

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**

MICHAEL WENTWORTH,)	NO. SA CV 16-744-VBF (KS)
)	
Petitioner,)	
)	
v.)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF UNITED
R. MADDEN, Warden,)	STATES MAGISTRATE JUDGE
)	
Respondent.)	
_____)	

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition for Writ of Habeas Corpus (“Petition”), all of the records herein, and the Report and Recommendation of United States Magistrate Judge (“Report”), Petitioner’s Objections to the Magistrate Judge’s Report and Recommendation (“Objections”), and Petitioner’s exhibits, including a CD purporting to contain GPS information for Petitioner on December 27, 2011 (Dkt. No. 48). 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.

Petitioner makes various factual assertions in, and appends a panoply of exhibits to, his Objections, some of which are newly-presented. In addition, Petitioner raises several

1 new habeas claims that were not alleged in the Petition. A district court has discretion, but
2 is not required, to consider evidence or arguments presented for the first time in objections
3 to a report and recommendation. *See Brown v. Roe*, 279 F.3d 742, 744-45 (9th Cir. 2002);
4 *United States v. Howell*, 231 F.3d 615, 621-22 (9th Cir. 2000). The Court declines to
5 consider the habeas claims asserted for the first time in the Objections. The Court has
6 exercised its discretion to consider Petitioner's new evidence, but concludes that it does not
7 affect or alter the analysis and conclusions set forth in the Report.

8
9 Having completed its review, the Court accepts the findings and recommendations
10 set forth in the Report. Accordingly, IT IS ORDERED that:

- 11 (1) **petitioner's Motion for Evidentiary Hearing [Doc #37] is DENIED;**
12 (2) **the habeas corpus petition is DENIED;**
13 (3) this action is dismissed with prejudice; and
14 (4) separate final judgment shall be entered consistent with this Order and with the
15 R&R.

16
17 Dated: November 13, 2017



18
19 VALERIE BAKER FAIRBANK
20 UNITED STATES DISTRICT JUDGE
21
22
23
24
25
26
27
28