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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

| | | |
|-------------------|---|------------------------------------|
| ANTHONY ALVAREZ, |) | Civil No. 08cv2422 L(CAB) |
| |) | |
| Petitioner, |) | ORDER ADOPTING REPORT AND |
| |) | RECOMMENDATIONS and |
| v. |) | DISMISSING WITH PREJUDICE |
| |) | PETITION FOR WRIT OF HABEAS |
| MICHAEL SMELESKY, |) | CORPUS |
| |) | |
| Respondent. |) | |
| |) | |
| _____ |) | |

Petitioner Anthony Alvarez, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Cathy Ann Bencivengo for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Civil Local Rule 72.1(d). In an Order filed January 9, 2009, the Court dismissed the petition for failure to satisfy the filing fee requirement and to use a court-approved form. Plaintiff previously filed a petition for writ of habeas corpus, 06cv2112 WQH (JMA). Therefore, he was required to file a first amended petition stating that he is now challenging a different San Diego Superior Court conviction **or** a first amended petition with an Order from the Ninth Circuit Court of Appeals stating that petitioner may file a successive petition with this Court. Plaintiff was also ordered to either pay the \$5.00 filing fee or provide adequate proof of his inability to pay the fee. (*See* Order filed January 9, 2009 [doc. #8].) Although petitioner filed a motion for leave to proceed *in forma pauperis*, which was granted, he did not file a first amended petition.


1 On July 15, 2009, 2009, the Magistrate Judge issued a Report and Recommendation
2 (“Report”), recommending that the petition be dismissed with prejudice for failure to comply with
3 the Court’s previous order and because it is a second or successive petition. Any objections
4 were to be filed no later than August 17, 2009.

5 In reviewing a magistrate judge’s report and recommendation, the district court “shall
6 make a *de novo* determination of those portions of the report . . . to which objection is made,”
7 and “may accept, reject, or modify, in whole or in part, the findings or recommendations made
8 by the magistrate judge.” 28 U.S.C. § 636(b)(1). Under this statute, “the district judge must
9 review the magistrate judge’s findings and recommendations *de novo if objection is made, but*
10 *not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*)
11 (emphasis in original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz.
12 2003) (applying *Reyna-Tapia* to habeas review). Petitioner did not object to the Report or seek
13 additional time in which to file objections to the Report.

14 Because no objections have been filed, the Court adopts the Report in its entirety and
15 dismissed the petition with prejudice.

16 **IT IS SO ORDERED.**

17 DATED: August 24, 2009

18 
19 M. James Lorenz
United States District Court Judge

20 COPY TO:

21 HON. CATHY ANN BENCIVENGO
22 UNITED STATES MAGISTRATE JUDGE

23 ALL PARTIES/COUSEL
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