

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<p><b>ERIC DAVID HOFFERT,</b></p>	)	
	)	
<b>Petitioner,</b>	)	<b>2:08-CV-1268 JWS</b>
	)	
<b>vs.</b>	)	<b>ORDER FROM CHAMBERS</b>
	)	
<b>DORA B. SCHRIRIO, <i>et al.</i>,</b>	)	<b>[Re: Petition at docket 1,</b>
	)	<b>Report at docket 20, and</b>
<b>Respondents.</b>	)	<b>Motion at docket 25]</b>
	)	

**I. MATTERS PRESENTED**

Pursuant to 28 U.S.C. § 2254, petitioner Hoffert seeks a writ of *habeas corpus*. Respondents opposed the petition, and Hoffert filed a traverse. At docket 20, Magistrate Judge Irwin, to whom this matter had been referred, filed a report recommending that the petition be denied. Timely objections were filed by Hoffert at docket 24. The title to the document included a request for an evidentiary hearing. This appears to have resulted in the Clerk's placing the document on ECF a second time at docket 25 as a tracking mechanism for the hearing request. Respondents filed a response at docket 27 which was amended at docket 28.

## **II. STANDARD OF REVIEW**

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”<sup>1</sup> When reviewing a magistrate judge’s report and recommendation in a case such as this one, the district court conducts *de novo* review of all conclusions of law,<sup>2</sup> and any findings of fact to which objections have been made.<sup>3</sup> Uncontested findings of fact are reviewed for clear error.<sup>4</sup>

## **III. DISCUSSION**

Having reviewed the file, including the parties’ recent papers, and applied the standard of review articulated above, this court concludes that the magistrate judge has correctly found the facts and applied the law. There is nothing in Hoffert’s objections not adequately addressed in the report at docket 20. This court adopts the magistrate judge’s recommended findings and conclusions at docket 20. There being no merit in Hoffert’s position, an evidentiary hearing would not be helpful. Rather, such a hearing is unnecessary.

In sum, this court has concluded that the petition in this case should be denied for the reasons explained by the magistrate judge, and has further concluded that there is no reason to conduct an evidentiary hearing. Given this disposition, a result which is fully consistent with the disposition sought by respondents, this court finds it

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<sup>1</sup>28 U.S.C. § 636(b)(1).

<sup>2</sup>*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

<sup>3</sup>28 U.S.C. § 636(b)(1).

<sup>4</sup>*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

unnecessary to address respondents' criticism of the analytical approach used by the magistrate judge contained in respondents' briefing at docket 28.

#### **IV. CONCLUSION**

For the reasons above, this court adopts Magistrate Judge Irwin's recommended findings and conclusions. Based thereon, the motion at docket 25 is **DENIED**, and the petition at docket 1 is **DENIED**.

DATED at this 14th day of October 2009.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE