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7 UNITED STATES DISTRICT COURT
8 SOUTHERN DISTRICT OF CALIFORNIA
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10 LARRY HERNANDEZ,

11 Petitioner,

12 v.

13 SCOTT KERNAN,

14 Respondent.

Case No.: 16-cv-02460-AJB-LL

ORDER:

**(1) ADOPTING THE REPORT
AND RECOMMENDATION, (Doc.
No. 72);**

**(2) DENYING PETITIONER’S FIRST
AMENDED PETITION FOR WRIT
OF HABEAS CORPUS, (Doc. No. 7);
AND**

**(3) DENYING CERTIFICATE OF
APPEALABILITY**

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21 Presently before the Court is Petitioner Larry Hernandez’s (“Petitioner”) first
22 amended petition for writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2254. (Doc.
23 No. 7.) Respondent filed an answer to the Petition. (Doc. No. 15). Petitioner did not file a
24 traverse. The Court referred the matter to the Honorable Linda Lopez, Magistrate Judge,
25 who issued a Report and Recommendation (“R&R”) recommending the Court deny the
26 Petition. (Doc. No. 72.) The parties were instructed to file written objections by April 19,
27 2019, and replies by May 10, 2019. (*Id.* at 29.)

28 Federal Rule of Civil Procedure 72(b) and 28 U.S.C. § 636(b)(1) set forth a district


1 judge's duties in connection with a magistrate judge's report and recommendation. The
2 district judge must "make a de novo determination of those portions of the report . . . to
3 which objection is made," and "may accept, reject, or modify, in whole or in part, the
4 findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C);
5 *see also United States v. Remsing*, 874 F.2d 614, 617–18 (9th Cir. 1989). However, in the
6 absence of timely objections, the Court "need only satisfy itself that there is no clear error
7 on the face of the record in order to accept the recommendation." Fed. R. Civ. P. 72(b)
8 advisory committee's note (1983); *see also United States v. Reyna-Tapia*, 328 F.3d 1114,
9 1121 (9th Cir. 2003).

10 Here, neither party timely filed objections to Magistrate Judge Lopez's R&R.
11 Having reviewed the R&R, the Court finds that Magistrate Judge Lopez's R&R is
12 thorough, well-reasoned, and contains no clear error.

13 Accordingly, the Court hereby (1) **ADOPTS** Magistrate Judge Lopez's R&R, (2)
14 **DENIES** the Petition on the merits, and (3) **DECLINES** to issue a certificate of
15 appealability.¹ The Court Clerk is **DIRECTED** to close the case.

16 **IT IS SO ORDERED.**

17 Dated: December 11, 2019


18 Hon. Anthony J. Battaglia
19 United States District Judge
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22 ¹ When a district court enters a final order adverse to the applicant in a habeas proceeding,
23 it must either issue or deny a certificate of appealability. *See* 28 U.S.C. § 2253(c)(1)(A). A
24 certificate of appealability is required to appeal a final order in a habeas proceeding. *See*
25 *id.* A certificate of appealability is appropriate only where the petitioner makes "a
26 substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2); *Miller-El v.*
27 *Cockrell*, 537 U.S. 322, 326 (2003). Under this standard, the petitioner must demonstrate
28 that "reasonable jurists could debate whether . . . the petition should have been resolved in
a different manner or that the issues presented were 'adequate to deserve encouragement
to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 474 (2000) (quoting *Barefoot v.*
Estelle, 463 U.S. 880, 893 & n.4 (1983)).