

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|--------------------|---|-------------------------------|
| _____ |) | |
| LUIS MEDINA, |) | |
| |) | |
| <u>Petitioner,</u> |) | |
| |) | |
| v. |) | Civil Action No. 11-10615-NMG |
| |) | |
| GARY RODEN, |) | |
| |) | |
| <u>Respondent.</u> |) | |
| _____ |) | |

REPORT AND RECOMMENDATION ON
RESPONDENT’S MOTION TO DISMISS FOR FAILURE TO EXHAUST

December 6, 2011

SOROKIN, M.J.

Pending is the Respondent’s Motion to Dismiss. Docket # 10. I RECOMMEND that the Motion be DENIED, in light of Medina’s voluntary withdrawal of exhausted claims, for the following reasons.

I. FACTUAL AND PROCEDURAL BACKGROUND

Medina was convicted in the Superior Court for the Commonwealth of Massachusetts in Hampden County on two counts of trafficking in cocaine (over 200 grams and over 28 grams), and two counts of committing those offenses within a school zone. He appealed his convictions to the Massachusetts Appeals Court, which affirmed the judgments. Medina then filed an Application for Leave to Obtain Further Appellate Review (“ALOFAR”) in which he raised three grounds: (1) that the Appeals Court erred in affirming his convictions where he was denied his Sixth Amendment right to confront and cross-examine all of the evidence against him; (2) that the Appeals Court erred

Report and Recommendation accepted and adopted.

SLM/Gorton, USDJ 1/20/12