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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHN EDWARD MITCHELL,	1:10-cv-01342-LJO-MJS (HC)
Petitioner,	ORDER DENYING MOTION FOR
v.	DEFAULT GRANTING OF WRIT OF
	HABEAS CORPUS
	[Doc. 17]
DERRAL ADAMS, Warden,	
Respondent.	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On January 26, 2011, Petitioner filed a motion for granting of the writ of habeas corpus due to the alleged procedural default of Respondent. Petitioner asserts that Respondent did not timely file an answer to the Petition.

On November 15, 2010, the Court ordered Respondent to file a response to the petition within sixty (60) days. Sixty days after November 15, 2010 is January 14, 2011. However, Respondent is entitled to an additional three days for service by mail. See Fed. R. Civ. P. 6(d). Additionally, the last day for filing (with the addition of the three days for service), is January 17, 2011. As January 17, 2011 is a federal holiday, Respondent had until the next day, January 18, 2011, to file a timely response. See Fed. R. Civ. P. 6(a)(1)(C). Respondent filed an answer on January 18, 2011, and the answer is therefore timely.

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1 As Respondent timely filed an answer to the petition, Respondent is not in
2 procedural default and Petitioner's motion is DENIED.

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4 IT IS SO ORDERED.

5 Dated: June 14, 2011

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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