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

JOSE BONILLA,

Plaintiff,

vs.

D. URIBE; K. BERKLER; T.L.
ROSENKRANS; E. FISCHER; E.
VARGAS; J. ESCOBEDO; A.
MONARREZ,;

Defendants.

Case No. 3:11-cv-1274-GPC-WMC

**ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANT'S MOTION TO
DISMISS**

(ECF NOS. 132, 144)

INTRODUCTION

On June 9, 2011, plaintiff Jose Bonilla ("Plaintiff"), a state prisoner proceeding pro se, filed a civil rights action pursuant to 28 U.S.C. § 1983. Defendants E. Fischer, E. Vargas, J. Escobedo, D. Uribe, K. Berkler, and T. Rosenkraus ("Defendants") filed a motion to dismiss Plaintiff's Third Amended Complaint ("TAC"). (ECF No. 132.) The Honorable William McCurine, Jr., United States Magistrate Judge, submitted a report and recommendation ("Report") to this Court, recommending Defendants' Motion to Dismiss be granted with prejudice. (ECF No. 144.) After a careful consideration of the pleadings, the parties' submissions, and the applicable law, and for the reasons set forth below, this Court will **ADOPT** the Report in its entirety and will therefore **GRANT** Defendants' Motion to Dismiss and **DISMISS WITH PREJUDICE** Plaintiff's TAC.

1 **BACKGROUND**¹

2 Plaintiff’s case arises from his designation as a prison gang affiliate. (ECF No.
3 144.) Plaintiff first filed a petition for writ of habeus corpus challenging his
4 designation in the California Superior Court for Kern County. (Id.) This petition was
5 denied. (Id.) Plaintiff filed a subsequent petition in the California Court of Appeal
6 raising the same arguments. (Id.) The appellate court denied this petition. (Id.)
7 Plaintiff then filed a petition with the Supreme Court of California, which was also
8 denied. (Id.)

9 Plaintiff then filed a petition for writ of habeus corpus in the Eastern District of
10 California challenging the sufficiency of evidence regarding his gang validation and
11 placement in administrative segregation. (Id.) The district court recommended
12 dismissal. Plaintiff filed timely objections, challenging the magistrate judge’s findings
13 and recommendations. (Id.) After reviewing Plaintiff’s petition, the district court
14 adopted the magistrate judge’s findings and recommendations, and dismissed the
15 petition. (Id.)

16 Plaintiff has now filed the instant civil rights action under 42 U.S.C. § 1983,
17 alleging violations of due process and equal protection. (ECF No. 129.) Defendants
18 move to dismiss. (ECF No. 132.) The magistrate judge recommends dismissal with
19 prejudice on res judicata grounds. (ECF. No 144.) Plaintiff filed an objection to this
20 recommendation, (ECF No. 149), and Defendants filed a reply. (ECF No. 151.)

21 **STANDARD OF REVIEW**

22 The district court’s role in reviewing a Magistrate Judge’s report and
23 recommendation is set forth in 28 U.S.C. § 636(b)(1). Under this statute, the district
24 court “shall make a de novo determination of those portions of the report . . . to which
25 objection is made,” and “may accept, reject, or modify, in whole or in part, the findings
26 or recommendations made by the magistrate [judge].” 28 U.S.C. § 636(b)(1). When

27
28 ¹ The underlying facts set forth in the Report, taken directly from the California Court of
Appeal’s opinion affirming Plaintiff’s conviction on appeal, is adopted in toto and referenced as if
fully set forth herein. This Court provides only a brief procedural background.

1 no objections are filed, the Court may assume the correctness of the magistrate judge’s
2 findings of fact and decide the motion on the applicable law. Campbell v. United
3 States Dist. Ct., 501 F.2d 196, 206 (9th Cir. 1974); Johnson v. Nelson, 142 F. Supp. 2d
4 1215, 1217 (S.D. Cal. 2001). Under such circumstances, the Ninth Circuit has held that
5 “a failure to file objections only relieves the trial court of its burden to give de novo
6 review to factual findings; conclusions of law must still be reviewed de novo.” Barilla
7 v. Ervin, 886 F.2d 1514, 1518 (9th Cir. 1989) (citing Britt v. Simi Valley Unified Sch.
8 Dist., 708 F.2d 452, 454 (9th Cir. 1983)). Any objections must be specific to a
9 particular finding or conclusion. See Thomas v. Arn, 474 U.S. 140, 151-53 (1985).

10 DISCUSSION

11 After reviewing the Report, Plaintiff’s Objection, and Defendants’ Reply, the
12 Court concludes Plaintiff’s objections are not specific to any of the magistrate judge’s
13 findings or conclusions. As such, the Court assumes the correctness of the magistrate
14 judge’s factual findings and adopts them in full. Further, the Court has conducted a de
15 novo review of the magistrate judge’s legal conclusions, independently reviewing the
16 Report and all relevant papers submitted by both parties. As set forth in the following
17 paragraphs, the Court finds that the Report provides a cogent analysis of the issues
18 raised in Defendants’ Motion to Dismiss.

19 **I. Res Judicata**

20 The magistrate judge concluded Plaintiff’s claims are res judicata. This Court
21 agrees. “A final judgement on the merits of an action precludes the parties or their
22 privies from relitigating issues that were or could have been raised in that action.”
23 Allen v. McCurry, 449 U.S. 90, 94 (1980). Plaintiff’s complaint alleges, near
24 verbatim, the same cause of action he pursued in state court. Plaintiff had a full and
25 fair opportunity to litigate his claim in the state proceedings. The state courts’
26 adjudication of Plaintiff’s claims was final, on the merits, and brought against the same
27 defendants. Plaintiff’s objections do not address the substance of these conclusions.
28 Accordingly, the Court **ADOPTS** the Report with regard to the magistrate judge’s

1 conclusion that Plaintiff's claims are res judicata.

2 **II. Collateral Estoppel**

3 The magistrate judge further concluded that collateral estoppel bars Plaintiff
4 from relitigating the issue of whether he received due process regarding the evidence
5 used to validate his gang affiliation. This Court agrees. Under the doctrine of
6 collateral estoppel, "once a court has decided an issue of fact or law necessary to its
7 judgement, that decision may preclude relitigation of the issues in a suit on a different
8 cause of action involving a party to the first case." Allen, 449 U.S. at 94. Here,
9 Plaintiff raised the same issue regarding the reliability of the evidence used to validate
10 him as a gang member before the state court, which decided that three items supported
11 the validation. Further, there was a final judgement on the merits and Plaintiff was a
12 party to each state proceeding. Plaintiff had a full and fair opportunity to litigate his
13 claims and accordingly collateral estoppel bars the relitigation of these issues.
14 Plaintiff's objections do not address the substance of this conclusion. Accordingly, this
15 Court **ADOPTS** the Report with regard to the magistrate judge's conclusion that
16 Plaintiff is collaterally estopped from relitigating the issue of whether the evidence
17 used to validate his gang affiliation was insufficient or unreliable.

18 **III. Rooker-Feldman Doctrine**

19 Defendants claim the Rooker-Feldman doctrine deprives this Court of
20 jurisdiction to hear a direct appeal from the final judgement of a state court. (ECF No.
21 132-2.) The magistrate judge concluded, however, that the doctrine does not apply
22 because Plaintiff has not directly challenged the state courts' decisions, but has instead
23 filed claims for violations of his civil rights pursuant to § 1983. The Court agrees with
24 this conclusion. See Maldando v. Harris, 370 F.3d 945, 949 (9th Cir. 2004) ("[F]ederal
25 district court does not have subject matter jurisdiction to hear a direct appeal from the
26 final judgment of a state court."); see also Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir.
27 2003) ("If . . . a federal plaintiff asserts as a legal wrong an allegedly illegal act or
28 omission by an adverse part, Rooker-Feldman does not bar jurisdiction."). Plaintiff's

1 objections do not address the substance of this conclusion. The Court therefore
2 **ADOPTS** the Report with regard to the conclusion that the Rooker-Feldman doctrine
3 does not apply.

4 **IV. Qualified Immunity**

5 The magistrate judge concluded that, because Plaintiff did not sufficiently allege
6 any constitutional violation, qualified immunity bars his due process and equal
7 protection claims. This Court agrees. See Jeffers v. Gomez, 267 F.3d 895, 910 (9th
8 Cir. 2001) (“Government officials enjoy qualified immunity unless their conduct
9 violates a clearly established statutory or constitutional rights.”) Plaintiff’s objections
10 do not address the substance of this conclusion. Accordingly, the Court **ADOPTS** the
11 Report with regard to the conclusion that qualified immunity bars Plaintiff’s claims.

12 In sum, the Court adopts each of the magistrate judge’s conclusions.

13 **CONCLUSION AND ORDER**

14 Having considered the Report, Plaintiff’s Objection, Defendants’ Reply, and the
15 applicable law, and for the foregoing reasons, **IT IS HEREBY ORDERED** that:

- 16 1. The Report is **ADOPTED** in its entirety;
- 17 2. Defendants’ Motion to Dismiss is **GRANTED**;
- 18 3. Plaintiff’s TAC is **DISMISSED WITH PREJUDICE**; and
- 19 4. The Clerk of Court shall enter judgment in accordance with this Order.

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21 DATED: September 30, 2013

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23 HON. GONZALO P. CURIEL
24 United States District Judge
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