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

MICHAEL DANIEL CUERO,		
v.		Petitioner,
DERRAL G. ADAMS,		Respondent.

CASE NO. 08cv2008 BTM (WMc)  
**ORDER RE: REPORT AND  
RECOMMENDATION**

Petitioner has filed a petition for writ of habeas corpus. On April 6, 2009, Petitioner filed a "Motion to Suppress New Evidence for a 'Writ Review' and Sentence Modification" (Doc. 12). In a Report and Recommendation ("R&R") filed on August 19, 2009, Magistrate Judge McCurine construed Petitioner's motion as seeking to add a claim for entrapment. The Magistrate Judge indicated that such a claim may be unexhausted and provided Petitioner with several options as to how to proceed. On September 17, 2009, the Petitioner submitted a reply to the R&R, stating that "Petitioner will choose the following option: iii) Third option: Formally abandon unexhausted claim(s); So that the one-year statute of limitations will be with merits, so it is." This reply was filed nunc pro tunc to September 14, 2009. The Court construes this reply as an intention to abandon the entrapment claim in this habeas proceeding.

Therefore, the Court orders as follows:

(1) Since in response to the R&R the Petitioner has made an election to abandon any entrapment claim, no further action is required as to that R&R (Doc. 18);

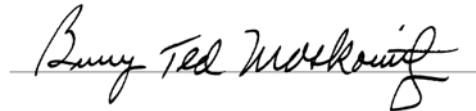
1 (2) Petitioner's "Motion to Suppress Evidence for a 'Writ of Review' and Sentence  
2 Modification" (Doc. 12) is **DENIED without prejudice**.

3 (3) Respondent's motion for extension of time (Doc. 25) is **GRANTED**. Respondent  
4 shall file a response to the Petition on or before January 11, 2010. Any further requests for  
5 extensions shall be made to the Magistrate Judge.

6 (4) This matter is remanded to the Magistrate Judge to prepare a Report and  
7 Recommendation on the current Petition.

8 **IT IS SO ORDERED.**

9 DATED: December 7, 2009

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12 Honorable Barry Ted Moskowitz  
United States District Judge

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