

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Silva v. Unknown

No. 2:24-cv-0618 DJC AC P (E.D. Cal. Mar. 21, 2025) · No. 2:24-cv-0618 DJC AC P · Decided March 21, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends dismissing Joe Silva’s § 2254 habeas petition without prejudice for failure to prosecute. The recommendation follows Silva’s failure to oppose a pending motion to dismiss or otherwise respond to the court’s order, and relies on the factors governing dismissal under Federal Rule of Civil Procedure 41(b).

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 21, 2025
DOCKET	2:24-cv-0618 DJC AC P
DISPOSITION	dismissed
PROCEDURAL POSTURE	A state prisoner filed a habeas corpus petition under 28 U.S.C. § 2254. After respondent moved to dismiss, petitioner failed to oppose the motion or comply with an order directing him to respond, leading the magistrate judge to recommend dismissal without prejudice for failure to prosecute.
STANDARD OF REVIEW	Dismissal for failure to prosecute under Federal Rule of Civil Procedure 41(b), evaluated under the five-factor test governing the public interest in expeditious resolution, docket management, prejudice to defendants, the policy favoring disposition on the merits, and the availability of less drastic alternatives.
PRECEDENTIAL VALUE	Nonprecedential district-court findings and recommendations
PARTIES	Joe Silva v. Unknown

TOPICS

- federal habeas corpus
- motions to dismiss
- post-conviction relief
- civil procedure

PRACTICE AREAS

Federal habeas corpus

Civil procedure

QUESTIONS PRESENTED

1. Whether the habeas action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) because petitioner failed to prosecute the action and failed to comply with the court's order.

HOLDINGS

1. Dismissal without prejudice under Federal Rule of Civil Procedure 41(b) was warranted because petitioner failed to respond to the motion to dismiss or comply with the court's order, and the relevant dismissal factors favored dismissal.

KEY QUOTATIONS

“(1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives.” (at 1-3)

FACTUAL BACKGROUND

Petitioner is a state prisoner proceeding pro se with a petition for habeas corpus under 28 U.S.C. § 2254. Respondent filed a motion to dismiss, and the court ordered petitioner to respond within twenty-one days. Petitioner did not oppose the motion, file a statement of non-opposition, or otherwise respond to the court's order, preventing the case from moving forward.

PROCEDURAL HISTORY

Petitioner filed a state habeas petition under 28 U.S.C. § 2254. Respondent moved to dismiss on December 16, 2024. The court ordered petitioner on February 11, 2025, to file an opposition or statement of non-opposition within twenty-one days and warned that failure to do so could result in dismissal under Federal Rule of Civil Procedure 41(b). Petitioner did not respond, and the magistrate judge issued findings and recommendations that the action be dismissed without prejudice.

DISPOSITION

dismissed

CASES CITED

- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991)

OPINION

(HC) Silva v. Unknown

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 JOE SILVA, No. 2:24-cv-0618 DJC AC P 12 Petitioner,

13 v. FINDINGS AND RECOMMENDATIONS

14 UNKNOWN,

15 Respondent. 16

17 Petitioner is a state prisoner proceeding pro se with a habeas corpus petition filed pursuant 18
to 28 U.S.C. § 2254. On December 16, 2024, respondent filed a motion to dismiss the petition. 19
On February 11, 2025, petitioner was ordered to file an opposition or statement of non-opposition
20 to the pending motion within twenty-one days. ECF No. 21. In the same order, petitioner was
21 informed that failure to file an opposition would result in a recommendation that this action be
22 dismissed without prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure
23 41(b). The twenty-one-day period has now expired, and petitioner has not filed a response to
the 24 motion to dismiss or otherwise responded to the court's order. 25 In recommending this
action be dismissed for failure to prosecute, the court has 26 considered "(1) the public's interest
in expeditious resolution of litigation; (2) the court's need to 27 manage its docket; (3) the risk of
prejudice to the defendants; (4) the public policy favoring 28 disposition of cases on their merits;
and (5) the availability of less drastic alternatives." *Ferdik v. 1 || Bonzelet*, 963 F.2d 1258, 1260-61
(9th Cir. 1992) (citation omitted). Because this case cannot 2 || move forward without petitioner's
participation, the court finds the factors weigh in favor of 3 || dismissal. 4 For the foregoing
reasons, IT IS HEREBY RECOMMENDED that this action be 5 || dismissed without prejudice
pursuant to Federal Rule of Civil Procedure 41(b). 6 These findings and recommendations are
submitted to the United States District Judge 7 || assigned to the case, pursuant to the provisions of
28 U.S.C. § 636(b)(1). Within fourteen days 8 | after being served with these findings and
recommendations, any party may file written 9 || objections with the court and serve a copy on all
parties. Such a document should be captioned 10 | "Objections to Magistrate Judge's Findings and
Recommendations." Any response to the 11 || objections shall be filed and served within fourteen
days after service of the objections. The 12 || parties are advised that failure to file objections
within the specified time may waive the right to 13 || appeal the District Court's order. *Martinez v.*
YIst, 951 F.2d 1153 (9th Cir. 1991). 14 | DATED: March 21, 2025 15 ~ 16 ththienr—Chnp—e_
ALLISON CLAIRE

17 UNITED STATES MAGISTRATE JUDGE

18 19 20 21 22 23 24 25 26 27 28

