

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
SOUTHERN DISTRICT OF CALIFORNIA

FRANCISCO RENE
HERNANDEZ,

Petitioner,

v.

JEFFERY BEARD, Secretary,

Respondent.

Case No.: 16CV0470-BEN(JMA)


**ORDER DENYING
PETITIONER'S MOTION TO
SHOW THE COURT EVIDENCE
(DOC. NO. 13)**

Petitioner has filed a motion requesting he be permitted to present evidence that he was not informed of his Miranda rights when he was interrogated by Detective Garcia on November 20, 2008. [Doc. No. 13.] On August 3, 2016, the undersigned issued a Report and Recommendation, recommending this Petition for Writ of Habeas Corpus ("Petition") be dismissed on the basis it is second and successive to Hernandez v. Beard, 12-CV-1682-BEN(DHB). [Doc. No. 14.] As discussed in the Report and Recommendation, both petitions for writ of habeas corpus challenge Petitioner's August 4, 2009 conviction in San Diego County Superior Court Case No. SCE286092 and Petitioner has not obtained the requisite authorization from the Ninth Circuit to file //

1 this second petition or alleged any facts to establish his new Petition satisfies the
2 requirements of 28 U.S.C. § 2244(b)(2).

3 The evidence Petitioner seeks to profer appears to be directed not to the
4 claims he makes in this case, but rather to the second claim in his earlier filed
5 case, in which he argued Detective Garcia failed to “Mirandize” Petitioner, in
6 violation of his Constitutional rights, and which was denied by District Judge
7 Roger T. Benitez on October 16, 2013.¹ Hernandez, 12-CV-1682-BEN(DHB)
8 [Doc. No. 4, p. 7 of 108 and Doc. No. 35.] Furthermore, even if the evidence
9 Petitioner now seeks to introduce relates to the claims he raises in this case, the
10 undersigned has recommended dismissal of this Petition. Petitioner’s motion to
11 present evidence in support of his claim Detective Garcia failed to inform
12 Petitioner of his Miranda rights is, therefore, DENIED.

13 Dated: August 10, 2016

14 
15 Honorable Jan M. Adler
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25

26
27 ¹ In this case, Petitioner argues: (1) the San Diego Superior Court Judge failed to submit a waiver in open court
28 to transfer Petitioner’s case to the East County Court; (2) the prosecutor failed to obtain a waiver from Petitioner
after transferring his case to East County Court; (3) the court failed to arraign Petitioner within 48 hours of arrest;
and (4) Detective Garcia failed to inform San Diego County Jail of Petitioner’s pending charges of robbery,
resulting in a failure to rebook Petitioner on the robbery charges.