

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW
HAMPSHIRE**

Mark Heath v. Warden, N.H. State Prison for Men

Heath · No. Civil No. 23-cv-276-JL-AJ · Decided March 20, 2026

SUMMARY

A United States magistrate judge recommends denying petitioner Mark Heath’s motion for default judgment in his 28 U.S.C. § 2254 habeas case. The recommendation concludes that default judgment is improper because the respondent filed a motion for summary judgment, which was deemed timely after the court retroactively granted an extension of time.

OPINION

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW HAMPSHIRE Mark Heath v. Civil No. 23-cv-276-JL-AJ Warden, N.H. State Prison for Men REPORT AND RECOMMENDATION Before the court is self-represented Petitioner Mark Heath’s “Motion for Judgment” (Doc. No. 29) seeking entry of default judgment in this 28 U.S.C. § 2254 case. Respondent filed an objection (Doc.

No. 31) to Mr. Heath’s motion. Discussion The clerk’s entry of default and a default judgment “can come into play... ‘[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend’ in the action. *Universitas Educ., LLC v. Granderson*, 98 F.4th 357, 363 n.2 (1st Cir. 2024) (quoting Fed. R. Civ. P. 55(a)). Respondent filed a motion for summary judgment in this case (Doc.

No. 34), albeit after the January 13, 2026 deadline previously set by the court.¹ That motion makes a default judgment improper here, even though the motion was approximately two weeks late on the date it ¹ Respondent’s objection to Mr. Health’s motion for default judgment is a document entitled “Respondent’s Objection to Petitioner’s Motion for Judgment and Motion for Extension of Time to File Until March 9, 2026” (Doc.

No. 31). By separate Order, the court retroactively granted the respondent’s request to extend the deadline to file an answer or dispositive motion in this case until March 9, 2026, rendering his February 3, 2026 motion for summary judgment timely. Going forward, the respondent is advised that under LR 7.1(a), “[o]bjections to pending motions and affirmative motions for relief shall not be combined in one filing.” was filed.

See *Jenkins v. Hazlewood*, No. 20-cv-803-PB, 2021 DNH 154, 2021 U.S. Dist. LEXIS 186631, at *20-21, 2021 WL 4462192, at *8, (D.N.H. Sept. 29, 2021) (prisoner was not entitled to default

judgment “solely because the government did not file an opposition to his habeas petition”) (citing *Quifiones-Torres v. United States*, 240 F. App’x 876, 878 (1st Cir. 2007)).

Accordingly, the district judge should deny Mr. Heath’s motion for default judgment. Conclusion For the foregoing reasons, the district judge should deny Mr. Heath’s “Motion for Judgment” (Doc. No. 29). Any objections to this Report and Recommendation (“R&R”) must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2).

The fourteen-day period may be extended upon motion. Only those issues raised in the objections to this R&R are subject to review in the district court. See *Sch. Union No. 37 v. United Nat’l Ins. Co.*, 617 F.3d 554, 564 (1st Cir. 2010). Any issues not preserved by such objections are precluded on appeal. See *id.* Failure to file any objections within the specified time waives the right to appeal the district court’s Order.

See *Santos-Santos v. Torres-Centeno*, 842 F.3d 163, 168 (1st Cir. 2016). Qeucaiet pynttnra—Andrea K. Johnstone” United States Magistrate Judge March 20, 2026 Cc: Mark Heath, pro se Elizabeth C. Woodcock, Esq. John Drennan, Esq. Sam Michael Gonyea, Esq