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

BARRY FLOYD BRAESEKE,

Petitioner,

No. CIV S-05-0279 GEB KJM P

vs.

MICHAEL MARTEL,

Respondent.

ORDER

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Petitioner, a state prisoner proceeding pro se, 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 Rule 302.

On September 30, 2010, 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-one days. Respondent has filed objections to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire file, the court finds the findings and recommendations, except where identified below, are supported by the record and by proper analysis.

1 IT IS HEREBY ORDERED that:

2 1. The findings and recommendations filed September 30, 2010, are adopted in  
3 full as to the recommendation that petitioner's application for writ of habeas corpus be granted.

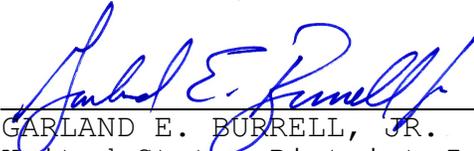
4 2. Petitioner's application for writ of habeas corpus is granted.

5 3. The remedy recommended by the magistrate judge is modified as follows:

6 A. Respondent is directed to release petitioner within thirty days unless a  
7 new parole suitability hearing is held in accordance with the provisions  
8 required by the Fourteenth Amendment of the United State Constitution  
9 and identified in the September 30, 2010 findings and recommendations;<sup>1</sup>  
10 and

11 B. Respondent is directed to file a status report with this court within  
12 thirty days advising the court of petitioner's release or, if a new parole  
13 suitability hearing is held within the time provided, reporting the outcome  
14 of the hearing.

15 Dated: December 23, 2010

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18 GARLAND E. BURRELL, JR.  
United States District Judge

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26 <sup>1</sup> See Haggard v. Curry, No. 10-16819, 2010 WL 4978842, at 4-5 (9th Cir., Dec. 9, 2010).