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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JOSE REDANI HERNANDEZ,  
Petitioner  
v.  
NEIL McDOWELL, Warden,  
Respondent.

Case No. 2:16-cv-03039-JLS (GJS)

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

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition (“Petition”), all pleadings and other documents filed in this action, the Report and Recommendation of United States Magistrate Judge (“Report”), and Petitioner’s untimely Objections to the Report.<sup>1</sup> Pursuant to 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b), the Court has conducted a de novo review of those portions of the Report to which objections have been stated.

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<sup>1</sup> The Magistrate Judge twice extended Petitioner’s deadline to file Objections to the Report, which ultimately were due by December 27, 2018. Although Petitioner did not file his Objections until January 14, 2019, they are being considered despite their untimeliness. The Court rejects Petitioner’s contention set forth in the Objections that the Magistrate Judge afforded him “no time” to prepare and file his Objections. The Report issued on September 27, 2018, and Petitioner has had over three months to respond to it.

1 In the Objections, Petitioner raises a number of new habeas claims, such as  
2 claims based on alleged ineffective assistance of counsel and First Amendment  
3 violation (Objections at 20-23) and insufficiency of the evidence and false testimony  
4 (*id.* at 29-31). These claims were not included within the ten habeas claims alleged  
5 in the Petition, which are addressed in the Report. These newly-proffered claims  
6 also were not raised in Petitioner’s state direct appeal and, thus, are unexhausted.

7 A district court has discretion, but is not required, to consider evidence or  
8 arguments presented for the first time in objections to a report and recommendation.  
9 *See Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002); *United States v. Howell*,  
10 231 F.3d 615, 621-22 (9th Cir. 2000). The Court exercises its discretion to reject  
11 considering these belatedly-raised, unexhausted claims and their underlying  
12 arguments, as it is inappropriate to raise new habeas claims for the first time in  
13 objections to a report and recommendation. *See Greenhow v. Secretary of Health &*  
14 *Human Servs.*, 863 F.2d 633, 638-39 (9th Cir. 1988) (“allowing parties to litigate  
15 fully their case before the magistrate and, if unsuccessful, to change their strategy  
16 and present a different theory to the district court would frustrate the purpose of the  
17 Magistrate Act”), *overruled on other grounds by United States v. Hardesty*, 977  
18 F.2d 1347, 1348 (9th Cir. 1992) (*en banc*); *see also* Rule 2(c)(1) of the Rules  
19 Governing Section 2254 Cases in the United States District Courts (the petition  
20 “must” “specify all grounds for relief available to the petitioner”).

21 Having completed its review, the Court accepts the findings and  
22 recommendations set forth in the Report. Accordingly, **IT IS ORDERED** that: (1)  
23 the Petition is DENIED; and (2) Judgment shall be entered dismissing this action  
24 with prejudice.

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26 DATE: February 21, 2019



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JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE