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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL J. MARTINEZ,
Petitioner,

v.

MATTHEW CATE,
Respondent.

1:11-cv-572 AWI MJS HC

**ORDER ON FINDINGS AND
RECOMMENDATION AND REFERRING
MATTER TO THE MAGISTRATE JUDGE**

[Doc. 26]

Petitioner is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On June 19, 2014, the Magistrate Judge issued a Findings and Recommendation (“F&R”) that the Petition for Writ of Habeas Corpus be DENIED with prejudice. This F&R was served on all parties with notice that any objections were to be filed within thirty (30) days of the date of service of the order. Petitioner filed objections on July 25, 2014.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), this Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, including Petitioner's objections, the Court concludes that the Magistrate Judge's F&R is generally supported by the record and proper analysis.

However, the Court cannot adopt the F&R's analysis of Petitioner's seventh ground for relief. It appears that the F&R addresses an issue that was not actually

1 raised by the Petitioner in his seventh ground. Therefore, the Court will adopt the F&R
2 with respect to Petitioner's first six claims, but will decline to adopt it with respect to the
3 seventh claim. The Court will refer the matter back to the Magistrate Judge to issue a
4 new Findings and Recommendation with respect to Petitioner's seventh ground for relief.

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Accordingly, IT IS HEREBY ORDERED that:

1. The Findings and Recommendation issued June 19, 2014, is ADOPTED in part as explained above;
2. The first six grounds for relief raised in the Petition for Writ of Habeas Corpus are DENIED;
3. The Court respectfully DECLINES to adopt the Findings and Recommendation as to the Petition for Writ of Habeas Corpus's seventh ground for relief; and
4. This matter is referred back to the Magistrate Judge for the issuance of a Findings and Recommendation with respect to the Petition for Habeas Corpus's seventh ground for relief.

IT IS SO ORDERED.

Dated: January 17, 2015



SENIOR DISTRICT JUDGE