



1 equitable tolling because he is “vision impaired and can not even read his legal documents without  
2 assistance.”<sup>1</sup> Objs. at 1. He further contends that because his case is “private,” he can’t  
3 ask other inmates for help, and “staff assistance is not available to assist with legal papers.” *Id.*  
4 Medical records attached to the Objections show that Petitioner has “[v]ision loss of right eye” and  
5 “[i]njury of left optic nerve” and that on a particular day in July 2021 — well after the deadline for  
6 filing the Petition had run — he was “adorning vision impaired vest and wearing sunglasses.” Objs.  
7 at 6. Neither his Objections nor the records provided indicate when his eye problems began or  
8 whether he had them during the AEDPA limitation period.

9       Furthermore, Petitioner’s filing of his Objections appears to bely any entitlement to equitable  
10 tolling. As stated in the Report, during all relevant times Petitioner *has* had access to any necessary  
11 legal assistance—which enabled him to file four state habeas petitions during the limitation period or  
12 shortly thereafter. *See* Report at 17. The filing of his Objections—which are cogent and attach  
13 relevant documentary evidence—demonstrates once again that he has access to help; he just has  
14 failed to demonstrate an entitlement to tolling even with that help. Petitioner’s other objections  
15 simply repeat arguments the Magistrate Judge already addressed in the Report. *Id.* at 13–17  
16 (concluding that “Petitioner’s mental-health issues did not prevent him from filing a timely federal  
17 petition”), 18–19 (concluding that “[t]he prison’s COVID-19 protocols did not affect Petitioner’s  
18 ability to timely file the Petition”).

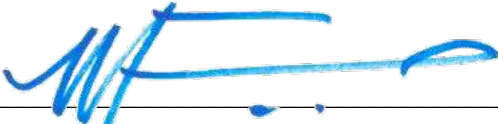
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25 <sup>1</sup> The Court notes that a district court may decline to consider issues presented for the first time in objections  
26 to a report and recommendation. *See United States v. Howell*, 231 F.3d 615, 621–623 (9th Cir. 2000) (district  
27 judge did not abuse discretion in refusing to consider factual allegations not presented to the magistrate  
28 judge); *see also Brown v. Roe*, 279 F.3d 742, 744–45 (9th Cir. 2002) (stating that a district court has  
discretion, but is not required, to consider evidence or claims presented for the first time in objections to a  
report and recommendation). Given the state of the record, the Court, in its discretion, is addressing the  
substance of this new issue.

1           Having reviewed de novo those portions of the Report to which Petitioner objects, *see* 28  
2 U.S.C. § 636(b)(1)(C), the Court accepts the findings and recommendations of the Magistrate Judge.  
3 It THEREFORE IS ORDERED that Judgment be entered denying the Petition and dismissing this  
4 action with prejudice.

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6 Dated: March 22, 2023

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8 MAAME EWUSI-MENSAH FRIMPONG  
9 United States District Judge  
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