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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

LINH N. NGUYEN, <div style="text-align: right; margin-right: 20px;">Petitioner,</div> vs. GEORGE GIURBINO, Warden, <div style="text-align: right; margin-right: 20px;">Respondent.</div>		
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CASE NO. 05cv2287 WQH (WMc)

ORDER

HAYES, Judge:

The matter before the Court is the review of the Report and Recommendation (Doc. # 30) filed on June 7, 2007 by Magistrate Judge William McCurine, Jr.

Background

On December 15, 2005, Petitioner Linh N. Nguyen filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. (Doc. # 1). On January 16, 2007, Petitioner filed an Amended Petition for Writ of Habeas Corpus. (Doc. # 27). On June 7, 2007, United States Magistrate Judge McCurine issued a Report and Recommendation recommending that this Court deny the Petition and Amended Petition, deny Petitioner’s request for an evidentiary hearing and deny Petitioner’s request for appointment of counsel. (Doc. # 30). On July 31, 2007, this Court issued an Order adopting the Report and Recommendation in its entirety. (Doc. # 31). On August 1, 2007, the Clerk of the Court entered judgment in favor of Respondent and against Petitioner. (Doc. # 32).

1 On September 5, 2007, Petitioner filed a Motion to Vacate Judgment Pursuant to Rule
2 60(b)(6) of the Federal Rules of Civil Procedure. (Doc. # 34). The Motion to Vacate asserted that
3 Petitioner never received a copy of the June 7, 2007 Report and Recommendation and requested
4 the Court to issue an order that he be served with a copy of the June 7, 2007 Report and
5 Recommendation, be given an opportunity to submit timely objections, and have the Court render
6 a decision upon review of any objections submitted by Petitioner. On September 13, 2007,
7 Respondent filed a Response to the Motion to Vacate which agreed that if in fact Petitioner did not
8 receive a copy of the Report and Recommendation, he would be entitled to relief under Rule 60 of
9 the Federal Rules of Civil Procedure. (Doc. # 36). On November 14, 2007, this Court issued an
10 Order granting the Motion to Vacate Judgment and vacated the July 31, 2007 Order adopting the
11 Report and Recommendation. (Doc. # 37). The Court stated: “Any party may file objections to
12 the Report and Recommendation no later than Monday, December 17, 2007. Any party may file a
13 reply to the objections to the Report and Recommendation no later than Monday, January 7,
14 2008.” *Order Granting Motion to Vacate*, p. 3. The docket indicates that Petitioner was served
15 with a copy of the Order Granting the Motion to Vacate Judgment and the Report and
16 Recommendation at the following address:

17 Linh Nguyen
18 T-48024
19 Calipatria State Prison
20 P.O.Box 5002
21 Calipatria, CA 92253-5002

22 Neither party filed objections to the Report and Recommendation.

23 **Standard of Review**

24 The duties of the district court in connection with a Report and Recommendation of
25 a Magistrate Judge are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and
26 28 U.S.C. § 636(b)(1). When the parties object to a Report and Recommendation, “[a]
27 judge of the [district] court shall make a de novo determination of those portions of the
28 [Report and Recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1); *see*
Thomas v. Arn, 474 U.S. 140, 149-50 (1985). When no objections are filed, the district
court need not review the Report and Recommendation de novo. *Wang v. Masaitis*, 416


1 F.3d 992, 1000 n. 13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114,
2 1121-22 (9th Cir. 2003) (en banc). A district court may “accept, reject, or modify, in whole
3 or in part, the findings or recommendations made by the magistrate judge.” Fed. R. Civ. P.
4 72(b); 28 U.S.C. § 636(b)(1).

5 **Ruling of the Court**

6 Neither party filed objections to the Report and Recommendation. The Court has
7 reviewed all aspects of the Report and Recommendation of the Magistrate Judge filed on
8 June 7, 2007, and adopts all portions of the Report and Recommendation. The Report and
9 Recommendation correctly concluded that Petitioner failed to show that he is entitled to
10 federal habeas relief under the applicable legal standards, that Petitioner’s request for an
11 evidentiary hearing should be denied, and that Petitioner is not entitled to counsel.

12 IT IS HEREBY ORDERED that all portions of the Report and Recommendation
13 (Doc. # 30) are **ADOPTED**. The Petition for Writ of Habeas Corpus (Doc. # 1) and the
14 Amended Petition for Writ of Habeas Corpus (Doc. # 27) are **DENIED**, Petitioner’s
15 request for an evidentiary hearing is **DENIED**, and Petitioner’s request for appointment of
16 counsel is **DENIED**.

17 DATED: February 5, 2008

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19 **WILLIAM Q. HAYES**
20 United States District Judge

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