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CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABNER HAYNES LISTER,

Petitioner,

v.

MATTHEW CATE, Secretary, et al.,

Respondents.¹

CASE NO. 07cv822 BEN (JMA)
**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Petitioner Abner Haynes Lister, a state prisoner proceeding pro se, petitions for a writ of habeas corpus under 28 U.S.C. § 2254. [Doc. Nos. 1, 8.] Respondent filed an answer. [Doc. No. 12.] Petitioner filed a traverse. [Doc. No. 13.]

On April 9, 2008, the Honorable Magistrate Judge Jan M. Adler issued a Report and Recommendation, recommending that the petition be denied with prejudice. The Court granted Petitioner's request for an extension of time in which to file objections to the Report and Recommendation. Petitioner did not, however, file objections. For the reasons stated below, the Court **ADOPTS** the well-reasoned Report and Recommendation of the Magistrate Judge and **DENIES WITH PREJUDICE** Petitioner's petition.

A district judge "may accept, reject, or modify the recommended disposition" on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.


¹ The Court substituted Matthew Cate, Secretary of the California Department of Corrections and Rehabilitation, as Respondent on May 29, 2008. See 28 U.S.C. § 2242; Rule 2(a) U.S.C. foll. § 2254; *Ortiz-Sandoval v. Gomez*, 81 F.3d 891, 894 (9th Cir. 1996); see also Fed. R. Civ. P. 25(d).

1 Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “[T]he court shall make a de novo determination of
2 those portions of the [report and recommendation] to which objection is made.” 28 U.S.C.
3 § 636(b)(1). Section 636(b)(1) does not require some lesser review by the district court when no
4 objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149-50, 106 S. Ct. 466, 472 (1985). “The statute
5 makes it clear that the district judge must review the magistrate judge’s findings and recommendations
6 de novo *if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
7 (9th Cir. 2003) (en banc).

8 In the absence of any objections, the Court **ADOPTS** the Report and Recommendation in its
9 entirety and **DENIES WITH PREJUDICE** Petitioner’s petition for writ of habeas corpus. The Clerk
10 shall close the file.

11 **IT IS SO ORDERED.**

12
13 DATED: 3/12/09



HONORABLE ROGER T. BENITEZ
UNITED STATES DISTRICT JUDGE

28