

1 **II. Discussion**

2 The duties of the district court in connection with a report and recommendation
3 of a magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28
4 U.S.C. § 636(b). The district judge must “make a de novo determination of those
5 portions of the report . . . to which objection is made,” and “may accept, reject, or
6 modify, in whole or in part, the findings or recommendations made by the magistrate.”
7 28 U.S.C. § 636(b). The district court need not review de novo those portions of a
8 Report and Recommendation to which neither party objects. *See Wang v. Masaitis*, 416
9 F.3d 992, 1000 n.13 (9th Cir. 2005); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121
10 (9th Cir. 2003) (en banc) (“Neither the Constitution nor the [Federal Magistrates Act]
11 requires a district judge to review, de novo, findings and recommendations that the
12 parties themselves accept as correct.”).

13 The Court has reviewed the Report and Recommendation, the record, and the
14 submissions of the parties. The Court finds that the Magistrate Judge correctly
15 recommended that the petition for writ of habeas corpus be dismissed with prejudice.
16 The Report and Recommendation is adopted in its entirety.

17 **III. Certificate of Appealability**


18 A certificate of appealability must be obtained by a petitioner in order to pursue
19 an appeal from a final order in a section 2254 habeas corpus proceeding. *See* 28 U.S.C.
20 § 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules
21 Governing Section 2254 Cases, “[t]he district court must issue or deny a certificate of
22 appealability when it enters a final order adverse to the applicant.”

23 A certificate of appealability should be issued only where the petition presents
24 “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
25 It must appear that reasonable jurists could find the district court’s assessment of the
26 petitioner’s constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473,
27 484 (2000). The Court finds that Petitioner has raised colorable, nonfrivolous
28 arguments. The Court grants a certificate of appealability.

1 **IV. Conclusion**

2 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 11)
3 is adopted in its entirety. The Petition for Writ of Habeas Corpus (ECF No. 1) is
4 denied. A certificate of appealability is granted. The Clerk of the Court shall enter
5 judgment for Respondent and against Petitioner and close the case.

6 DATED: June 14, 2016

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8 **WILLIAM Q. HAYES**
United States District Judge

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