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

BY:  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EDWARD REYNIR SULLIVAN,

v.

MATTHEW CATE, Secretary,

Petitioner,

Respondent.¹

CASE NO. 08cv406 BEN (AJB)
**ORDER ADOPTING REPORT AND
RECOMMENDATION**

I

INTRODUCTION

Petitioner Edward Reynir Sullivan petitioned for a writ of habeas corpus under 28 U.S.C. § 2254 in the Central District of California. [Doc. No. 1.] The case was transferred to this district. Respondent filed an answer arguing, *inter alia*, that the petition is untimely. [Doc. No. 9.]

On September 23, 2008, the Honorable Magistrate Judge Anthony J. Battaglia issued a Report and Recommendation, recommending that the petition be denied as untimely. Petitioner did not file objections to the Magistrate Judge's Report and Recommendation. For the reasons stated below, the Court ADOPTS the well-reasoned Report and Recommendation of the Magistrate Judge and DENIES Petitioner's petition.

¹ The Court substituted James Tilton, Secretary of the California Department of Corrections and Rehabilitation, as Respondent on May 16, 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). On that same date, however, Matthew Cate became Secretary. He is, therefore, substituted as Respondent in this matter. *See also* Fed. R. Civ. P. 25(d).

1 A district judge “may accept, reject, or modify the recommended disposition” on a dispositive
2 matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes.
3 Fed .R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). “[T]he court shall make a de novo determination of
4 those portions of the [report and recommendation] to which objection is made.” 28 U.S.C.
5 § 636(b)(1). Section 636(b)(1) does not require some lesser review by the district court when no
6 objections are filed. *Thomas v. Arn*, 474 U.S. 140, 149-50, 106 S. Ct. 466, 472 (1985). “The statute
7 makes it clear that the district judge must review the magistrate judge’s findings and recommendations
8 de novo *if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
9 (9th Cir. 2003) (en banc).

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

12 **IT IS SO ORDERED.**

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14 DATED: 3/02/04

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17 HONORABLE ROGER T. BENITEZ
18 UNITED STATES DISTRICT JUDGE
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