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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN GONZALEZ,
Petitioner

v.

B. CATES,
Respondent.

Case No. 2:21-cv-06316-ODW (GJS)

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

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all documents filed and lodged in this action, the Report and Recommendation of United States Magistrate Judge [Dkt. 11, “Report”], Petitioner’s Objections to the Report [Dkt. 27], and Petitioner’s Motion To Amend Habeas Petition [Dkt. 28, “Motion”]. 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.

A district court has discretion, but is not required, to consider arguments presented for the first time in objections to a report and recommendation. *See Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002); *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000). In the Motion, Petitioner asks the Court to amend

1 the operative habeas petition to include two new grounds for relief he has argued in
2 his Objections: (1) that witness Sara Chavez testified falsely; and (2) that witness
3 Vladimir Levicky testified falsely. There is no showing that either claim has been
4 exhausted in the state courts, nor has any adequate explanation been presented for
5 Petitioner's failure to do so or for his delay in waiting to raise these new claims until
6 after briefing was completed and the Report had issued. To the extent that
7 Petitioner seeks to have the Court consider these newly-asserted matters as extant
8 bases for federal habeas relief, the Court exercises its discretion to decline to
9 consider any such belatedly-raised habeas claims. That said, the Court has carefully
10 considered all of the arguments raised in the Objections to the Report.

11 Having completed its review, the Court accepts the findings and
12 recommendations set forth in the Report. Accordingly, **IT IS ORDERED** that: the
13 Petition is DENIED; the Motion is DENIED; and Judgment shall be entered
14 dismissing this action with prejudice.

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DATE: February 8, 2023



OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE