

1 U.S.C. § 2255. (Doc. 3). The Findings and Recommendations was served on all parties and
2 contained notice that any objections were to be filed within twenty days from the date of service of
3 that order. On May 26, 2009, Petitioner requested an extension of time to file his objections. (Doc.
4 4). However, before the Court could rule on that motion, Petitioner, on June 1, 2009, filed his
5 objections to the Magistrate Judge's Findings and Recommendations, in which Petitioner contends
6 that he has "newly discovered evidence" regarding his claim of perjury by a police officer that
7 contributed to his conviction. (Doc. 6).

8 Although the Court has reviewed Petitioner's objections, the Court believed that a response
9 by Respondent to Petitioner's objections would be of assistance in determining whether to proceed
10 with dismissing the petition as one that should have properly been brought as a motion to vacate, set
11 aside, or correct the sentence pursuant to 28 U.S.C. § 2255, rather than to proceed with the case as a
12 habeas corpus petition pursuant to 28 U.S.C. § 2241. Accordingly, the Court prepared an order to
13 that effect. However, due to a clerical error, the order was inadvertently captioned as an order
14 adopting the Magistrate Judge's Findings and Recommendations. Subsequently, the order adopting
15 the Findings and Recommendations was signed and issued, judgment was entered, and the case was
16 closed.

17 Because the Court continues to believe that a response to Petitioner's objections by
18 Respondent would be helpful to the Court, the Court is hereby vacating its previous order adopting
19 the Findings and Recommendations of May 14, 2009, and is setting aside the judgment entered on
20 August 17, 2009, in order to permit Respondent to respond to Petitioner's objections.

21 ORDER

22 Accordingly, the Court HEREBY ORDERS as follows:

- 23 1. The August 17, 2009 order adopting the Findings and Recommendations of May 14,
24 2009 (Doc. 8) is VACATED;
- 25 2. The judgment entered on August 17, 2007 (Doc. 9), is VACATED and SET ASIDE;
- 26 3. The Clerk of the Court is DIRECTED to REOPEN the case;
- 27 4. Petitioner's motion for extension of time to file objections (Doc. 4), is DENIED as
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MOOT; and,

- 5. Respondent is ordered to file a response to Petitioner's objections (Doc. 6), within thirty (30) days of the date of service of this order.

IT IS SO ORDERED.

Dated: September 4, 2009

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE