

Based on the foregoing, it is HEREBY ORDERED that:

1. The findings and recommendations issued by the Magistrate Judge on November 6, 2008, are adopted in full;
2. Respondent's motion to dismiss is GRANTED;
3. This petition is DISMISSED as moot;
4. The Clerk of the Court is directed to enter judgment for Respondent and to close this case.

IT IS SO ORDERED.

Dated: January 26, 2009

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE