

**THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

EZEKIEL C. CROSS, JR.,

Petitioner,

v.

**CIVIL ACTION NO. 1:04CV218
(BROADWATER)**

DOMINIC A. GUTIERREZ,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated June 3, 2005, and Petitioner's objections thereto filed on June 15, 2005. After conducting a *de novo* review in accordance with 28 U.S.C. § 636(b)(1), the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted.

Petitioner's objections did not raise issues that were not addressed by and disposed of by the Report and Recommendation. The Court therefore **ORDERS** that the petition be **DENIED** and **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation. It is further **ORDERED** that this action be and is hereby **STRICKEN** from the active docket of this Court and Respondent's motion to take judicial notice (**Docket number 7**) is hereby **DENIED**.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this **18th** day of August 2005.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE

