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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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10 CLIFFORD J. SCHUETT,

11 Petitioner,

12 vs.

13 U.S. MARSHAL SERVICE, *et al.*,

14 Respondents.

Case No. 2:15-cv-00253-RFB-GWF

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ORDER

On March 31, 2016, the Court entered an order noting that the habeas petition filed in this action was not entirely legible, and that the basis for the petition may have become moot based on petitioner's transfer to another facility. (ECF No. 21). The Court ordered petitioner to file an amended petition within ninety days. (*Id.*). The ninety-day period expired on June 29, 2016, and petitioner has not filed an amended petition or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "in the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal of a case." *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. *See, e.g. Pagtalunan v. Galaza*, 291 P.3d 639, 643 (9th Cir. 2002) (dismissal of habeas corpus petition with prejudice for failure to prosecute action and failure to comply with a court order); *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);

1 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an
2 order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988)
3 (dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
4 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to
5 comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for
6 failure to lack of prosecution and failure to comply with local rules).

7 In determining whether to dismiss an action for lack of prosecution, failure to obey a court order,
8 or failure to comply with local rules, the court must consider several factors: (1) the public's interest
9 in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice
10 to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the
11 availability of less drastic alternatives. *Pagtalunan*, 291 F.3d at 642; *Thompson*, 782 F.2d at 831;
12 *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130; *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46
13 F.3d at 53.

14 The Court finds that the first two factors, the public's interest in expeditiously resolving this
15 litigation and the Court's interest in managing the docket, weigh in favor of dismissal. The third factor,
16 risk of prejudice to respondents, also weighs in favor of dismissal, since a presumption of injury arises
17 from the occurrence of unreasonable delay in filing a pleading ordered by the court or prosecuting an
18 action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
19 favoring disposition of cases on their merits – is outweighed by the factors in favor of dismissal
20 discussed herein. Finally, a court's warning to a party that his failure to obey the court's order will
21 result in dismissal satisfies the “consideration of alternatives” requirement. *Pagtalunan*, 291 F.3d at
22 643; *Ferdik v. Bonzelet*, 963 F.2d at 1262; *Malone*, 833 at 132-33; *Henderson*, 779 F.2d at 1424. The
23 Court's March 31, 2016 order requiring petitioner to file an amended petition within ninety days
24 expressly stated: “If no amended petition is filed, this case will be dismissed without prejudice.” (ECF
25 No. 21, at p. 2). Thus, petitioner had adequate warning that dismissal would result from noncompliance
26 with the Court's order.

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1 **IT IS THEREFORE ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE**
2 based on petitioner's failure to file an amended petition in compliance with this Court's order of March
3 31, 2016.

4 **IT IS FURTHER ORDERED** that the Clerk of Court shall enter judgment accordingly.
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6 DATED this 8th day of February, 2017.
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9 RICHARD F. BOULWARE, II
10 UNITED STATES DISTRICT JUDGE
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