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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RAFAEL BARRAGAN OCHOA,	)	1:09-cv-00018-SMS
	)	
Plaintiff,	)	DECISION AND ORDER DENYING
v.	)	PLAINTIFF'S SOCIAL SECURITY
	)	COMPLAINT (DOC. 1)
MICHAEL J. ASTRUE,	)	
COMMISSIONER OF SOCIAL	)	ORDER DIRECTING THE ENTRY OF
SECURITY,	)	JUDGMENT FOR DEFENDANT MICHAEL J.
	)	ASTRUE, COMMISSIONER OF SOCIAL
Defendant.	)	SECURITY, AND AGAINST PLAINTIFF
	)	RAFAEL BARRAGAN OCHOA
	)	

Plaintiff is proceeding in forma pauperis and with counsel with an action seeking judicial review of a final decision of the Commissioner of Social Security (Commissioner) denying Plaintiff's application of January 23, 2006, made pursuant to Titles II and XVI of the Social Security Act, for a period of disability and disability insurance benefits (DIB), and for supplemental security income (SSI), in which he alleged that he had been disabled since July 13, 2005, due to lower back injury, left leg pain, memory problems, epilepsy causing an inability to stand or sit for long periods, difficulty walking, and pain upon too much movement. (A.R. 13, 105-11, 124.) The parties have consented to the jurisdiction of the United States Magistrate

1 Judge pursuant to 28 U.S.C. § 636(c)(1), manifesting their  
2 consent in writings signed by the parties' authorized  
3 representatives and filed on behalf of Plaintiff on January 7,  
4 2009, and on behalf of Defendant on January 21, 2009. Thus, the  
5 matter is assigned to the Magistrate Judge to conduct all further  
6 proceedings in this case, including entry of final judgment.

7 The decision under review is that of Social Security  
8 Administration (SSA) Administrative Law Judge (ALJ) Christopher  
9 Larsen, dated September 3, 2008 (A.R. 13-20), rendered after a  
10 hearing held on April 21, 2008, at which Plaintiff appeared and  
11 testified with the aid of a Spanish interpreter and with  
12 representation by an attorney. Vocational expert (VE) Mr. Shapiro  
13 also testified. (A.R. 13, 46.)

14 After receiving additional evidence and making it part of  
15 the record, the Appeals Council denied Plaintiff's request for  
16 review of the ALJ's decision on December 10, 2008 (A.R. 1-4), and  
17 thereafter Plaintiff filed the complaint in this Court on January  
18 5, 2009. Briefing commenced with the filing of Plaintiff's  
19 opening brief on August 10, 2009, and was completed with the  
20 filing of Defendant's brief on September 12, 2009. The matter has  
21 been submitted without oral argument to the Magistrate Judge.

22 I. Jurisdiction

23 This Court has subject matter jurisdiction pursuant to 42  
24 U.S.C. §§ 1383(c)(3) and 405(g), which provide that an applicant  
25 suffering an adverse final determination of the Commissioner of  
26 Social Security with respect to disability or SSI benefits after  
27 a hearing may obtain judicial review by initiating a civil action  
28 in the district court within sixty days of the mailing of the

1 notice of decision. Plaintiff timely filed her complaint on  
2 January 5, 2009, less than sixty days after the mailing of the  
3 notice of decision on or about December 10, 2008.

4

5 II. Standard and Scope of Review

6 Congress has provided a limited scope of judicial review of  
7 the Commissioner's decision to deny benefits under the Act. In  
8 reviewing findings of fact with respect to such determinations,  
9 the Court must determine whether the decision of the Commissioner  
10 is supported by substantial evidence. 42 U.S.C. § 405(g).  
11 Substantial evidence means "more than a mere scintilla,"  
12 Richardson v. Perales, 402 U.S. 389, 402 (1971), but less than a  
13 preponderance, Sorenson v. Weinberger, 514 F.2d 1112, 1119, n. 10  
14 (9th Cir. 1975). It is "such relevant evidence as a reasonable  
15 mind might accept as adequate to support a conclusion."  
16 Richardson, 402 U.S. at 401. The Court must consider the record  
17 as a whole, weighing both the evidence that supports and the  
18 evidence that detracts from the Commissioner's conclusion; it may  
19 not simply isolate a portion of evidence that supports the  
20 decision. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9<sup>th</sup> Cir.  
21 2006); Jones v. Heckler, 760 F.2d 993, 995 (9th Cir. 1985).  
22 It is immaterial that the evidence would support a finding  
23 contrary to that reached by the Commissioner; the determination  
24 of the Commissioner as to a factual matter will stand if  
25 supported by substantial evidence because it is the  
26 Commissioner's job, and not the Court's, to resolve conflicts in  
27 the evidence. Sorenson v. Weinberger, 514 F.2d 1112, 1119 (9<sup>th</sup>  
28 Cir. 1975).

1 In weighing the evidence and making findings, the  
2 Commissioner must apply the proper legal standards. Burkhart v.  
3 Bowen, 856 F.2d 1335, 1338 (9th Cir. 1988). This Court must  
4 review the whole record and uphold the Commissioner's  
5 determination that the claimant is not disabled if the  
6 Commissioner applied the proper legal standards, and if the  
7 Commissioner's findings are supported by substantial evidence.  
8 See, Sanchez v. Secretary of Health and Human Services, 812 F.2d  
9 509, 510 (9th Cir. 1987); Jones v. Heckler, 760 F.2d at 995. If  
10 the Court concludes that the ALJ did not use the proper legal  
11 standard, the matter will be remanded to permit application of  
12 the appropriate standard. Cooper v. Bowen, 885 F.2d 557, 561 (9<sup>th</sup>  
13 Cir. 1987).

### 14 III. Disability

#### 15 A. Legal Standards

16 In order to qualify for benefits, a claimant must establish  
17 that she is unable to engage in substantial gainful activity due  
18 to a medically determinable physical or mental impairment which  
19 has lasted or can be expected to last for a continuous period of  
20 not less than twelve months. 42 U.S.C. §§ 416(i), 1382c(a)(3)(A).  
21 A claimant must demonstrate a physical or mental impairment of  
22 such severity that the claimant is not only unable to do the  
23 claimant's previous work, but cannot, considering age, education,  
24 and work experience, engage in any other kind of substantial  
25 gainful work which exists in the national economy. 42 U.S.C.  
26 1382c(a)(3)(B); Quang Van Han v. Bowen, 882 F.2d 1453, 1456 (9<sup>th</sup>  
27 Cir. 1989). The burden of establishing a disability is initially  
28 on the claimant, who must prove that the claimant is unable to

1 return to his or her former type of work; the burden then shifts  
2 to the Commissioner to identify other jobs that the claimant is  
3 capable of performing considering the claimant's residual  
4 functional capacity, as well as her age, education and last  
5 fifteen years of work experience. Terry v. Sullivan, 903 F.2d  
6 1273, 1275 (9<sup>th</sup> Cir. 1990).

7       The regulations provide that the ALJ must make specific  
8 sequential determinations in the process of evaluating a  
9 disability: 1) whether the applicant engaged in substantial  
10 gainful activity since the alleged date of the onset of the  
11 impairment, 20 C.F.R. § 404.1520;<sup>1</sup> 2) whether solely on the basis  
12 of the medical evidence the claimed impairment is severe, that  
13 is, of a magnitude sufficient to limit significantly the  
14 individual's physical or mental ability to do basic work  
15 activities, 20 C.F.R. § 404.1520(c); 3) whether solely on the  
16 basis of medical evidence the impairment equals or exceeds in  
17 severity certain impairments described in Appendix I of the  
18 regulations, 20 C.F.R. § 404.1520(d); 4) whether the applicant  
19 has sufficient residual functional capacity, defined as what an  
20 individual can still do despite limitations, to perform the  
21 applicant's past work, 20 C.F.R. §§ 404.1520(e), 404.1545(a); and  
22 5) whether on the basis of the applicant's age, education, work  
23 experience, and residual functional capacity, the applicant can  
24 perform any other gainful and substantial work within the  
25 economy, 20 C.F.R. § 404.1520(f).

26       With respect to SSI, the five-step evaluation process is

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28 <sup>1</sup>All references are to the 2008 version of the Code of Federal  
Regulations unless otherwise noted.

1 essentially the same. See 20 C.F.R. § 416.920.

2 B. The ALJ's Findings

3 The ALJ found that Plaintiff had severe impairments of  
4 lumbar degenerative disc disease and seizure disorder secondary  
5 to cysticercosis, but Plaintiff had no impairment or combination  
6 of impairments that met or medically equaled a listed impairment.  
7 (A.R. 15-16.) Plaintiff retained the residual functional capacity  
8 (RFC) to lift and carry twenty pounds occasionally and ten pounds  
9 frequently; sit or stand and walk a total of six hours out of an  
10 eight-hour day; never climb ladders, ropes, or scaffolds;  
11 occasionally crouch, crawl, and climb ramps or stairs; frequently  
12 balance and kneel; and avoid even moderate exposure to hazards.  
13 (A.R. 16.) Plaintiff could not perform his past relevant work,  
14 but as a thirty-five-year-old or younger person at the alleged  
15 date of onset who was illiterate but able to communicate in  
16 English, and who had the aforementioned RFC, Plaintiff could  
17 perform jobs that existed in significant numbers in the national  
18 economy, including housekeeping cleaner, DOT 323.687-014, with  
19 53,600 positions in California and about 406,500 nationally; raw  
20 shellfish preparer, DOT 311.674-014, with about 4,500 positions  
21 in California and about 41,400 nationally; and agricultural  
22 produce sorter, DOT 529.687-186, with about 1,300 positions in  
23 California and about 3,600 nationally. (A.R. 19.) Accordingly,  
24 Plaintiff was not disabled at any time from July 13, 2005 to the  
25 date of decision, namely, September 3, 2008. (A.R. 19-20.)

26 C. Plaintiff's Contentions

27 Plaintiff argues that the ALJ ignored Plaintiff's mental  
28 impairments and the opinion of Ricardo Carrillo, Ph.D.; further,

1 the ALJ failed to state legally sufficient reasons for rejecting  
2 Dr. Carrillo's opinion. The ALJ failed to consider the record as  
3 a whole, and the record lacked substantial evidence to support  
4 the ALJ's conclusions concerning Plaintiff's mental impairments.

5 IV. The Medical Record<sup>2</sup>

6 From 2004 through 2008, Plaintiff visited the Darin M.  
7 Camarena Health Centers, Inc., and saw multiple physicians. (A.R.  
8 309-75.) In September 2004, he reported that his last seizure was  
9 about three months before. (A.R. 374.) His seizures were "stable"  
10 in March 2005. (A.R. 372.)

11 On July 1, 2005, about ten days before the alleged date of  
12 onset, Plaintiff visited Andres Zimmermann, M.D., to follow up on  
13 his seizure disorder. (A.R. 203-04, 367-68.) Plaintiff reported  
14 that since about ten months before when he had started taking  
15 Dilantin daily, he had not had a seizure, although sometimes he  
16

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17  
18 <sup>2</sup>The medical evidence pertinent to Plaintiff's impairment involving back  
19 pain is not summarized because Plaintiff's contentions relate to his  
20 cysticercosis, epilepsy, and mental impairments. The Court notes that  
21 Plaintiff reported a one-month history of back pain from a work injury caused  
22 by lifting heavy objects on July 13 and 14, 2005. Pain, limited flexion,  
23 extremely restricted lateral bending and extension, and negative straight leg  
24 raise bilaterally were noted. Medications were prescribed. (A.R. 199-200.) On  
25 July 22, 2005, Henry H. Kang, M.D., Ph.D., certified in physical medicine and  
26 rehabilitation, diagnosed low back pain with discogenic disease, sacroiliitis,  
27 and muscle spasm, and prescribed medication, moist hot pack, and ambulation  
28 exercises. (A.R. 182.) Additional objective signs developed with respect to  
Plaintiff's lumbar spine pain and radiculitis from the autumn of 2005 through  
2007. (A.R. 209-20, 224-30.) A state agency physician rendered an opinion in  
April 2006. (A.R. 231-38.) Plaintiff was released to work in June 2006 and  
thereafter was considered disabled in October 2006 due to his lumbar spine  
injury. Additional treatment occurred in 2007 with temporary total disability  
through June 17, 2007. (A.R. 242-79.) In 2007, a CT scan of the lumbar spine  
and lumbar diskogram performed at UCSF Medical Center revealed a left  
dorsolateral full thickness tear at L4-5 entering a lateral disc protrusion  
with moderate left neural foraminal narrowing at L4-5 but no right neural  
foraminal narrowing and no significant canal stenosis. At L5-S1, there was a  
posterior midline tear filling a central disc protrusion with no canal  
stenosis but moderate right neural foraminal narrowing and mild left neural  
foraminal narrowing. (A.R. 433-35.) An agreed medical examiner rendered a  
report in July 2008. (A.R. 447-54.)

1 was easily distracted with his family. The doctor had to  
2 recommend to the Department of Motor Vehicles that Plaintiff not  
3 drive.

4 A CT scan of Plaintiff's head with and without contrast  
5 performed on July 12, 2005, revealed no evidence of intracranial  
6 hemorrhage, mass effect, or infarct. There were multiple, small  
7 calcifications in the internal capsule, particularly on the  
8 right, and in the cerebral cortex bilaterally, suggesting  
9 cysticercosis. (A.R. 201, 222, 363.) Cysticercosis serology was  
10 positive on July 27, 2005. (A.R. 198, 360.)

11 On July 27, 2005, Plaintiff reported to Dr. Zimmermann that  
12 he had not had any recurrent seizures; Dr. Zimmermann continued  
13 Dilantin and informed Plaintiff that his symptoms did not warrant  
14 any disability at that time; he would refer Plaintiff to a  
15 neurologist. (A.R. 198, 358.) Plaintiff's cysticercosis would be  
16 treated with Albendazole. (A.R. 359.) On August 19, 2005,  
17 Plaintiff reported that he had been doing all right, had not had  
18 any seizure, was prodromal but never lost consciousness, and was  
19 taking Albendazole in addition to Dilantin. However, it was also  
20 noted that he had complained of two "episodes" recently. (A.R.  
21 195-96.)

22 On October 25, 2005, Plaintiff reported that he had been  
23 doing all right but been experiencing absence seizures about once  
24 a month. Plaintiff reported difficulty learning and exhibited  
25 deficits in calculation and immediate recall. Dr. Zimmermann  
26 diagnosed neurocysticercosis and stable seizure disorder; he  
27 noted that they would fill out forms for INS "to try to waive him  
28 from the exams since probably he is not going to be able to pass



1 it due to his physical condition." (A.R. 194, 354.)

2 Between October 2005 and March 2008, Plaintiff was treated  
3 by neurologist Mythili Sundaresan, M.D. (A.R. 376-92.) In October  
4 2005, Plaintiff complained of seizures with loss of consciousness  
5 at least twice a month, but it was also related that at some time  
6 he had been free of seizures for four years. (A.R. 391.) In  
7 November 2005, Plaintiff reported that his last seizure had been  
8 two weeks before; his Dilantin dose was increased and he was  
9 referred to mental health. (A.R. 390.)

10 In December 2005, Plaintiff reported to Dr. Sundaresan that  
11 his last seizure was about a year before. (A.R. 386.) Dr.  
12 Sundaresan had increased his Dilantin dose. His Zoloft dose was  
13 increased for panic attacks. Plaintiff's anxiety and seizure  
14 disorder were noted as stable. (A.R. 350.) An EEG performed on  
15 December 2, 2005, was normal. (A.R. 389.) In February 2006,  
16 Plaintiff reported that his anxiety was still present, but  
17 otherwise he had no complaints. (A.R. 346.) In March 2006, Dr.  
18 Zimmermann assessed absence seizures and memory impairment as  
19 shown on the Folstein Mini-Mental Status Exam. (A.R. 339.) In  
20 September 2006, Plaintiff reported that he had had no seizures in  
21 the last couple of months, thought he should obtain disability,  
22 and reported occasional depression because of seizures. Zoloft  
23 was restarted, and neuropsychiatric evaluation was planned.  
24 However, Plaintiff declined because he was going to see another  
25 doctor. (A.R. 333.)

26 In late 2006 and early 2007, Plaintiff was treated by S. S.  
27 Samrao, M.D., for recurrent seizures, occurring once or twice a  
28 week, unrelated to activity, and accompanied by upset stomach and

1 blacking out. Dr. Samrao assessed depression with anxiety  
2 neurosis, and rule out pseudoseizures; obesity; and latent  
3 diabetes, with treatment by Paxil for depression and Lorazepam  
4 for anxiety. Other anti-seizure medication was not needed. (A.R.  
5 294.) Plaintiff was treated with Toradol and Reglan, which  
6 improved his symptoms of headache and nausea. (A.R. 302-03.) The  
7 medication helped a little and was adjusted. (A.R. 292.) Then  
8 Effexor XR and Zyprexa were prescribed and increased. (A.R. 290-  
9 91.) In December 2006, Dr. Samrao assessed Plaintiff with  
10 depression, chronic headaches due to depression, seizures, and  
11 history of neurocystic sarcosis; medications were Effexor, which  
12 was increased, and Zyprexa. (A.R. 289.) In January 2007, after  
13 reviewing Plaintiff's CAT scan that revealed multiple lesions of  
14 cranial cysticercosis but otherwise no tumors, Dr. Samrao  
15 assessed cranial cysticercosis--benign, seizures since age 17,  
16 stress, and depression. He explained to Plaintiff that he did not  
17 find any reason for him to give him a waiver, and that perhaps he  
18 should go to mental health, where he would be referred; he noted,  
19 "Again, counseling done that his cranial condition is benign."  
20 (A.R. 288.)

21 In February 2007, Plaintiff returned to the clinic and was  
22 told by Dr. Denkabe that he needed to be seen by a neurologist  
23 before Plaintiff could be evaluated for disability. (A.R. 331.)  
24 Plaintiff reported to Dr. Sundaresan that his last seizure was in  
25 December 2006. Dr. Sundaresan noted that Plaintiff's five-hour  
26 glucose tolerance test showed a tendency towards hypoglycemia,  
27 which could worsen seizures, so Plaintiff was prescribed a diet  
28 of small, frequent meals that were high in protein and low in

1 carbohydrates. (A.R. 379.)

2 Plaintiff visited Madera County Mental Health from February  
3 through November 2007. (A.R. 393-427.) Linda Negrete,  
4 M.S.W./A.C.S.W., assessed a depressive disorder not otherwise  
5 specified with a global assessment of functioning (GAF) of fifty  
6 in February. (A.R. 427.) Plaintiff reported having been depressed  
7 for two years because of inability to work because of seizures.  
8 He reported that he had gotten off the epilepsy medication for  
9 some days and that is when he had the seizures; further, his wife  
10 had told him that when he did not take his medication as we was  
11 supposed to, he had acted out and gone out of control, and his  
12 children had observed it. (A.R. 424.) He had appropriate affect,  
13 depressed mood, was well-groomed and calm, had intact thought  
14 process, impaired immediate memory, normal speech, intact  
15 judgment and insight, and was fully oriented. He had no  
16 impairment in living arrangements, moderate impairment in social  
17 relationships, and severe impairment in health and daily  
18 activities. (A.R. 425.)

19 In March 2007, Plaintiff reported to Ana Mendoza, M.D., a  
20 psychiatrist, that he had been irritable because of loss of  
21 memory, which prevented him from learning what to do at work. Dr.  
22 Mendoza assessed depressive disorder with a GAF of fifty. Zyprexa  
23 was stopped because of excessive sedation. Plaintiff's seizure  
24 disorder was controlled with Phenitoin. His affect was  
25 constricted, mood anxious and depressed, thought process was  
26 blocking, concentration was decreased, memory was impaired,  
27 speech normal, and judgment and insight were fair. He knew how to  
28 read and had average intellectual functioning. (A.R. 416-20.) In

1 April, he explained that his depression depended on whether there  
2 was hope in his SSI case. (A.R. 412.) In May 2007, he reported  
3 feeling less depressed with symptoms of irritability and fatigue,  
4 and improved mood and patience with less arguments with this wife  
5 and children, due to taking Prozac for a week. His memory  
6 continued to be poor. (A.R. 409.) In June 2007, Plaintiff  
7 reported that his seizure disorder was controlled with Dilantin;  
8 for the last year or more, four to five times a month he would  
9 feel as if a seizure were coming, but he and his daughter  
10 confirmed that he had had no actual seizure. (A.R. 404.) His  
11 affect was broad and his mood calmer, and the medication  
12 prescribed by the psychiatrist had helped him feel less depressed  
13 and anxious. (A.R. 403.)

14 In July 2007, Dr. Denkabe checked Plaintiff's seizure  
15 disorder and characterized Plaintiff's past seizures as absence  
16 seizures. The record is unclear, but Plaintiff reported, or Dr.  
17 Denkabe opined, that Plaintiff's cysticercosis did not affect his  
18 ability to perform daily activities. (A.R. 325.)

19 In August 2007, Plaintiff reported that the Prozac was not  
20 helping with the depression, but the Norco relieved his pain, and  
21 Dilantin had reduced the number and intensity of seizures. (A.R.  
22 402.) He reported having no seizures lately but experiencing the  
23 aura; he had impaired memory. (A.R. 400.) In September,  
24 psychiatry services were discontinued after some baseline  
25 progress with some improvement in affect as social factors  
26 improved; Plaintiff was referred to a neurologist because it was  
27 determined that his depression was due to his medical condition.  
28 His judgment and insight were fair to good, memory unchanged,

1 affect broad, and mood and sleep pattern better. (A.R. 395, 397-  
2 98.) He was discharged in October 2007 after individual therapy  
3 and medication, with moderate improvement in his depression and  
4 anxiety, and fair prognosis. The diagnosis of Ana E. Mendoza,  
5 M.D., was dementia due to GMC-neurocysticercosis; no diagnosis on  
6 Axis II; epilepsy; and a GAF of 50. If Plaintiff needed  
7 medications, he was to obtain in from his primary care physician.  
8 (A.R. 394.)

9       On August 10, 2007, Dr. Ricardo Antonio Carrillo, Ph.D.,  
10 performed a neuropsychological evaluation upon referral in  
11 connection with Plaintiff's application for citizenship, and  
12 specifically, his attempt to file a "N-648" or "Medical  
13 Certification for Disability Exceptions," which had been cited as  
14 incomplete. (A.R. 280-86.) Dr. Zimmermann, who had originally  
15 filled out the form, had moved from the Madera area. Dr. Carrillo  
16 reviewed records of cerebral tomography and other medical  
17 records, and he performed a mental status exam and brief  
18 neuropsychological evaluation that could not be completed but  
19 that reflected that Plaintiff met the criteria for severe  
20 impairment in all areas of functioning. (A.R. 281.)

21       Plaintiff suffered from a seizure disorder caused by  
22 "nuero-cysticercosis" (cerebral tapeworm infection) and thus  
23 sought a medical disability waiver in his immigration application  
24 because he was not able to process minimal cognitive and  
25 emotional stimuli as a result of diffuse damage to the cerebral  
26 cortex. (A.R. 280.) Plaintiff reported debilitating grand mal  
27 seizures, severe bouts of depression and clinical depression,  
28 anhedonia, disorientation, severe memory impairment lasting many

1 hours in a day's time, severe anxiety, suicidal thoughts, and  
2 inability to drive.

3 Dr. Carrillo's examination of Plaintiff reflected no  
4 physical abnormalities. Plaintiff had coherent and fluid speech,  
5 lucid thinking with no indication of a thought disorder, flat,  
6 numb, depressed, and anxious mood and affect, a general emotional  
7 state described as "desperate," severely impaired judgment, and  
8 severe thoughts of suicide without plans. Plaintiff was slow to  
9 respond, and his memory was severely impaired. He became  
10 disoriented to time and situation and perseverated at times,  
11 repeating things he had earlier disclosed without knowledge of  
12 repeating them. He could not remember the day, time, year, simple  
13 digits forward or backward, or beyond two digits; immediate  
14 recall was severely impaired; he lacked the capacity for abstract  
15 thinking; and he was unable to recognize simple shapes or  
16 replicate figures. The test results indicated severe impairment  
17 in the entire cortex.

18 The left hemisphere was responsible for language, analysis,  
19 and abstract thinking in the language realm; he could not  
20 abstract, thus any language-oriented task, such as studying for a  
21 citizenship exam, would not be possible. He was not able to read,  
22 comprehend, or recall what he was expected to answer; he would  
23 have a tendency to become confused and disoriented. (A.R. 282.)

24 The right hemisphere was responsible for spatial relations,  
25 emotionality, synthesis, orientation, equilibrium, and physical  
26 memory. Plaintiff was significantly impaired in this area, so he  
27 could not make sense of figures or puzzles, drive, or work with  
28 his hands. He could no longer perform tasks that were second

1 nature to him, such as field work or driving. Ability to  
2 recognize signs and directions, put together objects with his  
3 hands, and abstract ability to recognize and make sense of his  
4 emotions were significantly impaired. He knew he was disabled,  
5 but he still wanted to attain his citizenship for the sake of his  
6 family. (A.R. 282.)

7 Dr. Carrillo's diagnosis was dementia due to epilepsy and  
8 "nuerocysticercosis," dysthymic disorder, late onset, suicidal  
9 ideation, with diagnosis on Axis II deferred. (A.R. 282.) He  
10 opined on Axis IV that Plaintiff was disabled physically,  
11 mentally, and psychologically secondary to the dementia; he was  
12 unable to work, drive, or manage his personal affairs and was  
13 dependent upon his family; and the GAF was 25, reflecting severe  
14 impairment with suicidal ideation. (A.R. 282.) The recommendation  
15 was that he not drive and be given a disability exception for his  
16 citizenship application. (A.R. 283.) He was unable to learn or to  
17 demonstrate the ability to speak, read, or write English. (A.R.  
18 284-86.)

19 In October 2007, Plaintiff reported that he was not sure but  
20 thought he had about five seizures per month, although he had not  
21 had any "full" seizures. (A.R. 322-24.) He did not work and  
22 helped minimally around the house. Examination revealed no  
23 abnormal findings. (A.R. 323.) The assessment was seizure  
24 disorder, history of cysticercosis, and chronic low back pain  
25 secondary to disk herniation per patient. (A.R. 323.)

26 In November 2007, he reported to Dr. Sundaresan that he had  
27 at least four to five seizures a month; his last seizure was six  
28 days before. (A.R. 385.)

1 A CT scan of the brain with and without contrast performed  
2 on December 6, 2007, showed multiple calcifications present  
3 bilaterally most likely due to cysticercosis; no focal masses or  
4 edema; no fluid collections; and no enhancing lesions. (A.R.  
5 384.)

6 In February 2008, Plaintiff's grand-mal seizures were  
7 described as stable. (A.R. 321.) Plaintiff was prescribed a  
8 special diet to address his tendency to hypoglycemia, which Dr.  
9 Sundaresan noted could worsen his seizures. He believed Plaintiff  
10 had four to five seizures in a month. (A.R. 379.)

11 In March 2008, Plaintiff reported more frequent seizures and  
12 increasing memory loss. (A.R. 318.) Dr. Sundaresan noted on March  
13 10, 2008, that although Plaintiff had been prescribed a diet high  
14 in protein, low in carbohydrates, and made up of small, frequent  
15 meals, he was still non-compliant. (A.R. 377.) The last seizure  
16 had been three days before. (A.R. 377.)

17 On March 13, 2008, Dr. Arthur Paredes, M.D., of the Darin M.  
18 Camarena Health Center, opined that Plaintiff could sit, stand,  
19 or walk zero hours; never lift or carry even less than five  
20 pounds; could use his hands for simple grasping but no pushing or  
21 pulling of arm controls or fine manipulation; and could not bend,  
22 squat, crawl, climb, kneel, or stoop, or be exposed to extremes  
23 of hot or cold, wetness, humidity, noise, vibration, fumes,  
24 odors, gases, dust, or hazards. (A.R. 308.) Plaintiff had  
25 seizures and was totally incapacitated from any work. (A.R. 308.)

26 On June 25, 2008, Dr. Arthur Paredes opined that Plaintiff  
27 had a disability that affected his ability to learn and/or  
28 demonstrate knowledge, to learn or demonstrate an ability to read



1 and write English, and or learn or demonstrate knowledge of  
2 United States history and civics. The disability was a parasitic  
3 growth in the brain causing mental impairment and seizures,  
4 Echinocoosis infection, and generalized non-convulsive epilepsy,  
5 causing trouble remembering phrases and commands worsened by a  
6 seizure problem. (A.R. 444-46.)

7 V. Plaintiff's Testimony

8 Plaintiff could not recall his telephone number but could  
9 recognize his address. (A.R. 28.) He no longer had a license, but  
10 he usually drove his car once a week. (A.R. 29.) He had four or  
11 five seizures per month; he had been taking the medication, so he  
12 did not get the real strong ones so much. After a seizure, he  
13 felt tired and depressed and had to rest. (A.R. 40-42.)

14 Plaintiff's memory problems were worsening; the only thing  
15 the doctors did was to medicate so the seizures would not be as  
16 strong. (A.R. 42.) He could concentrate for four or five minutes.  
17 (A.R. 44.) He could read and write some in Spanish, although  
18 sometimes he got words confused; he could not read or write  
19 English but understood enough words to count to a hundred and  
20 make purchases. (A.R. 30-31.) Plaintiff remembered some of his  
21 work history, but he had difficulty remembering other parts.  
22 (A.R. 31-35.) He could not remember things that happened more  
23 than three months previously. (A.R. 33.) He could not work  
24 because of lower back pain due to damaged discs, pain in the feet  
25 and the head, seizures, memory problems, and depression. (A.R.  
26 35.) He could sit ten to fifteen minutes, stand ten to twenty  
27 minutes, walk ten to fifteen minutes, and lift a gallon of milk,  
28 but he did not think he could lift ten pounds. A TENS unit and

1 oral medication numbed the pain but did not take it away  
2 completely, and at UCSF he was told he needed surgery for his  
3 back. (A.R. 36-39.)

4 VI. Plaintiff's Wife's Testimony

5 Cortensia Barragan, Plaintiff's wife, testified that  
6 Plaintiff had four seizures per month, which lasted a few seconds  
7 or a minute, and required rest for the remainder of the day.  
8 (A.R. 45-46.)

9 VII. Vocational Expert's Testimony

10 Mr. Shapiro, a vocational expert (VE), testified that  
11 Plaintiff could not perform his past relevant work, which was  
12 medium work; however, assuming that Plaintiff could lift and  
13 carry twenty pounds occasionally and ten pounds frequently, sit,  
14 stand, and walk a total of six hours in an eight-hour day, never  
15 climb ladders, ropes, or scaffolds, occasionally crouch, crawl,  
16 and climb ramps or stairs, frequently balance and kneel, and  
17 avoid even moderate exposure to hazards, he could perform the  
18 jobs of housekeeping cleaner, light and unskilled, DOT 323.687-  
19 014, with 53,600 jobs in California and about 406,500 nationally;  
20 raw shellfish preparer, light and unskilled, DOT 311.674-014,  
21 with about 4,500 positions in California and about 41,400  
22 positions nationally; and agricultural produce sorter, light and  
23 unskilled, DOT 529.687-186, with about 1,300 positions in  
24 California and 3,600 nationally. Inability to remember anything  
25 more than three months past did not change his answer. (A.R. 47-  
26 48.) However, limitations from seizures and restrictions in  
27 concentration as described by Plaintiff in his testimony  
28 precluded employment. (A.R. 49-50.)

1 VIII. Reports of Plaintiff and Third Parties

2 Plaintiff reported on February 8, 2006, to the SSA that  
3 sometimes when he got seizures, he was a little groggy  
4 afterwards; however, when he was seizure free, he did well with  
5 his memory and concentration, could think, and did not need  
6 constant reminders. His memory problems did not affect his  
7 activities of daily living. (A.R. 141.)

8 Plaintiff's wife, son, and daughter reported in letters in  
9 2007 and 2008 that Plaintiff had told his wife that the attacks  
10 came four to five times a month and that he felt really bad; he  
11 would lose consciousness and orientation. (A.R. 169.) Plaintiff's  
12 son reported that Plaintiff had attacks about four to five times  
13 a month; he lost his memory more every day and needed his family;  
14 his epileptic attacks did not allow him to get a job. (A.R. 171.)  
15 His daughter confirmed that he got the attacks four to five  
16 times, and she stated that Plaintiff said bad words without  
17 knowing what he said unconsciously; pills did not preclude the  
18 attacks, which did not have bad convulsions but caused loss of  
19 consciousness for seconds. His illness caused his depression.  
20 (A.R. 173.)

21 IX. Rejection of Dr. Carrillo's Opinion

22 Plaintiff argues that the ALJ ignored Plaintiff's mental  
23 impairments and the opinion of Ricardo Carrillo, Ph.D.; further,  
24 the ALJ failed to state legally sufficient reasons for rejecting  
25 Dr. Carrillo's opinion. The ALJ failed to consider the record as  
26 a whole, and the record lacked substantial evidence to support  
27 the ALJ's conclusions concerning Plaintiff's mental impairments.

28 A. Legal Standards

1 The standards for evaluating expert opinions have recently  
2 been summarized:

3 By rule, the Social Security Administration favors  
4 the opinion of a treating physician over  
5 non-treating physicians. See 20 C.F.R. § 404.1527.  
6 If a treating physician's opinion is  
7 "well-supported by medically acceptable clinical  
8 and laboratory diagnostic techniques and is not  
9 inconsistent with the other substantial evidence  
10 in [the] case record, [it will be given]  
11 controlling weight." Id. § 404.1527(d)(2). If a  
12 treating physician's opinion is not given  
13 "controlling weight" because it is not  
14 "well-supported" or because it is inconsistent  
15 with other substantial evidence in the record, the  
16 Administration considers specified factors in  
17 determining the weight it will be given. Those  
18 factors include the "[l]ength of the treatment  
19 relationship and the frequency of examination" by  
20 the treating physician; and the "nature and extent  
21 of the treatment relationship" between the patient  
22 and the treating physician. Id. §  
23 404.1527(d)(2)(i)-(ii). Generally, the opinions of  
24 examining physicians are afforded more weight than  
25 those of non-examining physicians, and the  
26 opinions of examining non-treating physicians are  
27 afforded less weight than those of treating  
28 physicians. Id. § 404.1527(d)(1)-(2). Additional  
factors relevant to evaluating any medical  
opinion, not limited to the opinion of the  
treating physician, include the amount of relevant  
evidence that supports the opinion and the quality  
of the explanation provided; the consistency of  
the medical opinion with the record as a whole;  
the specialty of the physician providing the  
opinion; and "[o]ther factors" such as the degree  
of understanding a physician has of the  
Administration's "disability programs and their  
evidentiary requirements" and the degree of his or  
her familiarity with other information in the case  
record. Id. § 404.1527(d)(3)-(6).

23 Orn v. Astrue, 495 F.3d 625, 631 (9<sup>th</sup> Cir. 2007).

24 With respect to proceedings under Title XVI, the Court notes  
25 that an identical regulation has been promulgated. See, 20 C.F.R.  
26 § 416.927.

27 B. Analysis

28 Here, the ALJ's treatment of Dr. Carrillo's opinion must be

1 considered in context. In the decision, the ALJ initially set  
2 forth a summary of the medical evidence. (A.R. 15-18.) The ALJ  
3 noted Plaintiff's subjective complaints of memory problems and  
4 limited concentration due to seizure disorder secondary to  
5 cysticercosis. (A.R. 17, 15.) The ALJ cited numerous clear and  
6 convincing reasons, supported by substantial evidence, for his  
7 conclusion that despite Plaintiff's having impairments that could  
8 reasonably have been expected to produce his symptoms,  
9 Plaintiff's statements about the intensity, persistence, and  
10 limiting effects of his symptoms were not credible to the extent  
11 they were inconsistent with the ALJ's RFC assessment. (A.R. 17.)  
12 The ALJ's reasons included inconsistencies in Plaintiff's  
13 testimony concerning his ability to remember, his admission that  
14 he drove weekly despite doctors' admonitions not to drive, his  
15 sitting for a one-hour hearing while claiming that he could sit  
16 for only ten to fifteen minutes at a time, his concentrating and  
17 participating throughout the hearing while claiming that he could  
18 concentrate for only a few minutes, the inconsistencies between  
19 Plaintiff's and Plaintiff's wife's reports concerning Plaintiff's  
20 seizures, Plaintiff's inconsistent statements concerning his  
21 seizures, Plaintiff's admissions that his seizures did not affect  
22 his activities of daily-living and that his concentration and  
23 memory were good when he was seizure-free; the mild or normal  
24 findings on examination and the opinions of various practitioners  
25 that contradicted Plaintiff's claims, including Dr. Zimmermann's  
26 statement that Plaintiff's symptoms did not warrant any  
27 disability at the time, Dr. Nugent's mild findings, Dr. Samrao's  
28 notation that Plaintiff's cranial cysticercosis was benign and

1 his failure to find a basis for a waiver, the note that  
2 Plaintiff's seizures and cystecercosis did not affect Plaintiff's  
3 day-to-day activities, and Dr. Sundaresan's note that Plaintiff's  
4 seizures were due in part to Plaintiff's noncompliance with diet.  
5 (A.R. 18.) The ALJ noted how historically Plaintiff had been able  
6 to work despite his seizure disorder from 1988 to the alleged  
7 onset date. (A.R. 18.) The ALJ also noted that Plaintiff visited  
8 physicians for waivers in connection with the citizenship exam,  
9 and he expressly concluded that the record suggested that  
10 Plaintiff was seeing physicians primarily in order to generate  
11 evidence for his SSI application and appeal rather than in a  
12 genuine attempt to obtain relief from his symptoms. (A.R. 18.)

13 Plaintiff does not challenge these findings. The Court notes  
14 them because they reflect the ALJ's evaluation of Plaintiff's  
15 credibility, which was pertinent to the reliability of the  
16 medical evidence that in turn rested on Plaintiff's reports.

17 The ALJ noted Dr. Carrillo's assessment that Plaintiff was  
18 not able to process minimal cognitive and emotional stimuli as a  
19 result of diffuse damage to the cerebral cortex, and his note  
20 that Plaintiff could not remember the date, time, year, or simple  
21 digits forward or backward; engage in abstract thought; make  
22 sense of figures or puzzles; or drive or work with his hands.  
23 (A.R. 17.) However, the ALJ noted Plaintiff's inconsistent  
24 statements that his impairments did not affect his activities of  
25 daily living and that he did well with concentration and memory  
26 when he was seizure-free. The ALJ referred to the medical  
27 evidence in general, noting the absence of hospitalizations for  
28 Plaintiff's seizures and his failure to visit a neurologist as

1 directed. (A.R. 18.) In this course of reasoning, the ALJ relied  
2 on the evidence that was inconsistent with the severely  
3 debilitating symptoms that Plaintiff reported or represented to  
4 Dr. Carrillo.

5 This reasoning was legitimate, specific, and even clear and  
6 convincing. It is established that important factors in  
7 evaluating expert opinions include the amount of relevant  
8 evidence that supports the opinion, the quality of the  
9 explanation provided, the consistency of the medical opinion with  
10 the record as a whole, the specialty of the physician providing  
11 the opinion, and "[o]ther factors" such as the degree of  
12 understanding a physician has of the Administration's "disability  
13 programs and their evidentiary requirements" and the degree of  
14 his or her familiarity with other information in the case record.  
15 20 C.F.R. § 416.927(d); Orn v. Astrue, 495 F.3d 625, 631 (9<sup>th</sup> Cir.  
16 2007).

17 The ALJ also noted that Dr. Carrillo's opinion was not  
18 written for the purpose of evaluating Plaintiff's ability to  
19 work; rather, it was for the specific purpose of obtaining a  
20 waiver of a citizenship exam that involved English language  
21 skills and knowledge of American civics and history. (A.R. 18.)  
22 It is evident from the purpose of the examination that it  
23 centered on a citizenship exam process that involved a specific  
24 set of advanced literacy and learning skills; thus, the doctor's  
25 opinion regarding a citizenship exam waiver does not necessarily  
26 preclude an ability to work, which involves a much broader, more  
27 inclusive set of basic work activities. When Dr. Carrillo  
28 referred to Plaintiff's inability to work, it is not clear what

1 set of activities was involved. The ALJ's reasoning was specific,  
2 legitimate, and even clear and convincing.

3 Further, the ALJ noted that Dr. Carrillo's opinion did not  
4 indicate how Plaintiff had been able to work steadily from 1988  
5 to his alleged onset date. (A.R. 18.) The opinion was  
6 insufficient with respect to addressing the pertinent facts and  
7 providing an adequate explanation of the conclusions. The ALJ's  
8 reasoning was supported by the record and was specific,  
9 legitimate, clear, and convincing.

10 Finally, the ALJ gave great weight to the opinions of the  
11 state agency physicians that Plaintiff could perform light work  
12 with some additional limitations because their limitations were  
13 consistent with the treatment history. (A.R. 18.) The ALJ by  
14 implication found that Dr. Carrillo's limitations were  
15 inconsistent with the treatment history. Further, the ALJ  
16 expressly reviewed the inconsistent findings or opinions of  
17 treating physicians Zimmermann, Nugent, Samrao, Sundaresan,  
18 Dankabe, and even PA-C Evangelina Nunez. (A.R. 18.) The ALJ thus  
19 concluded that Dr. Carrillo's limitations were inconsistent with  
20 the overall medical record.

21 Contrary to Plaintiff's assertion, the ALJ did not ignore  
22 Dr. Carrillo's opinion; rather, he noted Dr. Carrillo's  
23 examination and assessment (A.R. 16, 17), detailed the  
24 inconsistencies that brought Dr. Carrillo's opinion into question  
25 (A.R. 17-18), and stated additional reasons for not giving weight  
26 to Dr. Carrillo's opinion (A.R. 18). Although the ALJ did not  
27 affirmatively express the precise lack of weight assigned to Dr.  
28 Carrillo's opinion, it was clear that the ALJ discounted Dr.



1 Carrillo's opinion and instead placed great weight on other,  
2 specified opinions found to be consistent with the overall  
3 record. The ALJ thus stated multiple reasons, supported by  
4 substantial evidence in the record, that were specific and  
5 legitimate and, in the circumstances of the present case, clear  
6 and convincing in force, for declining to give weight to the  
7 opinion of Dr. Carrillo.

8 The ALJ's conclusion was supported by substantial evidence.  
9 It was Plaintiff's burden to provide evidence of disability at  
10 step four and determination of RFC. The ALJ rejected the evidence  
11 that would have supported a finding of disability based on  
12 Plaintiff's functioning due to cysticercosis/seizure disorder.  
13 The ALJ's conclusion was proper.

14 X. Disposition

15 Based on the foregoing, the Court concludes that the ALJ's  
16 decision was supported by substantial evidence in the record as a  
17 whole and was based on the application of correct legal  
18 standards.

19 Accordingly, the Court AFFIRMS the administrative decision  
20 of the Defendant Commissioner of Social Security and DENIES  
21 Plaintiff's Social Security complaint.

22 The Clerk of the Court IS DIRECTED to enter judgment for  
23 Defendant Michael J. Astrue, Commissioner of Social Security,  
24 and against Plaintiff Rafael Barragan Ochoa.

25 IT IS SO ORDERED.

26

27 Dated: February 25, 2010

/s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE

28