

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ZACHARY NELSON,

11 Petitioner,

v.

12 WILLIAM VAN HOOK,

13 Respondent.

14 CASE NO. C17-0780-JCC

ORDER

15 This matter comes before the Court on the Report and Recommendation (Dkt. No. 9) of  
16 the Honorable Brian A. Tsuchida, United States Magistrate Judge, and Petitioner Zachary  
17 Nelson's motion to dismiss his writ of habeas corpus (Dkt. No. 10). Having thoroughly  
18 considered the parties' briefing and the relevant record, the Court finds oral argument  
19 unnecessary and hereby GRANTS Petitioner's motion and DISMISSES the Report and  
20 Recommendation as moot for the reasons explained herein.

21 On June 21, 2017, Judge Tsuchida granted Petitioner leave to amend his habeas corpus  
22 petition. (Dkt. No. 8.) Judge Tsuchida enumerated the petition's various deficiencies, including  
23 Petitioner's failure to exhaust his state court remedies and failure to demonstrate cause and actual  
24 prejudice for his procedurally defaulted claims. (*Id.* at 2–4.) Petitioner's amendment was due by  
25 July 21, 2017. (*Id.* at 4.)

26 On July 24, 2017, Judge Tsuchida issued a Report and Recommendation, recommending

1 that this Court dismiss Petitioner's claims without prejudice and noting Petitioner's failure to  
2 amend his petition. (*See* Dkt. No. 9.) However, Petitioner responded on July 21, 2017, but the  
3 document was not posted on the docket until July 25, 2017. (*See* Dkt. No. 10.) Petitioner asks  
4 that the Court dismiss his petition without prejudice so he can cure his deficiencies noted by  
5 Judge Tsuchida. (*Id.*)

6 The Court agrees with Judge Tsuchida's assessment of the procedural deficiencies and  
7 concludes that Petitioner's habeas petition should be DISMISSED without prejudice. Given that  
8 both motions ask for the same relief, the Court GRANTS Petitioner's motion to dismiss his  
9 habeas petition (Dkt. No. 10) and DISMISSES the Report and Recommendation (Dkt. No. 9) as  
10 moot. The Court DIRECTS the Clerk to CLOSE this case and to send a copy of this order to the  
11 parties and Judge Tsuchida.

12 DATED this 2nd day of August 2017.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE