findings and recommendations.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The findings and recommendations filed September 20, 2021, are adopted in part as  
10 described above;
- 11 2. Petitioner's motion for default judgment (ECF No. 14) is denied;
- 12 3. The motion to dismiss (ECF No. 11) remains pending; and
- 13 4. This matter is referred again to the Magistrate Judge to consider the arguments and  
14 claims in petitioner's objections (ECF No. 22) and to take whatever action the Magistrate Judge  
15 deems appropriate.

16 DATED: December 13, 2021.

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20 CHIEF UNITED STATES DISTRICT JUDGE  
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