



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MILTON SIMS,
Petitioner,

v.

JOSEPH K. WOODRING, Warden
Respondent.

Case No. CV 08-00936 AHM (AN)

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the Magistrate Judge's Report and Recommendation ("R&R"), *de novo*. IT IS ORDERED that:

1. The R&R is approved and adopted.
2. Respondent's request to stay the action pending the Ninth Circuit's issuance of its opinion in *Rodriguez v. Smith*, --- F.3d ---, No. 07-00190, 2008 WL 4070264 (9th Cir. Sept. 4, 2008) is denied as moot.
3. Judgment shall be entered dismissing the Petition without prejudice.
4. Any pending motions are denied as moot and terminated.

IT IS FURTHER ORDERED that the Clerk of the Court shall serve a copy of this Order and the Judgment on all counsel or parties of record.

A. HOWARD MATZ
UNITED STATES DISTRICT JUDGE

Dated: October 31, 2008