

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

RUFUS GRAY, JR.,

Petitioner,

vs.

STUART RYAN, et al.,

Respondents.

CASE NO. 09cv709 BEN (KSC)

**ORDER ADOPTING REPORT  
AND RECOMMENDATION  
AND DENYING PETITION**

Petitioner Rufus Gray, Jr., a state prisoner proceeding pro se, has filed a Second Amended Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2254. Respondent moved to dismiss. The motion was denied and Respondent filed an answer. Gray filed a traverse.

On November 3, 2011, United States District Judge (then United States Magistrate Judge) Cathy Ann Bencivengo issued a Report and Recommendation, recommending that the petition be denied. On December 5, 2011 Petitioner sought an extension of time within which to file Objections. Five more times Petitioner sought extensions (April 5, 2012; April 16, 2012; May 10, 2012; July 3, 2012; August 13, 2012). The last extension granted Petitioner until August 10, 2012 to file objections and cautioned that further extensions were unlikely. As of September 20, 2012, Petitioner has still not filed objections and the Court hereby denies his request for further extensions of time. For the reasons stated below, the Court adopts the Report and Recommendation in its entirety and denies the Second Amended Petition.

A district judge “may accept, reject, or modify the recommended disposition” of a Magistrate Judge on a dispositive matter. FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C.

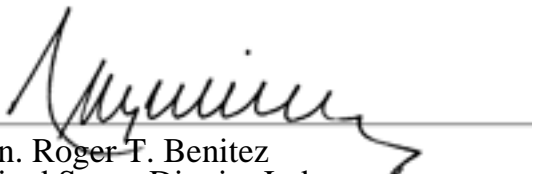
1 §636(b)(1). “[T]he district judge must determine de novo any part of the [report and  
2 recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However,  
3 “[t]he statute makes it clear that the district judge must review the magistrate judge’s findings  
4 and recommendations de novo *if objection is made*, but not otherwise.” *United States v.*  
5 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 540 U.S. 900 (2003)  
6 (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005).  
7 “Neither the Constitution nor the statute requires a district judge to review, de novo, findings  
8 and recommendations that the parties themselves accept as correct.” *Reyna-Tapia*, 328 F.3d  
9 at 1121.

10 In the absence of any objections, the Court adopts the Report and Recommendation in  
11 its entirety and denies Petitioner’s Second Amended Petition for a Writ of Habeas Corpus.

12 The Clerk shall close the file.

13 **IT IS SO ORDERED.**

14 DATED: September 21, 2012

15  
16   
17 Hon. Roger F. Benitez  
18 United States District Judge  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28