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

JAVIER ESPINOZA RODRIGUEZ,

Petitioner,

vs.

JOHN C. MARSHALL, Warden,,

Respondent.

CASE NO. 10cv767-MMA (AJB)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 12]

**GRANTING RESPONDENT'S
MOTION TO DISMISS;**

[Doc. No. 8]

**DENYING AND DISMISSING AS
MOOT PETITION FOR WRIT OF
HABEAS CORPUS**

[Doc. No. 1]

Petitioner Javier Espinoza Rodriguez, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus [Doc. No. 1] pursuant to 28 U.S.C. § 2254. Respondent filed a motion to dismiss the petition as moot [Doc. No. 8]. Petitioner did not oppose the motion. The matter is currently before the Court for review of the Report and Recommendation issued by United States Magistrate Judge Anthony J. Battaglia recommending that Respondent's motion be granted and the petition be denied and dismissed as moot [Doc. No. 12].

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1 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the
2 Court must “make a *de novo* determination of those portions of the report . . . to which objection is
3 made,” and “may accept, reject, or modify, in whole or in part, the findings or recommendations
4 made by the magistrate [judge].” 28 U.S.C. § 636(b) (1); *see also United States v. Remsing*, 874
5 F.2d 614, 617 (9th Cir. 1989). When no objections are filed, as is the case here, a district court may
6 assume the correctness of the magistrate judge’s factual findings and decide the motion on the
7 applicable law. *Johnson v. Nelson*, 142 F.Supp.2d 1215, 1217 (S.D.Cal. 2001) (citing *Campbell v.*
8 *United States District Court*, 501 F.2d 196, 206 (9th Cir. 1989)).

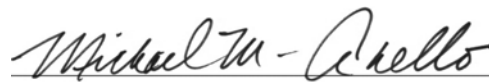
9 The Court concludes that the magistrate judge issued an accurate report and well-reasoned
10 recommendation that the instant petition be denied and dismissed as moot in light of the proceedings
11 recorded in Civil Case No. 08cv1007-H (CAB). Accordingly, **IT IS HEREBY ORDERED**

12 **THAT:**

- 13 1. The Report and Recommendation is **ADOPTED** in its entirety.
- 14 2. Respondent’s Motion to Dismiss is **GRANTED**.
- 15 3. Petitioner’s Petition for Writ of Habeas Corpus is **DENIED** and **DISMISSED AS**
16 **MOOT**.
- 17 4. The Clerk of Court shall terminate this case and enter judgment in favor of
18 Respondent.

19 **IT IS SO ORDERED.**

20 DATED: November 23, 2010



Hon. Michael M. Anello
United States District Judge

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