

FILED

11 FEB 14 AM 8:56

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

BY

YLB
DEPUTY

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**

BRYAN D. SMITH,

vs.

DOMINGO URIBE, Warden,

Petitioner,

Respondent.

CASE NO. 10cv545 BEN (JMA)

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING PETITION
WITHOUT PREJUDICE**

Petitioner Bryan D. Smith, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On November 18, 2010, the Court ordered Petitioner to inform the Court how he wished to proceed with his mixed petition and cautioned him that if he failed to inform the Court how he wished to proceed by December 20, 2010, the Petition would be dismissed.

On January 7, 2011, the Honorable Magistrate Judge Jan M. Adler issued a Report and Recommendation recommending that the Court dismiss the petition without prejudice because Petitioner has not informed the Court how he intends to proceed. Dkt. No. 16. Any objections to the Report and Recommendation were due January 24, 2011. *Id.* No objections have been filed.

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. §636(b)(1). “[T]he district judge must determine de novo any part of the [report and recommendation] that has been properly objected to.” FED. R. CIV. P. 72(b)(3). However, “[t]he statute makes it clear that the district judge

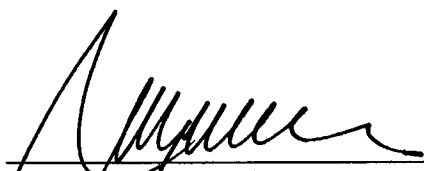
1 must review the magistrate judge's findings and recommendations de novo *if objection is made*, but
2 not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert*
3 *denied*, 540 U.S. 900 (2003) (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000
4 n.13 (9th Cir. 2005). "Neither the Constitution nor the statute requires a district judge to review, de
5 novo, findings and recommendations that the parties themselves accept as correct." *Reyna-Tapia*, 328
6 F.3d at 1121.

7 Accordingly, the Court **ADOPTS** the Report and Recommendation in its entirety. The Petition
8 is **DISMISSED** without prejudice.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

DATED: February // , 2011



Hon. Roger T. Benitez
United States District Court