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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RANDAL RUIZ,
Petitioner,
v.
SCOTT FRAUENHEIM, Warden,
Respondent.

Case No. CV 14-08693 PA (RAO)

**ORDER ACCEPTING FINDINGS,
CONCLUSIONS, AND
RECOMMENDATIONS OF
UNITED STATES MAGISTRATE
JUDGE**

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all of the records and files herein, and the Final Report and Recommendation of United States Magistrate Judge (“Report”).¹ Further, the Court has engaged in a *de novo* review of those portions of the Report and Recommendation issued on October 21, 2016, to which Petitioner has objected.² The Court hereby accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge.

¹ The Report issued March 28, 2017, differs from the Report and Recommendation issued on October 21, 2016, only in the addition of non-substantive procedural background. (*See* Dkt. No. 62 at 1 n.2.)

² On March 6, 2017, the Court received from Petitioner a “Motion for Relief from Judgement for De Novo Review, Reconsideration Rehearing” regarding the Magistrate Judge’s partial grant of Petitioner’s request for an extension of time in which to file objections to the Report. (Dkt. No. 61.) Because Petitioner has now filed objections to the Report, his Motion is denied as moot.

1 The Court notes that Petitioner appears to raise, for the first time, a number
2 of claims that were not addressed in the Report. Specifically, Petitioner challenges
3 the following aspects of the police investigation preceding his state prosecution, his
4 state prosecution, and his state habeas efforts: denial of discovery of jury
5 misconduct; denial of evidentiary hearings on collateral review; impermissibly
6 suggestive show-up; unreliable identification testimony; clearly erroneous and
7 inconsistent pre-show-up description; prosecutorial misconduct; false or misleading
8 arguments, presumably by the prosecution; denial of right to present a defense;
9 insufficient evidence to support presumption of harm to occupants; illegal
10 detention, arrest, search, and seizure; denial of a full and fair suppression hearing;
11 failure to preserve evidence in bad faith; use by the prosecution of incurably
12 prejudicial hearsay; hearsay impermissibly admitted for the truth of the matter
13 asserted on the critical issue of intent; and denial of discovery on peace officer
14 personnel misconduct, including as it related to a motion to suppress evidence; and
15 failure to preserve evidence. (Dkt. No. 62 at 1-2.) While Petitioner raised many of
16 these arguments on direct appeal of his conviction to the California Court of Appeal
17 or during state habeas proceedings (Dkt. No. 1 at 2-5), and discussed his challenges
18 to these aspects of his state criminal proceedings in opposition to Respondent's
19 Motion to Dismiss and Answer (Dkt. Nos. 29, 47), Petitioner did not raise these as
20 claims in his Petition in the instant action (*see* Dkt. No. 1 at 5-9).

21 Generally, a district court is not required to consider new arguments or
22 evidence raised for the first time in an objection to a magistrate judge's
23 recommendation, but the court actually must exercise its discretion in declining to
24 do so; the court cannot simply adopt the recommendation without explaining that it
25 will not consider a new matter. *See Jones v. Blanas*, 393 F.3d 918, 935 (9th Cir.
26 2004); *Brown v. Roe*, 279 F.3d 742, 745-46 (9th Cir. 2002); *United States v.*
27 *Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000). Here, the Court declines to consider
28 the numerous new grounds now asserted by Petitioner because Petitioner is raising

1 them after the Magistrate Judge already had issued the Report. The Court’s
2 conclusion in this regard is buttressed by the fact that, even at this late stage,
3 Petitioner fails to provide any facts or legal citations to support these new grounds,
4 thus failing to adequately present those claims to the Court. *See Greenway v.*
5 *Schriro*, 653 F.3d 790, 804 (9th Cir. 2011) (stating that a “cursory and vague claim
6 cannot support habeas relief” (citing *James v. Borg*, 24 F.3d 20, 26 (9th Cir.
7 1994))); *James*, 24 F.3d at 26 (“Conclusory allegations which are not supported by
8 a statement of specific facts do not warrant habeas relief.” (citing *Boehme v.*
9 *Maxwell*, 423 F.2d 1056, 1058 (9th Cir.1970))).

10 Accordingly, IT IS ORDERED that the Petition is denied and Judgment shall
11 be entered dismissing this action with prejudice.

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13 DATED: 03/30/2017



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15 PERCY ANDERSON
16 UNITED STATES DISTRICT JUDGE
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