

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAMON NAVARRO LUPERCIO,

1: 08 CV 0012 LJO WMW HC

Petitioner,

ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS RE MOTION TO  
DISMISS PETITION FOR WRIT OF HABEAS  
CORPUS

SYLVIA GONZALEZ, WARDEN.

[Doc.8, 15]

## Respondent.

Petitioner is a prisoner proceeding with a petition for writ of habeas corpus pursuant to 28 U.S.C. Section 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On December 9, 2008, the Magistrate Judge filed findings and recommendations herein. These findings and recommendations were served on the parties and contained notice to the parties that any objections to the findings and recommendations were to be filed within thirty days. Petitioner filed objections on January 6, 2009, to which Respondent filed a reply on January 14, 2009.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)C) this court has conducted a de novo review of this case. See Britt v. Simi Valley Unified School Dist., 708 F.2d 452, 454 (9<sup>th</sup> Cir. 1983). Having carefully reviewed the entire file, the court finds the findings and recommendations to be supported by the record and by proper analysis.

Petitioner may seek to appeal from the judgment of the court in this case. Petitioner cannot

1 proceed on such an appeal absent a certificate of appealability. The controlling statute, 28 U.S.C. §  
2 2253, provides as follows:

3 (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge,  
4 the final order shall be subject to review, on appeal, by the court of appeals for the circuit in  
which the proceeding is held.  
(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a  
5 warrant to remove to another district or place for commitment or trial a person charged with a  
6 criminal offense against the United States, or to test the validity of such person's detention  
pending removal proceedings.  
(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not  
7 be taken to the court of appeals from--  
(A) the final order in a habeas corpus proceeding in which the detention complained of arises  
8 out of process issued by a State court; or  
(B) the final order in a proceeding under section 2255.  
(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made  
9 a substantial showing of the denial of a constitutional right.  
(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or  
10 issues satisfy the showing required by paragraph (2).

11  
12 In the present case, the court finds no denial of a constitutional right. Accordingly, a  
13 certificate of appealability will be denied.

14

15 Based on the foregoing, it is HEREBY ORDERED that:

16 1. The findings and recommendations issued by the Magistrate Judge on  
17 December 9, 2008, are adopted in full;  
18 2. Respondent's motion to dismiss is GRANTED;  
19 3. The Petition for Writ of Habeas Corpus is DISMISSED as barred by the statute of  
20 limitations;  
21 4. A certificate of appealability is DENIED; and  
22 3. The Clerk of the Court is directed to enter judgment for Respondent and to close this case.

23 IT IS SO ORDERED.

24 Dated: January 22, 2009

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