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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID HERNANDEZ,

Petitioner,

2:04-cv-0280-GEB-GGH-P

vs.

JOSEPH MCGRATH,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding through counsel, has filed this application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local General Order No. 262.

On November 20, 2008, the magistrate judge filed findings and recommendations herein which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty days. Petitioner and respondent have filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 72-304, this court has conducted a de novo review of this case. Having carefully reviewed the

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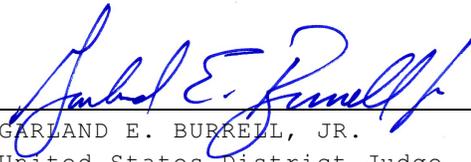
1 entire file, the court finds the findings and recommendations to be supported by the record and by
2 proper analysis.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. The findings and recommendations filed November 20, 2008, are adopted in
5 full; and

6 2. Petitioner's application for a writ of habeas corpus is granted in part on the
7 Confrontation Clause issue. The case shall be sent back to state court for resentencing only on
8 attempted murder without a finding of premeditation.

9 Dated: January 21, 2009

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11 
12 GARLAND E. BURRELL, JR.
United States District Judge