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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

EDGAR SALDANA,
Petitioner,
v.
M.D. BITER, Warden,
Respondent.

NO. CV 11-10467-MWF (AGR)

ORDER ACCEPTING FINDINGS
AND RECOMMENDATION OF
UNITED STATES MAGISTRATE
JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the petition, records on file, and the Report and Recommendation of the magistrate judge. Further, the Court has engaged in a *de novo* review of those portions of the Report to which Petitioner has objected. The Court accepts the findings and recommendation of the magistrate judge.

Petitioner also objects to the magistrate judge's minute order filed concurrently with the Report on June 3, 2014, in which she denied Petitioner leave to conduct discovery. (Objections at 15-16.)

1 Pursuant to Fed. R. Civ. P. 72(a), a “district judge . . . must consider timely
2 objections¹ and modify or set aside any of part of [a magistrate’s pretrial order]
3 that is clearly erroneous or is contrary to law.” The magistrate found that
4 Petitioner had not established good cause to conduct discovery. (Dkt. No. 74.)
5 With respect to the first three of the four items Petitioner wanted to discover, the
6 magistrate found that her Report found no merit to his claims and discovery of
7 those items would not change her analysis. (*Id.* at 2.) She also found that
8 Petitioner wanted to argue that he was placed in double jeopardy when he pled
9 guilty to possession of a shotgun but was then tried for murder with the same
10 shotgun. As the magistrate judge explained, one of the elements of double
11 jeopardy is that it must involve the same offense. (*Id.* at 2-3 (citing *Brown v.*
12 *Ohio*, 432 U.S. 161, 165, 97 S. Ct. 2221, 53 L. Ed. 2d 187 (1977)).)

13 With respect to the fourth item, which requested police reports potentially
14 regarding the brandishing of a gun at the scene, the magistrate judge found that
15 Petitioner’s request was “purely speculative” as all witness statements were
16 provided to the defense and no gunshot residue tests were performed. (*Id.* at 3.)

17 The magistrate’s order was neither clearly erroneous nor contrary to law.
18 Petitioner’s objection is OVERRULED. Petitioner’s request for an evidentiary
19 hearing is DENIED.

20 IT IS ORDERED that judgment be entered denying the petition and
21 dismissing this action with prejudice.

22
23 DATED: August 12, 2014



MICHAEL W. FITZGERALD
United States District Judge

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27 _____
28 ¹ Petitioner’s objection is not timely as it should have been filed within 14
days of the date of service the order. Fed. R. Civ. P. 72(a). Nonetheless, the
Court will address the merits of the objection.