

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).

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. Ylst*, 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