

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**THOMAS WEAVER,**

Petitioner,

v.

**MARK NOOTH,**

Respondent.

CV 07-1763-AC

OPINION AND ORDER

**MOSMAN, J.,**

On March 23, 2011, Magistrate Judge Acosta issued his Findings and Recommendation (“F&R”) [65] in the above-captioned case recommending that the petitioner’s Petition for Writ of Habeas Corpus [1] be denied, petitioner’s alternative request for an evidentiary hearing be denied, and a certificate of appealability should be denied. The petitioner objected [67] and the government responded [68].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121

(9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Acosta's recommendation, and I ADOPT the F&R [65] as my own opinion.

IT IS SO ORDERED.

DATED this 3rd day of May, 2011.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court