UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSE A. BORJA,

Plaintiff,

v.

F. GONZALEZ, et al.,

Defendants.

CASE NO. 10cv1379 BEN (WMC)

ORDER ADOPTING REPORT AND RECOMMENDATION

On October 25, 2010, Defendants filed a motion to dismiss Plaintiff's Complaint. (Dkt. No. 14.) Defendants moved to dismiss Plaintiff's Fourteenth Amendment Equal Protection claim and Plaintiff's claim for money damages. (*Id.*) On December 15, 2010, the Honorable Magistrate Judge William McCurine, Jr. issued a Report and Recommendation, recommending that the Court grant Defendants' motion to dismiss. (Dkt. No. 18.) Any objections to the Report and Recommendation were due January 4, 2011. (*Id.*) No objections have been filed. For the reasons stated below, the Court **ADOPTS** the well-reasoned Report and Recommendation of the Magistrate Judge and **GRANTS** Defendants' motion to dismiss.

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). "The district judge must determine de novo any part of the [report and recommendation] that has been properly objected to." *Id.* However, "[t]he statute makes it clear that the district judge must review the magistrate judge's findings and recommendations de novo *if objection is made*, but not

otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), *cert denied*, 540 U.S. 900 (2003) (emphasis in original); *see also Wang v. Masaitis*, 416 F.3d 992, 1000 n.13 (9th Cir. 2005) ("Of course, de novo review of a R & R is only required when an objection is made to the R & R"). "Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct." *Reyna-Tapia*, 328 F.3d at 1121.

In the absence of any objections, the Court **ADOPTS** the Report and Recommendation in its entirety and **GRANTS** Defendants' motion to dismiss. Plaintiff's claim for money damages against Defendants in their official capacity is **DISMISSED with prejudice**. Plaintiff's equal protection claim is **DISMISSED without prejudice** and with leave to amend.

Plaintiff may file an amended complaint within 30 days of the filing of this order. If Plaintiff does not amend within 30 days, Plaintiff's current complaint will be the operative complaint and the only actionable remaining claim will be Plaintiff's Eighth Amendment claim for cruel and unusual punishment.

IT IS SO ORDERED.

DATED: January 19, 2011

Hon. Roger T. Benitez
United States District Court