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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD D. LAWLER **PETITIONER**

VERSUS **CIVIL ACTION NO. 1:10cv414HSO-JMR**

CHARLES ABRAMS **RESPONDENT**

MEMORANDUM OPINION AND ORDER
ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on the Report and Recommendation of Chief United States Magistrate Judge John M. Roper [13-1] entered in this cause on November 18, 2010. Also before the Court is the Respondent's Motion to Dismiss [7-1] Richard Lawler's *habeas corpus* Petition based on the provisions of 28 U.S.C. § 2244(d). Respondent contends that Lawler's *habeas* Petition was not timely filed and should be dismissed. The Court has thoroughly reviewed the findings in the Report and Recommendation, the record, and the positions advanced in the Motion, and Petitioner's Response, and concludes that Lawler's Petition was untimely filed. Respondent's Motion should therefore be granted. The Court further agrees with the Magistrate Judge that because Lawler failed to proffer extraordinary circumstances, equitable tolling is inapplicable in this case.

To date, no objection to the Report and Recommendation has been filed by Petitioner.[1] Where no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a *de novo* review of it. *See* 28 U.S.C. §

[1] The record reflects that on November 22, 2010, Petitioner signed for receipt of the Report and Recommendation [14-1].

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636(b)(1) ("a judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether it is either clearly erroneous or contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Having conducted the required review, the Court finds that the Magistrate Judge's Report and Recommendation thoroughly considered all issues, is neither clearly erroneous, nor contrary to law. The Court, being fully advised in the premises, finds that the Magistrate Judge properly recommended that Defendant's Motion to Dismiss should be granted. Said Report and Recommendation should be adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that, the Report and Recommendation [13-1] of Chief Magistrate Judge John M. Roper entered on November 18, 2010, is hereby adopted as the finding of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that, Respondent's Motion to Dismiss [7-1] should be and hereby is **GRANTED**. A separate judgment will be entered in accordance with this Order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED, this the 10th day of December, 2010.

s/ Halil Suleyman Ozerden
HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE