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

VICTOR BALLESTEROS,

Petitioner,

No. CIV S-10-1363 JAM DAD P

vs.

GARY SWARTHOUT, Warden,

Respondent.

ORDER

_____ /

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 January 13, 2011, 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 to be supported by the record and by proper analysis.

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Accordingly, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed January 13, 2011, are adopted in full;
2. Respondent's August 24, 2010 motion to dismiss (Doc. No. 11) is denied; and
3. Respondent is directed to file an answer to the petition together with all

transcripts and other documents relevant to the issues presented in the petition within sixty days.

See Rule 5, Fed. R. Governing § 2254 Cases.

DATED: April 4, 2011

/s/ John A. Mendez

UNITED STATES DISTRICT JUDGE