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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 RAUL ARELLANO,

11 Petitioner,

12 v.

13 DANIEL PARAMO,

14 Respondent.

Case No.: 16-cv-2337-WQH-MDD

ORDER

15 HAYES, Judge:

16 Before the Court are Petitioner's objections to the March 12, 2018 Report and
17 Recommendation of United States Magistrate Judge Mitchell D. Dembin. (ECF Nos. 39,
18 42).

19 **I. Background**

20 On September 13, 2016, Petitioner Raul Arellano filed a Petition for Writ of Habeas
21 Corpus (ECF No. 1) (the "Petition"). On March 12, 2018, United States Magistrate Judge
22 Mitchell D. Dembin issued a Report and Recommendation recommending the Petition be
23 denied because "Petitioner's four claims are not cognizable for habeas relief under 28
24 U.S.C. § 2254." (ECF No. 15 at 25). On August 6, 2018, having received no objections
25 to the March 12, 2018, Report and Recommendation, the Court issued an Order adopting
26 the Report and Recommendation and denying the Petition. (ECF No. 31). On October 24,
27 2018, the Court granted Petitioner an extension of time to file objections to the Report and
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1 Recommendation. (ECF No. 40). On December 6, 2018, Petitioner filed objections. (ECF
2 No. 42).

3 **II. Ruling of the Court**

4 The duties of the district court in connection with a report and recommendation of a
5 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §
6 636(b). The district judge must “make a de novo determination of those portions of the
7 report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in
8 part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b).

9 After conducting a de novo review of the Report and Recommendation and
10 considering the entire file, including Petitioner’s objections, the Court finds that the Report
11 and Recommendation correctly determined that the Petition for Writ of Habeas Corpus
12 should be denied.

13 A certificate of appealability must be obtained by a petitioner in order to pursue an
14 appeal from a final order in a section 2254 habeas corpus proceeding. *See* 28 U.S.C. §
15 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing
16 Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability
17 when it enters a final order adverse to the applicant.”

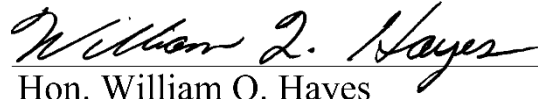
18 A certificate of appealability should be issued only where the petition presents “a
19 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). It must
20 appear that reasonable jurists could find the district court’s assessment of the petitioner’s
21 constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
22 The Court finds that the issues raised by Petitioner in the writ are frivolous. The Court will
23 not grant a certificate of appealability

24 **III. Conclusion**

25 The Court’s August 6, 2018 Order (ECF No. 31) is VACATED. IT IS HEREBY
26 ORDERED that the Report and Recommendation (ECF No. 15) is adopted in its entirety
27 and the Petition for Writ of Habeas Corpus (ECF No. 1) is DENIED. A certificate of
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1 appealability is DENIED. The Clerk of the Court shall re-enter judgment for Respondent
2 and against Petitioner and close the case.

3 Dated: January 28, 2019



Hon. William Q. Hayes

United States District Court

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