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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

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

JOSE RAMIREZ-SALGADO,
Petitioner,
vs.
LARRY E. SCRIBNER, Warden,
Respondent.

CASE NO. 08cv562-WQH-WMc
ORDER

HAYES, Judge:

The matter before the Court is the Report and Recommendation (Doc. 12) of Magistrate Judge William McCurine recommending that the Court deny the motion to dismiss the petition filed by Respondent.

On March 25, 2008, Petitioner Jose Ramirez-Salgado filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. 1.) On April 3, 2008, the Court dismissed the Petition without prejudice and with leave to amend. (Doc. 2.) On May 2, 2008, Petitioner filed his first amended petition naming Larry E. Scribner as the respondent. (Doc. 4.) On August 29, 2008, Respondent filed a motion to dismiss (Doc. 8), asserting that the Petition is barred by the applicable one year statute of limitations set by 28 U.S.C. § 2244(d)(1). Petitioner filed a timely opposition to Respondent's motion to dismiss (Doc. 10), asserting that his petition is not time barred because he is entitled to statutory and equitable tolling of the one year statute of limitations. On December 5, 2008, Magistrate Judge William McCurine issued the Report and Recommendation. (Doc. 12.) Neither party filed an

1 objection to the Report and Recommendation.

2 **RULING OF THE COURT**

3 The duties of the district court in connection with a Magistrate Judge's Report and
4 Recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and 28
5 U.S.C. § 636(b)(1). Where the parties object to a Report and Recommendation, "[a] judge of
6 the [district] court shall make a de novo determination of those portions of the [Report and
7 Recommendation] to which objection is made." 28 U.S.C.A. § 636(b)(1); see *Thomas v. Arn*,
8 474 U.S. 140, 149-50 (1985). When no objections are filed, the district court need not review
9 de novo the Report and Recommendation. *Wang v. Masaitis*, 416 F.3d 992, 1000 n. 13 (9th
10 Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).
11 A district court may nevertheless, "accept, reject, or modify, in whole or in part, the findings
12 or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1); *Wilkins v.*
13 *Ramirez*, 455 F. Supp. 2d 1080, 1088 (S.D. Cal. 2006); *Or. Natural Desert Ass'n v.*
14 *Rasmussen*, 451 F. Supp. 2d. 1202, 1205 (D. Or. 2006).

15 Neither party objected to the Magistrate Judge's Report and Recommendation in this
16 case, and this Court has reviewed the Report and Recommendation in its entirety. The Court
17 concludes that the Magistrate Judge correctly determined that "Petitioner has filed his petition
18 in federal court three-hundred seven (307) days into the applicable one (1) year, threehundred
19 sixty-five (365) days, statute of limitations." (Doc. 12 at 10.)

20 IT IS HEREBY ORDERED that (1) the Report and Recommendation (Doc. 12) is
21 adopted in its entirety, and (2) the motion to dismiss the petition (Doc. 8) filed by Respondent
22 Larry Scribner is DENIED. Respondents shall file an answer with the Court and serve a copy
23 on all parties within 30 days of the date of this order. Petitioner shall file his traverse with the
24 Court and serve a copy on all parties no later than 30 days after the filing of Respondent's
25 answer.

26
27 DATED: 1/21/07

28 
WILLIAM Q. HAYES
United States District Judge