

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Hoffer v. Gamboa

Hoffer · No. 2:25-CV-1253-DMC-P · Decided July 16, 2025

SUMMARY

The United States District Court for the Eastern District of California considers a state prisoner's habeas corpus petition under 28 U.S.C. § 2254. The magistrate judge recommends dismissal without prejudice for lack of prosecution and failure to comply with an order to resolve the filing-fee status, while directing random assignment of a district judge.

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 MICHAEL HOFFER, No. 2:25-CV-1253-DMC-P 12
Petitioner, ORDER 13 v. and 14 MARTIN GAMBOA, FINDINGS AND
RECOMMENDATIONS 15 Respondent. 16 17 Petitioner, a state prisoner proceeding pro se,
brings this petition for a writ of 18 habeas corpus under 28 U.S.C. § 2254.

On May 8, 2025, the Court directed Petitioner to submit 19 either a completed application for
leave to proceed in forma pauperis or the full filing fee for this 20 action within 30 days. See ECF
No. 4. Petitioner was warned that failure to comply may result in 21 dismissal of this action for
lack of prosecution and failure to comply with court rules and orders.

22 See Local Rule 110. To date, Petitioner has failed to comply. 23 The Court must weigh five
factors before imposing the harsh sanction of 24 dismissal. See *Bautista v. Los Angeles County*,
216 F.3d 837, 841 (9th Cir. 2000); *Malone v. 25 U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir.
1987). Those factors are: (1) the public's interest 26 in expeditious resolution of litigation; (2) the
Court's need to manage its own docket; (3) the risk 27 of prejudice to opposing parties; (4) the
public policy favoring disposition of cases on their 28 merits; and (5) the availability of less
drastic sanctions.

See *id.*; see also *Ghazali v. Moran*, 46 1 } F.3d 52, 53 (9th Cir. 1995) (per curiam). A warning that
the action may be dismissed as an 2 || appropriate sanction is considered a less drastic alternative
sufficient to satisfy the last factor. See 3 | *Malone*, 833 F.2d at 132-33 & n.1.

The sanction of dismissal for lack of prosecution 1s 4 | appropriate where there has been
unreasonable delay. See *Henderson v. Duncan*, 779 F.2d 1421, 5 || 1423 (9th Cir. 1986). Dismissal

has also been held to be an appropriate sanction for failure to 6 || comply with an order to file an amended complaint. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 7 || 1260-61 (9th Cir.

1992). 8 Having considered these factors, and in light of Petitioner's failure to resolve the 9 || fee status for this case as directed, the Court finds that dismissal of this action is appropriate. 10 Accordingly, IT IS HEREBY ordered and recommended as follows: 11 1. It is ORDERED that the Clerk of the Court is directed to randomly assign 12 | a District Judge to this case.

13 2. It is RECOMMENDED that this action be dismissed without prejudice for 14 | lack of prosecution and failure to comply with court rules and orders. 15 These findings and recommendations are submitted to the United States District 16 || Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(I). Within 14 days 17 || after being served with these findings and recommendations, any party may file written 18 || objections with the court.

Responses to objections shall be filed within 14 days after service of 19 | objections. Failure to file objections within the specified time may waive the right to appeal. See 20 | *Martinez v. Yist*, 951 F.2d 1153 (9th Cir. 1991). 21 22 Dated: July 15, 2025 Co 23 DENNIS M. COTA 4 UNITED STATES MAGISTRATE JUDGE 25 26 27 28