

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Mar-Nique Simon v. Jason Schultz

No. C 09-05859 WHA (N.D. Cal. Dec. 30, 2025) · No. C 09-05859 WHA · Decided December 30, 2025

SUMMARY

The United States District Court for the Northern District of California denied the respondent’s motion to dismiss Mar-Nique Simon’s federal habeas petition for lack of prosecution under Federal Rule of Civil Procedure 41(b). The court concluded that unusual circumstances, including petitioner’s mental limitations, attorney-client conflict, pandemic-related disruption, and ongoing criminal proceedings, weighed against dismissal, and that less drastic alternatives were available. The court ordered respondent to file a merits-dispositive motion by noon on February 27, 2026, and deemed petitioner to have waived further evidentiary development that would cause delay.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	William Alsup
JURISDICTION	United States District Court for the Northern District of California
DECIDED	December 30, 2025
DOCKET	C 09-05859 WHA
DISPOSITION	other
PROCEDURAL POSTURE	Respondent moved under Federal Rule of Civil Procedure 41(b) to dismiss Simon's federal habeas petition for failure to prosecute. The district court denied the motion after weighing the governing dismissal factors and ordered respondent to file a merits-disposition motion on an expedited schedule.
STANDARD OF REVIEW	The district court exercised discretion under Rule 41(b) and weighed the Ninth Circuit's five dismissal factors: the public's interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to respondent, the availability of less drastic alternatives, and the public policy favoring disposition on the merits.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Mar-Nique Simon v. Jason Schultz

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the federal habeas petition should be dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute or failure to comply with court orders.
2. Whether the availability of less drastic alternatives and the policy favoring merits adjudication weighed against dismissal.
3. Whether the order should make any renewed finding regarding Simon's mental capacity or the merits of his habeas claims.

HOLDINGS

1. The petition should not be dismissed for failure to prosecute because, although the public's interest in expeditious resolution favored dismissal, the court's docket-management factor weighed against dismissal, the prejudice factor was neutral, and the less-drastic-alternatives and merits-adjudication factors weighed against dismissal.
2. The less-drastic-alternatives factor weighed against dismissal because Simon complied with the court's prior filing deadline and other orders, current compliance was not futile, counsel was again prepared to proceed, and expedited merits briefing could provide an alternative to dismissal.
3. The order did not make a renewed finding regarding Simon's mental capacity and took no position on the merits of the habeas petition.

KEY QUOTATIONS

"The Court declines to exercise its discretion to dismiss the petition under Rule 41(b)." (Analysis at conclusion)

"For the reasons above, the motion (Dkt. No. 220) is DENIED." (Conclusion)

"To limit prejudice to respondent from any further delay, respondent SHALL bring a motion seeking to dispose of this petition on the merits By NOON ON FEBRUARY 27, 2026." (Conclusion)

"this order finds that petitioner has WAIVED any further evidentiary development that would delay respondent's ability to meet respondent's deadline or petitioner's ability to meet petitioner's resulting briefing deadline." (Conclusion)

FACTUAL BACKGROUND

Simon pleaded nolo contendere in state court to attempted murder and second-degree robbery with use of a deadly weapon and received a twenty-year sentence. He filed a federal habeas petition in 2009, asserting

incompetence to enter a plea and ineffective assistance of counsel. The federal case was stayed so he could exhaust an unexhausted claim in state court, but filing and prosecution were delayed by the COVID-19 pandemic, new criminal proceedings, Simon's mental limitations, parole termination, custody changes, and prolonged difficulties communicating with appointed counsel. After counsel confirmed in 2025 that Simon wished to proceed, respondent moved to dismiss for lack of prosecution.

PROCEDURAL HISTORY

Simon filed a federal habeas petition in 2009 challenging his state conviction. The petition was initially dismissed as untimely, but the Ninth Circuit reversed and remanded for factual development regarding equitable tolling; the district court later found equitable tolling applicable. The court stayed the federal proceeding in 2019 to permit exhaustion of claims in state court. After extended delays, state-court proceedings, parole termination, changes in custody, and attorney-client communication difficulties, respondent moved to dismiss for lack of prosecution. The court denied dismissal and directed respondent to seek merits disposition by February 27, 2026, while finding that Simon waived further evidentiary development that would delay briefing.

DISPOSITION

other

CASES CITED

- Nealey v. Transportacion Maritima Mexicana, S.A., 662 F.2d 1275, 1280 (9th Cir. 1981)
- Pagtalunan v. Galaza, 291 F.3d 639, 641-43 (9th Cir. 2002)
- Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)
- Nevijel v. N. Coast Life Ins. Co., 651 F.2d 671, 674 (9th Cir. 1981)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir. 1992)
- United States v. Simon, No. 21-cr-0352-JSW (N.D. Cal. filed July 22 & Sept. 29, 2021)