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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JESSE LYLE GEHRKE

vs.

R. SULLIVAN, Warden,

Petitioner,

Respondent.

CASE NO. 07cv0575 IEG (LSP)

**ORDER (1) VACATING THIS
COURT'S PREVIOUS ORDER OF
FEBRUARY 1, 2008; (2)
PERMITTING PETITIONER TO
FILE OBJECTIONS TO REPORT
AND RECOMMENDATIONS**

It has recently come to the Court's attention that on December 27, 2007, the Court received from Petitioner a "Petition for Issuance of Certificate of Probable Cause" and a "Notice of Appeal." In these documents, Petitioner incorrectly characterizes Magistrate Judge Leo Papas's November 20, 2007 Report and Recommendation ("the R&R") as a "final judgment" and seeks permission to present an appeal to the Ninth Circuit.¹

Because no final order had issued in the matter at the time, Petitioner's Petition for Issuance of a Certificate of Probable Cause and Notice of Appeal were premature. As a result, though incorrectly, the documents were not docketed at the time of their receipt but instead were held until such time as this Court issued its order, dated February 1, 2008, adopting the Report & Recommendations and denying the Petition for Writ of Habeas Corpus. Had the documents been

¹The R&R set December 20, 2007 as the date by which to file objections and the documents reflect Petitioner signed [wait to see the envelop]

1 docketed upon receipt, as they should have been, thus making the Court aware of Petitioner's
2 ineffectual attempt at challenging the Magistrate Judge's Report and Recommendations, the Court
3 would have alerted Petitioner to his error and instructed him once again to file written objections with
4 the Court.

5 **IT IS ORDERED:**

6 Now cognizant that Petitioner attempted to respond in some manner to the Report and
7 Recommendations, the Court **VACATES** its February 1, 2008 Order and Judgment pursuant to Fed.
8 Rule of Civil Procedure 60(a) which authorizes a court to grant relief from a judgment arising from
9 a mistake or omission.


10 No later than Monday, March 10, 2008, Petitioner may file written objections to the Magistrate
11 Judge's November 20, 2007 Report and Recommendations and serve a copy on Respondent. The
12 document should be captioned "Objections to Report and Recommendation." These objections are
13 distinct from a request for permission to appeal and should contain reasons why this Court should not
14 adopt the Magistrate Judge's factual or legal conclusions.

15 Any reply to the objections by Respondent shall be filed with the Court and served on
16 Petitioner no later than Monday, March 24, 2007.

17 Petitioner is advised that failure to file objections with the specified time may waive the right
18 to raise those objections on appeal.

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20 **IT IS SO ORDERED.**

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23 **DATED: February 13, 2008**

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25 **IRMA E. GONZALEZ, Chief Judge**
26 **United States District Court**