

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**ANTONIO ALEJANDRO GUTIERREZ,**

Petitioner,

No. 3:08-00311-ST

v.

OPINION AND ORDER

**BRIAN BELLEQUE, et al.,**

Respondents.

**MOSMAN, J.,**

On July 21, 2011, Magistrate Judge Stewart issued her Findings and Recommendation (“F&R”) [72] in the above-captioned case recommending that I deny the Petition for Writ of Habeas Corpus [2] and dismiss this matter with prejudice. Petitioner filed objections on September 23, 2011 [80]. Respondents filed a response on September 27, 2011 [81].

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d

1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Petitioner's objections are meritless and I find they are adequately addressed in the F&R itself. Upon review, I agree with Judge Stewart's recommendation and I ADOPT the F&R [72] as my own opinion.

IT IS SO ORDERED.

DATED this 12th day of October, 2011.

/s/ Michael W. Mosman  
MICHAEL W. MOSMAN  
United States District Court