


1 state a failure to respond may be construed as consent to the relief requested. E.D. Cal. L.R.
2 230(c). Courts may either dismiss complaints due to plaintiff's non-opposition or consider the
3 complaint's underlying merits regardless of the non-opposition. *Compare Ghazali v. Moran*,
4 46 F.3d 52, 54 (9th Cir. 1995) (dismissing case with prejudice due to plaintiff's non-opposition)
5 *with Elec. Recyclers Int'l, Inc. v. Calbag Metals Co.*, No. 1:14-CV-01352, 2015 WL 1529490, at
6 *2 (E.D. Cal. Apr. 2, 2015) ("Although Calbag's motion now faces no opposition, the court's
7 duty remains to consider its underlying merits.").

8 Here, this court has discretion to dismiss the case on a procedural basis due to plaintiff's
9 non-opposition. Moreover, this court has reviewed the merits of petitioner's petition for writ of
10 habeas corpus and finds defendant's motion to dismiss for failing to state a claim under 28 U.S.C.
11 § 2241 should be granted without prejudice. Petitioner's claims are not covered under 28 U.S.C.
12 § 2241, which exists to litigate claims of persons held in state custody in violation of the
13 Constitution of the United States.

14 Accordingly, IT IS HEREBY ORDERED:

- 15 1. The findings and recommendations filed November 2, 2022 (ECF No. 8), are
16 adopted in full;
- 17 2. Petitioner's writ of habeas corpus is dismissed without prejudice for failure to
18 state a claim under 28 U.S.C. § 2241; and
- 19 3. The Clerk of the Court is directed to close this case.

20 DATED: January 17, 2023.

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23 CHIEF UNITED STATES DISTRICT JUDGE
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