

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

<b>CRUZ ALONZO GUTIERREZ,</b>	)	<b>NO. EDCV 14-2569-AB (KS)</b>
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>ORDER ACCEPTING FINDINGS AND</b>
	)	<b>RECOMMENDATIONS OF UNITED</b>
<b>CLARK E. DUCART, Warden,</b>	)	<b>STATES MAGISTRATE JUDGE</b>
<b>Respondent.</b>	)	
_____	)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Second Amended Petition for Writ of Habeas Corpus (“Petition”), all of the records herein, the Report and Recommendation of United States Magistrate Judge (“Report”), and Petitioner’s Objections to the Magistrate Judge’s Report and Recommendation (“Objections”). 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.

The Court notes that, in concert with the Objections, Petitioner filed a Motion To Expand Record (“Motion”) with several exhibits attached. (Dkt. No. 58.) “[U]nder § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits.” *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). Nevertheless, to the extent that

1 Petitioner asks the Court to consider the exhibits attached to the Motion as part of his  
2 Objections, the Motion is GRANTED, and the Court exercises its discretion to consider  
3 evidence presented for the first time in objections to a report and recommendation. See  
4 *Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir.2002); *United States v. Howell*, 231 F.3d 615,  
5 621-22 (9th Cir. 2000). The Court concludes that this evidence does not affect the correctness  
6 of the Report's conclusions.

7  
8 Having completed its review, the Court accepts the findings and recommendations set  
9 forth in the Report. Accordingly, IT IS ORDERED that: (1) the Petition is DENIED; and (2)  
10 Judgment shall be entered dismissing this action with prejudice.

11  
12  
13 DATED: June 27, 2017



---

ANDRÉ BIROTTE JR.  
UNITED STATES DISTRICT JUDGE