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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSEPH HILTON McDONALD,	)	Civil No. 08cv652 L(PCL)
	)	
Petitioner,	)	<b>ORDER ADOPTING REPORT AND</b>
	)	<b>RECOMMENDATION; DENYING</b>
v.	)	<b>MOTION TO DISMISS SECOND</b>
	)	<b>AMENDED PETITION [doc. #24];</b>
E.B. HAAWS,	)	<b>and REQUIRING RESPONSE</b>
	)	
Respondent.	)	
	)	
_____	)	

Petitioner Joseph Hilton McDonald, a state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Peter C. Lewis for a report and recommendation (“Report”) pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d). In the Report, the magistrate judge recommended denial of respondent’s motion to dismiss the second amended petition. Neither party filed an objection to the Report.

In reviewing a magistrate judge’s report and recommendation, the district court “shall make a *de novo* determination of those portions of the report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Under this statute, “the district judge must review the magistrate judge’s findings and recommendations *de novo if objection is made, but not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)

1 (emphasis in original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz.  
2 2003) (applying *Reyna-Tapia* to habeas review).

3 As noted above, neither petitioner nor respondent objected to any portion of the Report.  
4 Having reviewed the Report, the Court finds that dismissal of the second amended petitioner on  
5 exhaustion grounds is not warranted. Accordingly, **IT IS ORDERED** adopting the Report and  
6 Recommendation in its entirety. **IT IS FURTHER ORDERED** denying respondent's motion to  
7 dismiss the second amended petition. **IT IS FURTHER ORDERED** that respondent shall  
8 answer the second amended petition within 30 days of the filing of this Order.

9 **IT IS SO ORDERED.**

10 DATED: February 8, 2010

11   
12 M. James Lorenz  
United States District Court Judge

13 COPY TO:

14 HON. PETER C. LEWIS  
15 UNITED STATES MAGISTRATE JUDGE

16 ALL PARTIES/COUNSEL  
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