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

JOSEPH GORE,

Petitioner,

No. CIV S-08-0448 JAM KJM P

vs.

E.K. McDANIALS, Warden,

Respondent.

ORDER

_____ /

Petitioner, a state prisoner proceeding pro se, has filed an 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 August 25, 2009, the magistrate judge filed findings and recommendations herein which were served on petitioner and which contained notice to petitioner that any objections to the findings and recommendations were to be filed within twenty days. Petitioner has not filed objections to the findings and recommendations.

The court has reviewed the file and finds the findings and recommendations to be supported by the record and by the magistrate judge’s analysis. Accordingly, IT IS HEREBY ORDERED that:

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1. The findings and recommendations filed August 25, 2009, are adopted in full;

2. Respondent's motion to dismiss (docket no. 17) is granted as to petitioner's claim that the prosecutor failed to correct witness Oliver's testimony, included in ground five of the petition, but denied in all other respects;

3. To the extent that claim five of the federal petition alleges that the prosecutor failed to correct Oliver's perjured testimony, it is stricken; and

4. Respondent is directed to file an answer to the petition as reformulated and to petitioner's amended request for a stay (docket no. 26) within thirty days of this order.

DATED: November 24, 2009

/s/ John A. Mendez
UNITED STATES DISTRICT JUDGE