



report and recommendation in a case such as this one, the district court conducts *de novo* review of all conclusions of law,<sup>2</sup> and any findings of fact to which objections have been made.<sup>3</sup> Uncontested findings of fact are reviewed for clear error.<sup>4</sup>

### **III. DISCUSSION**

Having reviewed the parties' papers and applied the standard of review articulated above, this court concludes that the magistrate judge correctly found the facts and applied the law. Nothing in the objections which relates to matters presented to the magistrate judge casts any doubt on the correctness of his recommended findings of fact and conclusions of law.

In his objections, petitioner has raised arguments and contentions which were not presented to the magistrate judge. By failing to raise these arguments before the magistrate judge petitioner has waived them. *Guzman-Ruiz v. Hernandez-Colon*, 406 F.3d 31, 36 (1st Cir. 2005). To hold otherwise would contravene the purpose of the statute authorizing magistrate judges to consider habeas petitions subject to final review by the district court. See 28 U.S.C. § 636(b)(1).

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<sup>2</sup>*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

<sup>3</sup>28 U.S.C. § 636(b)(1).

<sup>4</sup>*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

#### IV. CONCLUSION

For the reasons above, this court approves Magistrate Judge Estrada's thorough and well-reasoned report and adopts his recommended findings and conclusions.

Based thereon, the petition at docket 1 is **DENIED** as time barred.

DATED this 5th day of February 2010.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE