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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN R. GIBSON,)	1:05-CV-00042 AWI GSA HC
Petitioner,)	ORDER ADOPTING FINDINGS AND
v.)	RECOMMENDATION
)	[Doc. #80]
)	ORDER DISMISSING PETITION FOR WRIT
LEE ANN CHRONES,)	OF HABEAS CORPUS
Respondent.)	ORDER DIRECTING CLERK OF COURT
		TO ENTER JUDGMENT

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 on remand from the Ninth Circuit Court of Appeals.

On December 12, 2008, the Magistrate Judge issued a [Findings and Recommendation](#) that recommended the petition be DISMISSED WITH PREJUDICE as untimely pursuant to 28 U.S.C. § 2244(d). The Magistrate Judge further recommended that the Clerk of Court be DIRECTED to enter judgment for Respondent. The Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within fifteen (15) days of the date of service of the order.

On December 22, 2008, Petitioner filed [objections](#) to the Findings and Recommendation. In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a *de novo*

1 review of the case. Having carefully reviewed the entire file and having considered the objections,
2 the Court concludes that the Magistrate Judge's Findings and Recommendation is supported by the
3 record and proper analysis, and there is no need to modify the Findings and Recommendations based
4 on the points raised in the objections. In the objections, Petitioner incorrectly contends that the
5 Ninth Circuit's reversal in this action found Petitioner entitled to tolling based on the Los Angeles
6 habeas petition. Rather, the Ninth Circuit ordered this court to determine if this petition entitled
7 Petitioner to tolling. Having concluded that the Los Angeles habeas petition did not concern the
8 claim at issue in this action, the court has no choice but to dismiss the petition.

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. The Findings and Recommendation issued December 12, 2008, is ADOPTED IN FULL;
- 11 2. The Petition for Writ of Habeas Corpus is DISMISSED WITH PREJUDICE; and
- 12 3. The Clerk of Court is DIRECTED to enter judgment for Respondent.

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14 IT IS SO ORDERED.

15 **Dated: February 14, 2009**

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE

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