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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

<p>AASIM NIA,</p> <p style="text-align: right;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>M. SMELOSKY, Warden,</p> <p style="text-align: right;">Respondent.</p>	
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CASE NO.08-CV-1506 W(JMA)

**ORDER:**

- 1) **ADOPTS THE REPORT AND RECOMMENDATION (Doc. 10.)**
- 2) **DENIES PETITION FOR WRIT OF HABEAS CORPUS (Doc. 1.)**

On July 21, 2008, Petitioner Aasim Nia (“Petitioner”), a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”) pursuant to 28 U.S.C. § 2254. (Doc. 1.) On July 29, 2008, the case was transferred from the Eastern District of California to this Court. (Id.) On October 5, 2009, Magistrate Judge Jan Adler filed a Report and Recommendation (“Report”), recommending that the Court deny the Petition. (Doc. 10.) On February 22, 2010, Petitioner filed his objections to the Report. (Doc. 16.) The Court decides the matter on the papers submitted and without oral argument. See Civil Local Rule 7.1(d.1). For the reasons outlined below, the Court **ADOPTS** the Report and **DENIES** the Petition.

1 **I. BACKGROUND**

2 Petitioner is a prisoner at Centinela State Prison. While working kitchen detail  
3 in Dining Hall 3A on November 6, 2006, Petitioner told Correctional Officer Jimenez,  
4 “I quit, give me my I.D. so I can go home.” Officer Jimenez informed Petitioner that he  
5 would be marked absent for the day and that he would receive a Rules Violation Report.  
6 Petitioner received a copy of the Violation Report, which classified the violation as  
7 “serious,” on November 9, 2006. A hearing was held on November 21, 2006, with  
8 Lieutenant Kavanaugh serving as the Senior Hearing Official (“SHO”). Petitioner pled  
9 not guilty. The SHO found Petitioner guilty of the violation and he was assessed a  
10 thirty day credit forfeiture along with a ninety day privileges suspension.

11 Petitioner challenged the disciplinary action through the prison grievance system  
12 and his appeal was denied at the highest level of review on February 28, 2001. (*Lodgment*  
13 3.) He then filed petitions for writs of habeas corpus in the California courts, which  
14 were denied at every level. (*Lodgment* 5, 7, & 9.)

15 On July 31, 2008, after exhausting all administrative and state remedies,  
16 Petitioner filed the instant federal petition, raising the same due process claim. (*Report*  
17 at 2.) On October 5, 2009, Magistrate Judge Adler recommended the Court deny  
18 Petitioner's habeas request. (*Report* at 1,5.) On February 22, 2010, following a time  
19 extension from the Court, Petitioner submitted his Objection. (Doc. 16.)  
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21 **II. LEGAL STANDARD**

22 The duties of a district court in connection with a magistrate judge's report and  
23 recommendation are set forth in Rule 72(b) of the Federal Rules of Civil Procedure and  
24 28 U.S.C. § 636(b)(1). The district court “must make a *de novo* determination of those  
25 portions of the report ... to which objection is made,” and “may accept, reject, or modify,  
26 in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C.  
27 § 636(b)(1)(C); see also *United States v. Raddatz*, 447 U.S. 667, 676 (1980); *United*  
28 *States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

1 **III. DISCUSSION**

2 Petitioner seeks relief on grounds that his federal right to due process was violated  
3 because: (1) he was denied the right to call certain witnesses; (2) he was denied the right  
4 to question Officer Jimenez; (3) the decision was based on an incomplete record; (4) the  
5 decision was not made by a fair and impartial decision maker; and (5) the decision was  
6 not supported by a preponderance of evidence. (*Pet.* [Doc. 1] at 5–7.)

7 This Court is required to accord prison administrators “wide-ranging deference in  
8 the adoption and execution of policies and practices that in their judgment are needed  
9 to preserve internal order and discipline and to maintain institutional security.” Bell v.  
10 Wolfish, 441 U.S. 520, 547 (1979). It does, however, review prison disciplinary  
11 proceedings to determine if they comported with due process and if some evidence  
12 supported the decision of the prison disciplinary committee. See Superintendent v. Hill,  
13 472 U.S. 445, 454 (1985); Wolff v. McDonnell, 418 U.S. 539, 563–70 (U.S. 1974). In  
14 order for Petitioner to be entitled to habeas relief on his due process claim, he must show  
15 that the SHO’s finding of “some evidence” was either objectively unreasonable or based  
16 on an unreasonable determination of the facts in light of the evidence presented. 28  
17 U.S.C. § 2254(d); Yarborough v. Gentry, 540 U.S. 1, 5 (2003).

18 Having read and considered the underlying Petition, the Report, and Petitioner’s  
19 objections thereto, the Court **OVERRULES** Petitioner’s objections, **ADOPTS** the  
20 Report, and for the reasons below, **DENIES** Petitioner’s writ of habeas corpus.

21

22 **A. Grounds One and Two - Lack of Witness Testimony**

23 In Ground One, Petitioner claims he was denied the right to call and question  
24 certain witnesses at his disciplinary hearing. (*Pet.* at 5.) In Ground Two, Petitioner  
25 claims he was denied the right to question Officer Jimenez, who was present at the  
26 hearing. (*Id.*) Petitioner alleges that the denial of opportunities to call and question  
27 witnesses violates his federal right to due process. (*Id.*) The Report rejects this  
28 argument. (*Report* at 4.) Petitioner objects to the Report’s finding. (*Obj.* [Doc. 16] at 4.)

1 The record shows that the witnesses Petitioner requested were called. (*Lodgment*  
2 2.) The record also indicates that Petitioner had no questions for Officer Jimenez.  
3 (*Lodgment 3, Director's Level Appeal Response*). Thus Petitioner's due process right to call  
4 witnesses under Wolff was met.

5 Accordingly, the Court **ADOPTS** the analysis of the Report in regards to this  
6 issue and **DENIES** Petitioner's first and second grounds for relief.

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### 8 **B. Grounds Three and Five - Sufficiency of the Record**

9 In Ground Three, Petitioner claims that the SHO's determination was based on  
10 an incomplete record because Correctional Officer J. Campbell's statement was not  
11 included. (*Pet.* at 6.) In Ground Five, Petitioner claims that he was denied his right to  
12 be found guilty by a preponderance of the evidence. (*Pet.* at 6.5) The Report rejects these  
13 arguments. (*Report* at 3-5.) Petitioner objects to the Report's finding as to Ground  
14 Three, but does not respond to the findings on Ground Five. (*Obj.* at 2.)

15 Under Hill, the SHO is not required to make a determination using all the  
16 evidence, or even a preponderance of evidence. 472 U.S. at 454. As the Report shows,  
17 the SHO used some evidence, including Officer Jimenez' written report, to support his  
18 determination. (*Report* at 4-5.) Thus, on the record before the Court, there is no  
19 indication that Petitioner's due process rights were violated.

20 Accordingly, the Court **ADOPTS** the analysis of the Report in regards to this  
21 issue and **DENIES** Petitioner's third and fifth grounds for relief.

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### 23 **C. Ground Four - Bias of the Hearing Official**

24 In Ground Four, Petitioner claims that the SHO was not a fair and impartial  
25 decision maker because he reported to Dining Hall 3A on the day of the incident and  
26 presided over the hearings of other inmates charged with violations stemming from the  
27 same incident. (*Pet.* at 6.) The Report rejects this argument. (*Report* at 4.) Petitioner  
28 objects to the Report's finding. (*Obj.* at 4-5.)

1 Due Process requires that anyone serving as the SHO at a disciplinary hearing does  
2 not have personal knowledge of the material facts and has not participated in the case  
3 as a witness or either an investigative or reviewing officer. Clutchette v. Proconier, 497  
4 F.2d 809, 820 (9th Cir. 1974) (rev'd on other grounds) (citing Goldberg v. Kelly, 397  
5 U.S. 254, 271 (1970) (rev'd on other grounds.))

6 Petitioner alleges that the SHO (Kavanaugh) was in Dining Hall 3A on November  
7 6, 2006, but does not allege that he was in the kitchen when the rules violation took  
8 place. (*Obj.* at 5; *Pet.* at 6.) And presiding over the other inmates' hearings does not  
9 automatically render Kavanaugh unfit to preside over Petitioner's hearing. Furthermore,  
10 nothing in the record indicates that Kavanaugh based his decision on anything other  
11 than Officer Jimenez' written report, Officer Jimenez' testimony, and the unconvincing  
12 testimony of the five inmates. (*Report* at 4-5.)

13 Because Kavanaugh did not participate in Petitioner's case as a witness,  
14 investigating officer, or reviewing officer, and did not base his decision on independent  
15 knowledge of material facts, there is no indication that he did not fulfill his obligation to  
16 serve as an impartial arbiter.

17 Accordingly, the Court **ADOPTS** the analysis of the Report in regards to this  
18 issue and **DENIES** Petitioner's fourth ground for relief.

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1 **IV. CONCLUSION AND ORDER**

2 In light of the foregoing, the Court agrees with Magistrate Judge Adler's well  
3 reasoned analysis and **ADOPTS** the Report in its entirety. (Doc. 10.) The procedures  
4 required by Wolff were provided to Petitioner. As such, the Court **DENIES** Petitioner's  
5 habeas petition and orders this case dismissed. (Doc. 1.) The Clerk of Court shall close  
6 the district court case file.

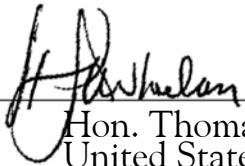
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8 **IT IS SO ORDERED.**

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10 DATED: April 21, 2010

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Hon. Thomas J. Whelan  
United States District Judge

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