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

BARRON SIMMONS,  <div style="text-align: right; padding-right: 20px;">Petitioner,</div> vs.  MATTHEW CATE,  <div style="text-align: right; padding-right: 20px;">Respondent.</div>		
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CASE NO. 10CV1795 DMS (BGS)  
  
**ORDER ADOPTING REPORT  
AND RECOMMENDATION,  
DENYING PETITION, AND  
DENYING CERTIFICATE OF  
APPEALABILITY**

Petitioner Barron Simmons, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. The case was referred to United States Magistrate Judge Bernard G. Skomal for a report and recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.1(d). The case was initially stayed to give Petitioner time to exhaust his state remedies. After completion of state court proceedings, on August 24, 2012, Respondent filed a response. Petitioner did not file a traverse. On October 10, 2011, the Magistrate Judge issued a Report and Recommendation recommending to deny the Petition. Petitioner has not filed any objections.

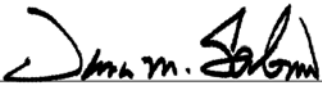
A district judge "may accept, reject, or modify the recommended disposition" on a dispositive matter prepared by a magistrate judge proceeding without the consent of the parties for all purposes. Fed. R. Civ. P. 72(b); *see* 28 U.S.C. § 636(b)(1). "The court shall make a *de novo* determination of those portions of the [report and recommendation] to which objection is made." 28 U.S.C. § 636(b)(1). When no objections are filed, the *de novo* review is waived. Section 636(b)(1) does not

1 require review by the district court under a lesser standard. *Thomas v. Arn*, 474 U.S. 140, 149-50  
2 (1985). The "statute makes it clear that the district judge must review the magistrate judge's findings  
3 and recommendations *de novo if objection is made, but not otherwise.*" *United States v. Reyna-Tapia*,  
4 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (emphasis in original); *see Schmidt v. Johnstone*, 263  
5 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003) (applying *Reyna-Tapia* to habeas review).

6 In the absence of objections, the court **ADOPTS** the Report and Recommendation. The  
7 petition is **DENIED** for the reasons stated in the Report and Recommendation. For the same reasons,  
8 certificate of appealability is also **DENIED**.

9 **IT IS SO ORDERED.**

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11 DATED: November 27, 2012

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14 HON. DANA M. SABRAW  
15 United States District Judge  
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