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## UNITED STATES DISTRICT COURT

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## DISTRICT OF NEVADA

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DONALD B. KIMBALL,

Case No. 3:12-cv-00639-MMD-VPC

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Plaintiff,

ORDER

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v.

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CHRIS PERRY, et al.,

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Defendants.

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Before the Court is Magistrate Judge Valerie P. Cooke's Report and Recommendation ("R&R") (dkt. no. 25) addressing Defendants' 12(b)(6) Motion to Dismiss without Prejudice for Failure to State a Claim (dkt. no. 21). The deadline for Plaintiff to file any objections was February 16, 2014 (dkt. no. 25). No objections were filed.

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This Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge's report and recommendation, then the court is required to "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). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge's report and recommendation where no objections have been filed. See *United States v.*


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1 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review  
2 employed by the district court when reviewing a report and recommendation to which no  
3 objections were made); *see also Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.  
4 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view  
5 that district courts are not required to review "any issue that is not the subject of an  
6 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then  
7 the court may accept the recommendation without review. *See, e.g., Johnstone*, 263 F.  
8 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to  
9 which no objection was filed).

10 Nevertheless, this Court finds it appropriate to engage in a *de novo* review in  
11 order to determine whether to adopt the R&R. The R&R recommends dismissing  
12 Plaintiff's claims under 42 U.S.C. § 1983 since Plaintiff seeks to challenge the legality or  
13 duration of his confinement. It is well established that when a prisoner raises such a  
14 challenge, his sole federal remedy is a writ of habeas corpus. *Preiser v. Rodriguez*, 411  
15 U.S. 475 (1973). Upon review of the R&R and the record in this case, the Court  
16 determines that it is appropriate to adopt the R&R in full.

17 It is hereby ordered that the R&R (dkt. no. 25) is accepted and adopted.  
18 Defendants' 12(b)(6) Motion to Dismiss without Prejudice for Failure to State a Claim  
19 (dkt. no. 21) is granted. The Clerk is directed to close this case.

20 DATED THIS 5<sup>th</sup> day of March 2014.

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MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE  
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