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United States District Court
For the Northern District of California

E-Filed 12/28/10

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JAVIER FRANK GARCIA,
Petitioner,

No. C 09-4264 RS (PR)

ORDER OF DISMISSAL

v.

J. W. HAVILAND, Warden,
Respondent.

This is a federal habeas corpus action filed by a *pro se* state prisoner pursuant to 28 U.S.C. § 2254. Petitioner, having submitted a habeas petition containing exhausted and unexhausted claims, was ordered to inform the Court within 30 days of his choice whether to dismiss, proceed with, or stay his petition. More than 30 days have passed, and petitioner has not informed the Court of his choice. Accordingly, the action is DISMISSED without prejudice. The Clerk shall enter judgment in favor of respondent, and close the file.

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ORDER OF DISMISSAL

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A certificate of appealability will not issue. Petitioner has not shown “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

IT IS SO ORDERED.

DATED: December 28, 2010


RICHARD SEEBORG
United States District Judge