

1 held that Article 36 of the Vienna Convention confers
2 individually enforceable rights. (Objs. at 8-9.)

3 Both objections lack merit. The fact that the prosecution
4 used English translations of Petitioner's interview transcripts
5 at the Miranda hearing that were slightly different from those
6 given to the jury at his trial two days later was well noted and
7 explored by defense counsel. (See, e.g., Lodged Doc. 3 at 33-41
8 & n.23 (citing both translations in detail but conceding that
9 they were "identical in content" except for minor stylistic
10 differences); Lodged Doc. 10 at 4 n.3 (noting same issue in
11 petition for review, that "[t]he two sets of transcripts are not
12 identical".) In his appellate brief, Petitioner expressly
13 acknowledged that the different versions were essentially
14 "identical in content":

15 Court Exhibit 2, which appears in the record (2
16 CT 349-397), is identical in content (with a slight
17 pagination difference) to People's Exhibit 6A (2 CT
18 254-302), which was admitted into evidence at trial
19 Court Exhibit 3, which also appears in the
20 record (2 CT 398-443), is identical in content (with
21 a different footer) to People's Exhibit 6B (2 CT 303-
22 348), which was admitted into evidence at
23 trial¹

24 (See Lodged Doc. 3 at 33 n.23 (some record citations omitted).)

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27 ¹ As Petitioner correctly noted, the transcripts admitted at
28 the pretrial Miranda hearing were marked as court exhibits 2 and
3, and the transcripts given to the jury at trial were marked as
People's exhibits 6A and 6B. (See Objs. at 5.)

1 In any event, as the R. & R. makes clear, "[b]ecause Miranda
2 involves a totality-of-circumstances inquiry," whether Petitioner
3 knowingly and voluntarily waived his Miranda rights does not
4 depend on any specific words or utterances in isolation (see R. &
5 R. at 11, 27-30) – including, for example, whether he said "Uh-
6 huh, yes, if [indecipherable] I can't say anything?" or "Uh-huh,
7 yes, if [indecipherable] now I can't tell you anything?" in
8 confirming his understanding of his right to remain silent (see
9 Objs. at 5-6). (See also R. & R. at 30 (finding no law requiring
10 suspect to "affirmatively indicate after each of the four
11 warnings his understanding of it").)


12 Further, the Magistrate Judge did not say that no court has
13 ever held that Article 36 of the Vienna Convention confers
14 individual rights; rather, she correctly noted that "the Supreme
15 Court has never clearly established that the Vienna Convention
16 creates judicially enforceable private rights," citing, among
17 others, various Supreme Court cases in support. (See R. & R. at
18 33-34.) Thus, because federal habeas review looks only to
19 clearly established Supreme Court decisions for guidance,
20 Petitioner's second objection has no merit.

21 Accordingly, having made a de novo determination of those
22 portions of the Report and Recommendation to which objections
23 have been made, the Court concurs with and accepts the Magistrate
24 Judge's recommendation that the Petition be denied. IT THEREFORE
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1 IS ORDERED that Judgment be entered denying the Petition and
2 dismissing this action with prejudice.

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DATED: January 9, 2017



JAMES V. SELNA
U.S. DISTRICT JUDGE