

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Lafond v. Zuniga

Lafond · No. 2:22-cv-1093 AC P · Decided March 8, 2023

SUMMARY

A federal magistrate judge recommends dismissing Raoul Lafond’s 28 U.S.C. § 2241 habeas petition for failure to prosecute and failure to obey a court order after Lafond did not respond to the respondent’s motion to dismiss or a subsequent court order. The recommendation also states that the motion to dismiss should be denied as moot and that a certificate of appealability should not issue.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 8, 2023
DOCKET	2:22-cv-1093 AC P
DISPOSITION	other
PROCEDURAL POSTURE	A federal prisoner proceeding pro se filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. After the respondent moved to dismiss, the petitioner failed to oppose the motion or comply with a subsequent court order directing a response. The magistrate judge issued findings and recommendations recommending dismissal for failure to prosecute and failure to obey a court order.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Raoul Lafond v. Raphael Zuniga, Warden

TOPICS

[federal habeas corpus](#) [motions to dismiss](#) [civil procedure](#)

PRACTICE AREAS

[Habeas corpus](#) [Civil procedure](#)

QUESTIONS PRESENTED

1. Whether the habeas action should be dismissed for failure to prosecute and failure to obey a court order.
2. Whether respondent's motion to dismiss should be denied as moot after dismissal of the action.
3. Whether the court should decline to issue a certificate of appealability.

HOLDINGS

1. The action should be dismissed under Federal Rule of Civil Procedure 41(b) and Local Rule 110 because petitioner failed to prosecute the action and failed to obey the court's order directing him to respond.
2. Respondent's motion to dismiss should be denied as moot because the action should be dismissed for petitioner's failure to prosecute and failure to obey a court order.
3. The court recommended declining to issue a certificate of appealability.

KEY QUOTATIONS

“More than thirty days have passed, and petitioner has neither filed a response to respondent’s motion to dismiss nor responded to the court’s order in any way.” (at 1)

FACTUAL BACKGROUND

Petitioner Raoul Lafond, a federal prisoner proceeding without counsel, filed an application for a writ of habeas corpus under 28 U.S.C. § 2241. Respondent filed a motion to dismiss, but petitioner failed to file an opposition or statement of non-opposition within the allotted time. After the court ordered petitioner to respond within thirty days, more than thirty days passed without any response or other action by petitioner.

PROCEDURAL HISTORY

Respondent moved to dismiss on subject-matter and jurisdictional grounds on October 13, 2022. Petitioner did not respond within the time allowed by Local Rule 230(l), and he also failed to comply with the court's January 18, 2023 order granting him an additional thirty days to respond. The magistrate judge recommended dismissal, denial of the motion to dismiss as moot, and denial of a certificate of appealability, subject to district-judge review under 28 U.S.C. § 636(b)(1)(B).

DISPOSITION

other

CASES CITED

- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(HC) Lafond v. Zuniga

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 RAOUL LAFOND, No. 2:22-cv-1093 AC P 12 Petitioner, 13 v. ORDER and

14 RAPHAEL ZUNIGA, WARDEN, FINDINGS and RECOMMENDATIONS

15 Respondent. 16

17 Petitioner, a federal prisoner proceeding pro se, has filed an application for a writ of 18 habeas corpus pursuant to 28 U.S.C. § 2241. The matter was referred to a United States 19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 20 On October 13, 2022, respondent filed a motion to dismiss this action on various subject 21 matter and jurisdictional grounds. ECF No. 10. Pursuant to Local Rule 230(l), petitioner had 22 twenty-one days to file an opposition or a statement of non-opposition to respondent's motion. 23 Petitioner, however, failed to file a response within the time allotted. As a result, on January 18, 24 2023, the court ordered petitioner to respond within thirty days. ECF No. 15. 25 More than thirty days have passed, and petitioner has neither filed a response to 26 respondent's motion to dismiss nor responded to the court's order in any way. For this reason, 27 the undersigned will recommend that this matter be dismissed for failure to prosecute and for 28 failure to obey a court order. See Fed. R. Civ. P. 41(b); Local Rule 110.] Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a 2 || District Judge to this action. 3 IT IS FURTHER RECOMMENDED that: 4 1. This matter be DISMISSED for failure to prosecute and for failure to obey a court 5 | order; 6 2. Respondent's motion to dismiss (ECF No. 10) be DENIED as moot; and 7 3. The court DECLINE to issue the certificate of appealability referenced in 28 U.S.C. § 8 | 2253. 9 These findings and recommendations are submitted to the United States District Judge 10 || assigned to the case, pursuant to the provisions of 28 U.S.C. §636(b)(1). Within fourteen days 11 | after being served with these findings and recommendations, any party may file written 12 || objections with the court and serve a copy on all parties. Such a document should be captioned 13 || "Objections to Magistrate Judge's Findings and Recommendations." If petitioner files objections, 14 || he shall also address whether a certificate of appealability should issue and, if so, why and as to 15 || which issues. See 28 U.S.C. § 2253(c)(2). Any reply to the objections shall be served and filed 16 || within seven days after service of the objections. The parties are advised that failure to file 17 || objections within the specified time may waive the right to appeal the District Court's order. 18 | Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991). 19 | DATED: March 8, 2023 * 20 Lhar—e_

ALLISON CLAIRE

21 UNITED STATES MAGISTRATE JUDGE

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