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

LUIS TAPIA,

Petitioner,

v.

S. HATTON, Warden,

Respondent.

Case No.: 16cv2624-MMA (BLM)

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE;**

[Doc. No. 13]

**GRANTING RESPONDENT’S
MOTION TO DISMISS;**

[Doc. No. 10]

**DISMISSING THE PETITION WITH
PREJUDICE;**

[Doc. No. 1]

**DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY**

Petitioner Luis Tapia has filed a Petition for Writ of Habeas Corpus (“petition”) pursuant to 28 U.S.C. § 2254, challenging his conviction for murder in the second degree with the use of a firearm. *See* Doc. No. 1. Respondent filed a motion to dismiss the petition, which Petitioner filed an opposition to. *See* Doc. Nos. 10, 12. The matter was referred to United States Magistrate Judge Barbara L. Major for preparation of a Report

1 and Recommendation pursuant to Title 28, section 636(b)(1), and Civil Local Rule HC.2.
2 Judge Major has issued a thorough and well-reasoned Report recommending that the
3 motion to dismiss be granted. *See* Doc. No. 13.

4 Pursuant to Rule 72 of the Federal Rules of Civil Procedure and 28 U.S.C. §
5 636(b)(1), the Court must “make a de novo determination of those portions of the report .
6 . . . to which objection is made,” and “may accept, reject, or modify, in whole or in part,
7 the findings or recommendations made by the magistrate [judge].” 28 U.S.C. §
8 636(b)(1); *see also United States v. Remsing*, 874 F.2d 614, 617 (9th Cir. 1989).

9 Objections to the Report and Recommendation were due no later than August 18, 2017.
10 To date, no objections have been filed.¹

11 Accordingly, the Court finds that Judge Major has issued an accurate Report and
12 well-reasoned recommendation that the Court grant Respondent’s motion to dismiss. The
13 Court **ADOPTS** the Report and Recommendation in its entirety. The Court **GRANTS**
14 Respondent’s motion to dismiss, and **DISMISSES** the petition with prejudice.

15 CERTIFICATE OF APPEALABILITY

16 Rule 11 of the Federal Rules Governing Section 2254 Cases states that “the
17 district court must issue or deny a certificate of appealability when it enters a final order
18 adverse to the applicant.” A certificate of appealability is not issued unless there is “a
19 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2).
20 Under this standard, a petitioner must show that reasonable jurists could debate whether
21 the petition should have been resolved in a different manner or that the issues presented
22 were adequate to deserve encouragement to proceed further. *Miller-El v. Cockrell*, 537
23 U.S. 322, 336 (2003), quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). For the
24 reasons set forth in the Report and Recommendation and incorporated by reference
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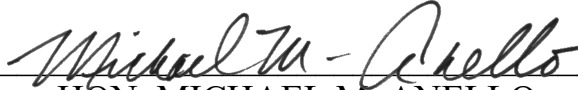
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28 ¹ The Clerk of Court served Petitioner with a copy of the Report and Recommendation via U.S. Mail on
July 21, 2017. *See* Doc. No. 13.

1 herein, the Court finds that this standard has not been met and therefore **DECLINES** to
2 issue a certificate of appealability in this case.

3 The Clerk of Court is instructed to enter judgment accordingly and close the case.

4 **IT IS SO ORDERED.**

5 DATE: August 23, 2017



HON. MICHAEL M. ANELLO

United States District Judge

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