

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HECTOR GONZALEZ,

Petitioner,

-vs-

**No. 6:13-CV-6574 (MAT)  
DECISION AND ORDER**

MARK BRADT,

Respondent,

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On April 7, 2014, this Court dismissed the pro se habeas corpus petition filed by petitioner Hector Gonzalez, denied his request for appointment of counsel, and denied a certificate of appealability. Judgment was entered on April 8, 2014.

On April 4, 2014, pursuant to the prisoner mailbox rule, Petitioner filed a motion for default judgment (Dkt #12) against Respondent on the basis that Respondent failed to respond to Petitioner's request for admissions pursuant to Rule 36 of the Federal Rules of Civil Procedure. However, the motion for default judgment did not appear on the Court's docket until April 23, 2014.

This motion is now moot, in light of the Court's dismissal of Petitioner's habeas petition on the merits. In the alternative, the Court declines to enter a default judgment in favor of Petitioner. "Although, in civil cases, a party's failure to respond justifies the entry of judgment against the defaulting party, default in responding to a habeas petition presents a different situation." Jackson v. Kuhlman, 94-CV-5934, 1996 WL 1088202, at \*1 (E.D.N.Y.

Oct. 8, 1996) (citation omitted). The Second Circuit made it clear in Bermudez v. Reid, 733 F.2d 18 (2d Cir. 1984), that default judgment should not be granted in favor of a habeas petitioner without a court first reaching the merits of the underlying petition. Id. at 21. As noted above, the Court has already found that Petitioner's claims for habeas relief lack merit. Thus, the entry of a judgment of default against Respondent is unwarranted. See id. Petitioner's motion for default judgment (Dkt #12) is **denied with prejudice.**

**SO ORDERED.**

S/Michael A. Telesca

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HONORABLE MICHAEL A. TELESKA  
United States District Judge

DATED: August 29, 2014  
Rochester, New York