

1 objections, the court briefly adds the additional analysis below. Because the facts and arguments
2 are known to the parties and addressed in the Findings and Recommendation, they will not be
3 repeated here.

4 Petitioner's objections primarily concern the introduction of Witness Rodriguez's
5 testimony at trial, along with his two prior statements to police. Each time, Rodriguez gave a
6 different version of events. In the second interview with police, Rodriguez implicated Plaintiff.
7 Petitioner contends that Witness Rodriguez's interviews should not be admitted because they
8 were coerced. As explained by the Magistrate Judge, Petitioner is entitled to habeas corpus
9 relief *only* if Petitioner can show that the trial court's admission of Rodriguez's "testimony
10 rendered the trial so fundamentally unfair as to violate due process." Williams v. Woodford, 384
11 F.3d 567, 593 (9th Cir. 2004). Here, the court agrees that the California courts' finding that due
12 process was not violated is not contrary to clearly established federal law.

13 There was a break in the causal chain between the first, and possible coercive interview,
14 and the second interview. An earlier interrogation in violation of the Constitution does not
15 always require the suppression of a latter statement. See Garvin v. Farmon 258 F.3d 951, 955
16 (9th Cir. 2001). In Garvin, the Ninth Circuit applied the deferential habeas corpus standard and
17 upheld the state court finding of voluntariness of a second confession despite false statements
18 and coercive tactics, including ignoring invocation of counsel three days earlier. The court
19 emphasized the defendant's criminal sophistication, apparent motivation to clear her conscience,
20 access to inmates and a friend during the three-day period, and her initiation of the second
21 interview, which was preceded by a Miranda waiver. Id. at 957.

22 Petitioner attempts to distinguish Garvin and related cases because the statements from
23 the earlier interviews in these cases were not introduced into evidence in Garvin. In this case,
24 both of the interviews were introduced, along with Rodriguez's trial testimony. Petitioner is
25 correct that Garvin's facts and the facts of related cases are different in that the interviews in
26 these cases were not introduced into evidence. However, in this case, unlike the other cases,
27 Rodriguez testified differently at trial than he did in both interviews. Petitioner has cited no case

1 in which the interviews were not introduced where the witnesses testified differentially at trial.
2 Under AEDPA the court cannot find the state courts' finding that the introduction of Rodriguez's
3 interviews was "contrary to, or involved an unreasonable application of, clearly established
4 Federal law, as determined by the Supreme Court of the United States." See 28 U.S.C. §
5 2254(d).

6 In addition, the state courts made certain factual findings about the second interview. In
7 finding the lack of a causal chain between the first and second interviews, the California courts
8 clearly made certain factual findings. A federal court must presume the correctness of the state
9 court's factual findings. 28 U.S.C. § 2254(e)(1). The court may not overturn state factual
10 findings "absent clear and convincing evidence" that they are "objectively unreasonable."
11 Miller-El v. Cockrell, 537 U.S. 322, 340 (2003); Stenson v. Lambert, 504 F.3d 873, 881 (9th Cir.
12 2007). There is no such clear and convincing evidence in this case.

13 The court adopts the Findings and Recommendation in full with the additional analysis
14 provided in this order. As to those objections not addressed specifically in this order, the court
15 finds that the Findings and Recommendation adequately address Petitioner's objections and no
16 further discussion is necessary. Accordingly, IT IS HEREBY ORDERED that:

- 17 1. The Findings and Recommendation issued December 12, 2008, is ADOPTED IN
18 FULL;
- 19 2. The Petition for Writ of Habeas Corpus is DENIED with prejudice; and
- 20 3. The Clerk of Court is DIRECTED to enter judgment.

21
22 IT IS SO ORDERED.

23 **Dated:** April 16, 2009

23 /s/ Anthony W. Ishii
24 CHIEF UNITED STATES DISTRICT JUDGE