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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JORGE GUADARRAMA,

Petitioner,

v.

LARRY SMALL, Warden,

Respondent.

Civil No. 09-cv-2544-BEN (POR)

**ORDER DENYING, IN PART,  
PETITIONER'S MOTION TO  
DISQUALIFY MAGISTRATE JUDGE  
PORTER AND DISTRICT JUDGE  
BENITEZ FROM CASE**

**[Doc. 33]**

Petitioner Jorge Guadarrama is a state prisoner proceeding *pro se* on a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. [Doc. 1.] On July 1, 2010, Petitioner filed a "Motion of Disqualification of Magistrate Judge Louisa S Porter and District Judge Roger T. Benitez From the Case." [Doc. 33.] In particular, Petitioner alleges judicial bias based on the Court (1) granting two extensions of time to Respondent to answer the Petition; and (2) denying Petitioner's motion to obtain his legal materials. For the reasons stated below, the Court DENIES the motion for disqualification as to Judge Porter. The Court will issue a separate order as to the requested disqualification of Judge Benitez.

Pursuant to 28 U.S.C. § 455(a), a judge must disqualify herself "in any proceeding in which [her] impartiality might reasonably be questioned." This is an objective standard. United States v. Holland, 519 F.3d 909, 914 (9th Cir. 2008). In other words, recusal is required if "a reasonable person perceives a significant risk that the judge will resolve the case on a basis other than the merits." Id. (internal quotations omitted). The "reasonable person is not someone who is

1 hypersensitive or unduly suspicious, but rather is a well-informed, thoughtful observer.” Id.  
2 (internal quotations omitted). Alternatively, a judge must disqualify herself “where [s]he has a  
3 personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts  
4 concerning the proceedings.” 28 U.S.C. § 455(b)(1). This is a subjective standard, under which a  
5 judge must recuse herself when she harbors *actual* bias. Holland, 519 F.3d at 915. However, under  
6 the “general proposition, . . . [i]n the absence of a legitimate reason to recuse [herself], a judge  
7 should participate in cases assigned.” Id. at 912 (internal quotations omitted).

8         In light of the foregoing, the Honorable Louisa S Porter need not recuse herself from this  
9 case. Specifically, each of Petitioner’s asserted grounds for disqualification involve previous rulings  
10 in this matter, but “prior rulings in the proceeding” do not require recusal “except in the rarest of  
11 circumstances.” Holland, 519 F.3d at 914 n. 5 (internal quotations omitted). Petitioner has not  
12 demonstrated exceptional circumstances. For example, even though the Court granted extensions of  
13 time for Respondent to answer the Petition, the Court also granted Petitioner’s motion for additional  
14 time to oppose Respondent’s motion to dismiss. [Doc. 32.] Furthermore, Petitioner accuses the  
15 Court of “denying” his motion to obtain his legal materials, but this is not an accurate representation  
16 of the Court’s Order of May 28, 2010 [Doc. 24]. Rather, the Court held a telephonic Discovery  
17 Conference with both parties, ascertained that Petitioner’s legal materials were delayed due to  
18 comingling with his medical records, and ordered Petitioner to send North Kern Valley Prison a  
19 “letter authorizing the transfer of his medical records.” Id. at 1. Furthermore, the Court confirmed  
20 that “Respondent’s counsel has agreed to follow up with personnel at North Kern Valley Prison in  
21 order to facilitate the transfer of Petitioner’s records in an expeditious manner.” Id. at 2. Based

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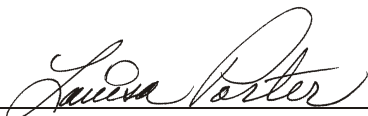
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1 thereon, the Court finds a reasonable person would not perceive “a significant risk that [Judge  
2 Porter] will resolve the case on a basis other than the merits.” Holland, 519 F.3d at 914.  
3 Additionally, the Court finds that Judge Porter does not possess “a personal bias or prejudice  
4 concerning [Petitioner].” 28 U.S.C. § 455(b)(1). Accordingly, Petitioner’s motion for  
5 disqualification, as to the Honorable Louisa S Porter, is DENIED.

6 **IT IS SO ORDERED.**

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8 DATED: August 9, 2010

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12 LOUISA S PORTER  
13 United States Magistrate Judge

14 cc: The Honorable Roger T. Benitez  
15 All parties  
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