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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAVID RODRIGUEZ,

1:09-cv-00748-OWW-DLB (HC)

Petitioner,

ORDER DENYING PETITIONER’S MOTION
FOR ENTRY OF DEFAULT

v.

[Doc. 21]

FERNANDO GONZALEZ,

Respondent.

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

Now pending before the Court is Petitioner’s request for entry of default, filed August 26, 2009. (Court Doc. 21.)

Entry of default is appropriate as to any party against whom a judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or otherwise. See Fed. R. Civ. P. 55(a).

On June 18, 2009, the Court directed Respondent to file a response to the petition within sixty (60) days from the date of service, i.e. August 17, 2009. (Court Doc. 12) Respondent filed a timely response to the petition on August 17, 2009, which was served by mail on Petitioner at his address of record. (Court Doc. 17.) Accordingly, because there is simply no basis upon which to enter default, Petitioner’s motion is **HEREBY DENIED**.

IT IS SO ORDERED.

Dated: September 8, 2009

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE