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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JESUS PEREDA RAMOS,

vs.

J. TIM OCHOA, Warden,

Petitioner,

Respondent.

CASE NO. 10cv2143 DMS (JMA)
**ORDER ADOPTING REPORT
AND RECOMMENDATION OF
MAGISTRATE JUDGE, DENYING
PETITION, AND DENYING
CERTIFICATE OF
APPEALABILITY**

Petitioner Jesus Pereda Ramos, a state prisoner proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. Section 2254 ("Petition"). Petitioner was arrested in 1985 for child molestation. Shortly thereafter Petitioner was released on his own recognizance on the condition he would not leave the state and would appear in court on November 27 and December 6, 1985 for his felony disposition conference and preliminary hearing, respectively. Petitioner did not appear but moved to Mexico. A bench warrant for his arrest was issued when he failed to appear at the November 27, 1985 hearing. He was arrested in March 2006 when he attempted to cross the border from Mexico into the United States. Following a jury trial which commenced on June 11, 2007, Petitioner was convicted of several counts of child molestation and sentenced to twelve years and eight months in state prison. He claims his federal constitutional rights were violated because more than twenty years had elapsed before he was brought to trial, and because he was sentenced to the upper term on several counts without a jury finding of aggravated circumstances.

1 The Petition was referred to United States Magistrate Judge Jan M. Adler for a report and
2 recommendation pursuant to 28 U.S.C. Section 636(b)(1)(B) and Civil Local Rule 72.1(d). The
3 Magistrate Judge issued a Report and Recommendation (“R&R”), recommending the Petition be
4 denied. On the first claim he found that the state court’s finding that Petitioner could not assert a
5 speedy trial claim due to his own active evasion was not “contrary to, or involved an unreasonable
6 application of, clearly established Federal law, as determined by the Supreme Court of the United
7 States.” 28 U.S.C. § 2254(d)(1); *see* R&R at 9-18. With respect to the second claim, the Magistrate
8 Judge found it was unexhausted, thus subjecting the entire Petition to dismissal.¹ (R&R at 18-19,
9 citing *Rose v. Lundy*, 455 U.S. 509, 522 (1982).) In the alternative, he recommended denying the
10 second claim on the merits. (R&R at 20-22.)

11 Petitioner timely objected to the Report and Recommendation. Respondent did not file a
12 response. In reviewing a magistrate judge's report and recommendation, the district court "shall make
13 a *de novo* determination of those portions of the report . . . to which objection is made," and "may
14 accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate
15 judge." 28 U.S.C. § 636(b)(1). Under this statute, "the district judge must review the magistrate
16 judge's findings and recommendations *de novo if objection is made, but not otherwise.*" *United States*
17 *v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*) (emphasis in original); *see Schmidt v.*
18 *Johnstone*, 263 F. Supp. 2d 1219, 1225-26 & n.5 (D. Ariz. 2003) (applying *Reyna-Tapia* to habeas
19 review).

20 Upon *de novo* review of the Report and Recommendation and Petitioner’s objections,
21 Petitioner’s objections are overruled and the Report and Recommendation is adopted in full.

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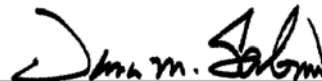
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25 ¹ Initially, Petitioner was informed his Petition contained claims which appeared to be
26 unexhausted, he was cautioned the Petition could be dismissed on this ground, and offered four
27 options to proceed. (Order (1) Denying *in Forma Pauperis* Application, (2) Dismissing Case without
28 Prejudice; and (3) Notifying Petitioner of Failure to Allege Exhaustion of His State Court Remedies
and Providing Options, filed Nov. 3, 2010.) Although Petitioner subsequently formally abandoned
two other unexhausted claims, he chose nevertheless to retain his second claim, which was
unexhausted.

1 Accordingly, the Petition is **DENIED**, and the Clerk shall enter judgment accordingly. Certificate of
2 appealability is **DENIED**.

3 **IT IS SO ORDERED.**

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5 DATED: October 18, 2011



6
7 HON. DANA M. SABRAW
8 United States District Judge

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