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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JESUS CIANEZ HERNANDEZ,
Petitioner,
v.
GREG LEWIS,
Respondent.

No. 1:12-cv-01661-DAD-MJS

ORDER DENYING REQUEST FOR
RECONSIDERATION

(Doc. No. 76)

On July 11, 2017, the undersigned issued an order declining to adopt the findings and recommendations of the assigned magistrate judge recommending that the petition be granted and referring the matter for further consideration of the standard of review and application of deference, if any, to the factual findings made by the state court. (Doc. No. 74.) On July 17, 2017, petitioner filed both a request for reconsideration of the undersigned’s order and an amended request for reconsideration. (Doc. Nos. 75, 76.) For the reasons set forth below, the court will deny the request for reconsideration.

Petitioner maintains that because no objections were filed to the findings and recommendations, the court erred by subjecting the findings and recommendations to *de novo* review. (Doc. No. 76 at 2.) According to petitioner, district judges are not required to perform *de novo* review of any portions of the findings and recommendations that are not objected to. (*Id.* at 2–4) (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)). Whether or not

1 a district judge is *required* to review findings and recommendations *de novo* standard, it is clear
2 that a district judge *may* conduct such a review in issuing an order addressing findings and
3 recommendations. While the relevant statute requires the undersigned to conduct a *de novo*
4 review of any portion of a recommendation from a magistrate judge that is objected to, it also
5 specifically states the “court may accept, reject, or modify, in whole or in part, the findings or
6 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Accordingly,
7 reconsideration is not compelled based on this argument.

8 Finally, petitioner objects because he believes that the undersigned should not have
9 “reconsider[ed] the factual findings” of the magistrate judge. (Doc. No. 76 at 6.) However, the
10 court did not reconsider the magistrate judge’s factual findings. Rather, the court sought further
11 legal analysis and explanation from the assigned magistrate judge as to the applicable standard of
12 review being employed and the deference, if any, being accorded to state court factual findings
13 under §§ 2254(d)(2) and (e)(1). (Doc. No. 74 at 4–6.)

14 For these reasons, petitioner’s request for reconsideration (Doc. No. 76) is denied.

15 IT IS SO ORDERED.

16 Dated: August 25, 2017

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19 UNITED STATES DISTRICT JUDGE
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