UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

MILROD OLIC,

Petitioner,

v.

WARDEN JOE A. LIZARRAGA,

Respondent.

No. 2:14-cv-2120 KJM GGH P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On March 25, 2016, the magistrate judge filed findings and recommendations, 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 fourteen days. Petitioner has filed objections to the findings and recommendations, and respondent has filed a reply.[1]

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 reviewed the file, the court declines to

[1] On April 18, 2016, petitioner filed a reply to respondent's reply to petitioner's objections. ECF No. 55. Neither the findings and recommendations, nor 28 U.S.C. § 636(b), nor Local Rule 304 authorize the filing of a reply to a reply in this context, and petitioner's reply has not been considered by the court.

adopt the findings and recommendations at this time. Instead, the matter will be referred back to the assigned magistrate judge for further consideration in light of the recent en banc decision in *Nettles v. Grounds*, ___ F.3d ___, 2016 WL 4072465 (9th Cir. July 26, 2016) (en banc).

In accordance with the above, IT IS HEREBY ORDERED that:

1. The findings and recommendations filed March 25, 2016, are not adopted; and

2. Respondent's motion to dismiss, filed July 17, 2015 (ECF No. 32), is referred back to the assigned magistrate judge for further consideration in light of *Nettles v. Grounds*, ___ F.3d ___, 2016 WL 4072465 (9th Cir. July 26, 2016) (en banc).

DATED: September 7, 2016

UNITED STATES DISTRICT JUDGE