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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

REGIMEN C. CALDWELL,	)	Case No. CV 14-2567 RGK(JC)
Petitioner,	)	<del>(PROPOSED)</del> ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE
v.	)	
E. VALENZUELA, et al.,	)	
Respondents.	)	

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Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus by a Person in State Custody (“Petition”) and all of the records herein, including the attached Report and Recommendation of United States Magistrate Judge (“Report and Recommendation”), and petitioner’s objections to the Report and Recommendation (“Objections”). The Court has further made a *de novo* determination of those portions of the Report and Recommendation to which objection is made. The Court concurs with and accepts the findings, conclusions, and recommendations of the United States Magistrate Judge (with one correction to a footnote)<sup>1</sup> and overrules the Objections.

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<sup>1</sup>This Court notes that footnote 6, which appears on page 4 of the Report and Recommendation contains an incorrect date and corrects such footnote so that it reads as  
(continued...)

1 The Court further specifically addresses certain Objections raised by  
2 petitioner.

3 First, contrary to petitioner’s contention (Objections at 2), given the  
4 extensive information in the record regarding the reasons for the delay in  
5 petitioner’s filings, the Court need not conduct an evidentiary hearing on this issue.  
6 Cf. Roberts v. Marshall, 627 F.3d 768, 773 (9th Cir. 2010) (evidentiary hearing not  
7 required where “the record is amply developed, and . . . it indicates that the  
8 petitioner’s mental incompetence was not so severe as to cause the untimely filing  
9 of his habeas petition”), cert. denied, 132 S. Ct. 286 (2011).

10 Second, this Court rejects petitioner’s assertion that his “actual innocence”  
11 should serve as a gateway through which he can pass and which should compel this  
12 Court to consider the merits of his claims. (Objections at 2-3). In rare and  
13 extraordinary cases, a plea of actual innocence can serve as a gateway through  
14 which a petitioner may pass to overcome the statute of limitations otherwise  
15 applicable to federal habeas petitions. McQuiggin v. Perkins, 133 S. Ct. 1924,  
16 1928 (2013); see also Lee v. Lampert, 653 F.3d 929, 934-37 (9th Cir. 2011) (en  
17 banc). “[A] petitioner does not meet the threshold requirement unless he [or she]  
18 persuades the district court that, in light of the new evidence, no juror, acting  
19 reasonably, would have voted to find him [or her] guilty beyond a reasonable  
20 doubt.” Id. (quoting Schlup v. Delo, 513 U.S. 298, 329 (1995)). In order to make a  
21 credible claim of actual innocence, a petitioner must “support his allegations of  
22 constitutional error with new reliable evidence – whether it be exculpatory  
23 scientific evidence, trustworthy eyewitness accounts, or critical physical evidence  
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26 <sup>1</sup>(...continued)  
27 follows: “Respondents assert that the First State Petition was filed on December 8, 2008.  
28 (Respondents’ Memo at 1). The First State Petition in the record is not file-stamped. (Lodged  
Doc. 1). The order denying the First State Petition reflects that the First State Petition was filed  
on December 4, 2008. (Lodged Doc. 2).”

1 – that was not presented at trial.” Schlup, 513 U.S. at 324. The habeas court then  
2 “consider[s] all the evidence, old and new, incriminating and exculpatory,  
3 admissible at trial or not.” Lee, 653 F.3d at 938 (internal quotations omitted; citing  
4 House v. Bell, 547 U.S. 518, 538 (2006)). On this record, the court “must make a  
5 ‘probabilistic determination about what reasonable, properly instructed jurors  
6 would do.’” House, 547 U.S. at 538 (quoting Schlup, 513 U.S. at 329).  
7 Unexplained or unjustified delay in presenting new evidence is a “factor in  
8 determining whether actual innocence has been reliably shown.” Perkins, 133 S.  
9 Ct. at 1928, 1935; Schlup, 513 U.S. at 332 (“A court may consider how the timing  
10 of the submission and the likely credibility of a [petitioner’s] affiants bear on the  
11 probable reliability of . . . evidence [of actual innocence].”). Here, petitioner has  
12 not submitted new, reliable evidence to cast doubt on his conviction to permit the  
13 Court to consider his otherwise time-barred claims.

14 IT IS THEREFORE ORDERED that the Petition is denied as time-barred,  
15 that this action is dismissed with prejudice, and that Judgment be entered  
16 accordingly.

17 IT IS FURTHER ORDERED that the Clerk serve copies of this Order, the  
18 Report and Recommendation, and the Judgment herein on petitioner and counsel  
19 for respondents.

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21 DATED: December 2, 2014

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25 HONORABLE R. GARY KLAUSNER  
26 UNITED STATES DISTRICT JUDGE  
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