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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 JORGE GUADARRAMA,

Petitioner,

12 vs.

13 LARRY SMALL, as Warden,

14 Respondent.  
15

CASE NO. 09-cv-2544 BEN (JMA)

ORDER DENYING MOTION FOR  
RECONSIDERATION

[Docket No. 45]

16 Before the Court is Petitioner's motion for reconsideration of orders denying his request to  
17 disqualify District Judge Roger T. Benitez and Magistrate Judge Louisa S. Porter in this case. For the  
18 reasons set forth below, the Motion is **DENIED**.

19 **BACKGROUND**

20 Petitioner is a state prisoner proceeding pro se. On November 10, 2009, Petitioner initiated  
21 this action pursuant to 28 U.S.C. § 2254,<sup>1</sup> challenging the state court's denial of his claim that he was  
22 falsely charged with a prison disciplinary violation and, as a result, was improperly confined beyond  
23 his minimum eligible parole release date.

24 On July 1, 2010, Petitioner filed a motion to disqualify District Judge Roger T. Benitez and  
25 Magistrate Judge Louisa S. Porter. (Docket No. 33.) The motion sought recusal of Judge Benitez on  
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27 <sup>1</sup> On December 2, 2009, the Court construed the Petition as one filed pursuant to 28 U.S.C. §  
28 2254 rather than 28 U.S.C. § 2241 because Petitioner is a state prisoner attacking the validity of a  
disciplinary proceeding and resulting placement in an Administrative Segregation Unit and, therefore,  
may only proceed with a habeas action in federal court under Section 2254. (Docket No. 4.)

1 the grounds that Judge Benitez has generally shown impartiality in favor of Respondent and has failed  
2 to give deference to Petitioner's pro se status. The motion also sought recusal of Judge Porter on the  
3 grounds that Judge Porter has exhibited judicial bias by granting two extensions of time to Respondent  
4 to answer the Petition and denying Petitioner's motion to obtain legal material.

5 In August 2010, the Court entered an order denying disqualification of Judge Benitez and also  
6 entered an order denying disqualification of Judge Porter. (Docket Nos. 36, 37.) Petitioner then filed  
7 the Motion currently before the Court, objecting to and seeking reconsideration of those orders.  
8 (Docket No. 45.)

## 9 DISCUSSION

### 10 I. ORDER DENYING DISQUALIFICATION OF JUDGE BENITEZ

11 Petitioner objects to the order denying disqualification of Judge Benitez. The Court construes  
12 the objection as a motion for reconsideration under Federal Rule of Civil Procedure 60.

13 "Reconsideration is appropriate if the district court (1) is presented with newly discovered  
14 evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an  
15 intervening change in controlling law." *School Dist. No. 1J, Multnomah Cnty. v. ACandS Inc.*, 5 F.3d  
16 1255, 1263 (9th Cir. 1993) (citing *All Hawaii Tours, Corp. v. Polynesian Cultural Ctr.*, 116 F.R.D.  
17 645, 648 (D. Haw. 1987), *rev'd on other grounds*, 855 F.2d 860 (9th Cir. 1988)); *see also* CivLR  
18 7.1.i.1 (a motion for reconsideration must set forth "what new or different facts and circumstances are  
19 claimed to exist which did not exist, or were not shown, upon such prior application.").

20 Although Petitioner does not reference any of these elements, for purposes here, the Court  
21 assumes the Motion is made under the second element. However, Petitioner does not cite legal or  
22 other authority suggesting how the Court's order was entered in clear error or was manifestly  
23 unjust. Petitioner, instead, incorporates by reference his prior motion for disqualification. As  
24 Petitioner fails to demonstrate that reconsideration is appropriate, and the Court finds no basis for  
25 granting reconsideration, Petitioner's Motion is **DENIED** as to Judge Benitez.

### 26 II. ORDER DENYING DISQUALIFICATION OF JUDGE PORTER

27 Petitioner also objects to the order denying disqualification of Judge Porter. The Court  
28 construes the objection as one under Federal Rule of Civil Procedure 72(a).

1 Rule 72(a) provides that a district judge may modify or set aside any part of an order entered  
2 by a magistrate judge in the case, which was clearly erroneous or contrary to applicable law. Fed. R.  
3 Civ. P. 72(a). Similar to the above, Petitioner does not identify any clear error or erroneous application  
4 of law in the order denying disqualification. Rather, Petitioner incorporates by reference his prior  
5 motion. Petitioner also contends the Court erred by refusing to docket an exhibit that was submitted  
6 on or around May 31, 2010; however, Petitioner fails to include a copy of that exhibit or explain the  
7 substance or significance of that exhibit. A review of the docket shows that the referenced exhibit may  
8 be a letter that Judge Porter rejected as being duplicative of a document already filed in the case. (See  
9 Docket No. 28.) In such instance, the Court finds it was not error to reject the document.

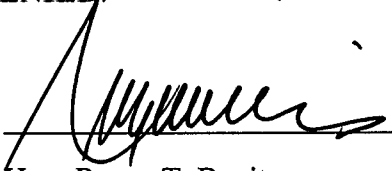
10 In light of the above, the Court overrules Petitioner's objection and denies the Motion as to  
11 Judge Porter.

12 **CONCLUSION**

13 Petitioner's Motion for Reconsideration is **DENIED**.

14 **IT IS SO ORDERED.**

15 Date: September 27, 2010

  
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Hon. Roger T. Benitez  
United States District Court Judge

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