

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

Ruben L. Garza,

)

No. CV 07-2497-PHX-JAT

10

Petitioner,

)

ORDER

11

vs.

)

12

Dora B. Schriro, et al.,

)

13

Respondents.

)

14

15

16

Pending before the Court is Petitioner’s Petition for Writ of Habeas Corpus (“Petition”) (Doc. #1). The Magistrate Judge issued a Report and Recommendation (“R&R”) (Doc. #11) recommending that the Petition be denied as untimely.

19

Neither party has filed objections to the R&R. Therefore, the Court will accept the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985) (finding that district courts are not required to conduct “any review at all . . . of any issue that is not the subject of an objection” (emphasis added)); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (“statute makes it clear that the district judge must review the magistrate judge’s findings and recommendations de novo if objection is made, but not otherwise” (emphasis in original)); *see also Schmidt v. Johnstone*, 263 F.Supp.2d 1219, 1226 (D. Ariz. 2003).

26

However, the Court notes that, in contradiction of *Reyna-Tapia* and *Schmidt*, the Magistrate Judge states that her recommendation is subject to the District Court conducting, “its independent review of the record.” The Court is unclear whether the Magistrate Judge

27

28

1 is attempting to direct this Court to conduct a *de novo* review or is suggesting some other
2 standard. Nonetheless, consistent with *Reyna-Tapia* and *Schmidt*, this Court has not
3 conducted any review because no objections were filed. If Petitioner (or Respondents) failed
4 to file objections in reliance on the Magistrate Judge's admonition to the District Court,
5 either party may move for reconsideration of this Order within ten days and shall
6 contemporaneously file such parties' objections with the motion for reconsideration.

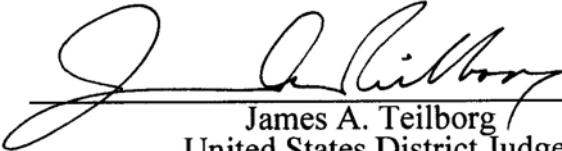
7 Accordingly,

8 **IT IS ORDERED** that the Magistrate Judge's Report and Recommendation (Doc.
9 #11) is **ACCEPTED**;

10 **IT IS FURTHER ORDERED** that Petitioner's Petition for Writ of Habeas Corpus
11 (Doc. #1) is **DENIED**; and

12 **IT IS FURTHER ORDERED** that this action is **DISMISSED WITH**
13 **PREJUDICE**.

14 DATED this 6th day of November, 2009.

15
16
17 
18 James A. Teilborg
19 United States District Judge
20
21
22
23
24
25
26
27
28