

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

_____ JOSE POLANCO,	:	CIVIL ACTION
Petitioner,	:	
	:	
v.	:	No. 08-3839
	:	
SUPERINTENDENT VARANO, <u>et al.</u> ,	:	
Respondents.	:	
_____	:	

ORDER

AND NOW, this 28th day of October, 2009, upon consideration of the Petition for Writ of Habeas Corpus, Respondents’ Answer thereto, the Report and Recommendation of United States Magistrate Judge M. Faith Angell dated May 27, 2009, and Petitioner’s objections to the Report and Recommendation, and after a thorough and independent review of the record, it is hereby **ORDERED** that:

1. Petitioner’s objections are **OVERRULED**;
2. The Report and Recommendation is **APPROVED** and **ADOPTED**;
3. The Petition for Writ of Habeas Corpus is **DENIED** with prejudice and **DISMISSED** as untimely without an evidentiary hearing; and
4. There is no probable cause to issue a certificate of appealability.

FURTHERMORE, upon consideration of Petitioner’s “Motion to Amend Habeas Corpus In the Above-Captioned Matter,” (doc. no. 11), wherein Petitioner requested that Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009), be added to his Petition as “a newly-recognized constitutional right,” it is hereby **ORDERED** that Petitioner’s motion is **DENIED** as moot because his Petition

is dismissed as time-barred.¹

BY THE COURT:

/s/ Mitchell S. Goldberg

MITCHELL S. GOLDBERG, J.

¹ In Melendez-Diaz v. Massachusetts, 129 S.Ct. 2527 (2009), the Supreme Court clarified its holding on the Confrontation Clause in Crawford v. Washington, 541 U.S. 36 (2004), and did not create a newly recognized constitutional right. Therefore, the one year period of limitation applicable to Petitioner's Petition was not tolled under 28 U.S.C. § 2244(d)(1)(C).