

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

VICTOR HUGO ESPARZA,)	Civil No. 09cv1974 L(JMA)
)	
Petitioner,)	ORDER ADOPTING REPORT AND
)	RECOMMENDATION AND
v.)	DENYING PETITION FOR WRIT
)	OF HABEAS CORPUS
J. SCHOMIG, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

Petitioner Victor Hugo Esparza, a state prisoner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 and later filed an amended petition. The case was referred to United States Magistrate Judge Jan M. Adler 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 the granting of respondent’s motion to dismiss the first amended petition. The parties were provided an opportunity to file objections to the Report. Objections to the Report were to be filed by December 27, 2010. To date, neither party has filed an objection.


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*

1 *not otherwise.*” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*)
2 (emphasis in original); *see Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz.
3 2003) (applying *Reyna-Tapia* to habeas review).

4 No objections having been filed, **IT IS ORDERED** adopting the Report and
5 Recommendation in its entirety and granting respondent’s motion to dismiss the first amended
6 petition for writ of habeas corpus. **IT IS FURTHER ORDERED** directing the Clerk of the
7 Court to enter judgment in accordance with this Order.

8 **IT IS SO ORDERED.**

9 DATED: January 6, 2011

10 
11 M. James Lorenz
United States District Court Judge

12 COPY TO:

13 HON. JAN M. ADLER
14 UNITED STATES MAGISTRATE JUDGE

15 ALL PARTIES/COUNSEL
16
17
18
19
20
21
22
23
24
25
26
27
28