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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DAVID SANCHEZ DOMINGUEZ,

Petitioner,

v.

RENEE BAKER, et al.,

Respondents.

Case No. 3:17-cv-00053-HDM-WGC

ORDER

This counseled habeas petition pursuant to 28 U.S.C. § 2254 comes before the court for consideration of the merits of the petition's surviving claims (ECF No. 10). Respondents have answered (ECF No. 28), and petitioner David Sanchez Dominguez ("petitioner") has replied (ECF No. 32).

I. Background

The petitioner in this action challenges his 2011 state court conviction for murder in the first degree with use of a deadly weapon, aggravated stalking, and burglary. (Pet. Ex. 10).¹ He is serving, for the murder conviction, a sentence of life imprisonment without the possibility of parole, in addition to sentences on the other convictions. (*See id.*)

¹ The petitioner's exhibits cited in this order are located at ECF Nos. 11-13 (cited as "Pet. Ex."). The respondents' exhibits are located at ECF Nos. 17-20 (cited as "Resp. Ex.").

1 The relevant facts, in brief, as accurately summarized by the
2 Nevada Supreme Court, are as follows:²

3 David Sanchez-Dominguez married Maria Angustias
4 Corona in 2002. Over the course of their seven-year
5 marriage, Sanchez-Dominguez subjected Maria to physical
6 and mental abuse. Maria attempted to leave Sanchez-
7 Dominguez several times, but always returned. In
8 September 2009, Maria again left Sanchez-Dominguez and
9 moved into her mother's home. She also obtained a
10 temporary protective order that forbade Sanchez-
11 Dominguez from coming within 100 yards of Maria, her
12 mother's home, or her place of work. Despite the
13 protective order, Sanchez-Dominguez continued to pursue
14 Maria.

15 On November 13, 2009, Sanchez-Dominguez drove to
16 Maria's mother's home. He entered the home, uninvited,
17 through the unlocked front door. Inside, he encountered
18 several of Maria's relatives, including her mother, two
19 cousins, and two brothers. Repeatedly, Sanchez-Dominguez
20 asked for Maria and was told that she was not home.
21 Maria's relatives told Sanchez-Dominguez to leave, but
22 he refused. When Maria's cousin Jose moved toward the
23 phone to call 911, Sanchez-Dominguez pulled a gun from
24 the waist of his pants and told Jose not to move. He
25 then pointed the gun at Maria's mother. Hearing the
26 commotion, Roberto Corona, Maria's brother, came
27 downstairs. Upon realizing what was happening and seeing
28 that Sanchez-Dominguez had the gun drawn, Roberto
stepped between his mother and Sanchez-Dominguez and
said, "if you're going to shoot, shoot." Immediately,
Sanchez-Dominguez held the gun to Roberto's chest and
fired a single shot, killing him."

(Pet. Ex. 13 at 2-3).

After being tackled and tied up by Maria's family, the
petitioner was arrested and charged by way of criminal complaint
with murder in the first degree or, in the alternative, felony
murder, felon in possession of a firearm, and burglary. (Resp. Ex.
3). An amended criminal complaint two months later added the
aggravated stalking charge. (Resp. Ex. 5).

² The court has independently reviewed the trial transcript and concurs
with the state court's summary in all material respects.

1 The defense moved to sever the aggravated stalking charge
2 from the remaining charges. (Pet. Ex. 2). The trial court denied
3 the motion, and trial commenced. (Pet. Ex. 3 (Tr. 15)). The jury
4 found petitioner guilty of murder in the first degree, aggravated
5 stalking, and burglary.³ (Resp. Exs. 25-27).

6 At the subsequent penalty phase for the murder conviction,
7 petitioner made an unsworn statement, while the State introduced
8 the testimonies of the victim' mother and sister, as well as
9 evidence of two prior felony convictions of the petitioner. (Pet.
10 Ex. 9). The jury returned a verdict of life without the possibility
11 of parole. (*Id.* at 35).

12 The petitioner filed a direct appeal. (Resp. Ex. 39). The
13 Nevada Supreme Court, in an *en banc* opinion, affirmed. (Pet. Ex.
14 13). Thereafter, the petitioner pursued his state court
15 postconviction remedies, and failing to obtain relief there, then
16 filed the instant federal habeas petition. (Pet. Exs. 14 & 19).

17 The first amended petition, filed by counsel, contains two
18 surviving claims for this court's consideration: Claims Two and
19 Three. Claim Two was decided by the state courts on the merits.
20 Claim Three is procedurally defaulted, so petitioner must
21 demonstrate cause and prejudice to excuse the default.

22 **II. Standards**

23 A. AEDPA Review

24 28 U.S.C. § 2254(d) provides the legal standards for this
25 Court's consideration of the merits of the petition in this case:

26 An application for a writ of habeas corpus on behalf of
27 a person in custody pursuant to the judgment of a State

28 ³ The felon in possession charge was not tried before the jury and was,
in the end, dismissed without prejudice. (*See id.* at 9; Pet. Ex. 10).

1 court shall not be granted with respect to any claim
2 that was adjudicated on the merits in State court
proceedings unless the adjudication of the claim -

3 (1) resulted in a decision that was contrary to, or
4 involved an unreasonable application of, clearly
established Federal law, as determined by the
Supreme Court of the United States; or

5 (2) resulted in a decision that was based on an
6 unreasonable determination of the facts in light of
7 the evidence presented in the State court
proceeding.

8 AEDPA "modified a federal habeas court's role in reviewing
9 state prisoner applications in order to prevent federal habeas
10 'retrials' and to ensure that state-court convictions are given
11 effect to the extent possible under law." *Bell v. Cone*, 535 U.S.
12 685, 693-694 (2002). This court's ability to grant a writ is to
13 cases where "there is no possibility fairminded jurists could
14 disagree that the state court's decision conflicts with [Supreme
15 Court] precedents." *Harrington v. Richter*, 562 U.S. 86, 102 (2011).
16 The Supreme Court has emphasized "that even a strong case for
17 relief does not mean the state court's contrary conclusion was
18 unreasonable." *Id.* (citing *Lockyer v. Andrade*, 538 U.S. 63, 75
19 (2003)); see also *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011)
20 (describing the AEDPA standard as "a difficult to meet and highly
21 deferential standard for evaluating state-court rulings, which
22 demands that state-court decisions be given the benefit of the
23 doubt") (internal quotation marks and citations omitted.)

24 A state court decision is contrary to clearly established
25 Supreme Court precedent, within the meaning of 28 U.S.C. § 2254,
26 "if the state court applies a rule that contradicts the governing
27 law set forth in [the Supreme Court's] cases" or "if the state
28 court confronts a set of facts that are materially

1 indistinguishable from a decision of [the Supreme Court] and
2 nevertheless arrives at a result different from [the Supreme
3 Court's] precedent." *Andrade*, 538 U.S. 63 (quoting *Williams v.*
4 *Taylor*, 529 U.S. 362, 405-06 (2000), and citing *Bell*, 535 U.S. at
5 694).

6 A state court decision is an unreasonable application of
7 clearly established Supreme Court precedent, within the meaning of
8 28 U.S.C. § 2254(d), "if the state court identifies the correct
9 governing legal principle from [the Supreme Court's] decisions but
10 unreasonably applies that principle to the facts of the prisoner's
11 case." *Andrade*, 538 U.S. at 74 (quoting *Williams*, 529 U.S. at 413).
12 The "unreasonable application" clause requires the state court
13 decision to be more than incorrect or erroneous; the state court's
14 application of clearly established law must be objectively
15 unreasonable. *Id.* (quoting *Williams*, 529 U.S. at 409).

16 To the extent that the state court's factual findings are
17 challenged, the "unreasonable determination of fact" clause of §
18 2254(d)(2) controls on federal habeas review. *E.g.*, *Lambert v.*
19 *Blodgett*, 393 F.3d 943, 972 (9th Cir. 2004). This clause requires
20 that the federal courts "must be particularly deferential" to state
21 court factual determinations. *Id.* The governing standard is not
22 satisfied by a showing merely that the state court finding was
23 "clearly erroneous." *Id.* at 973. Rather, AEDPA requires
24 substantially more deference:

25 [I]n concluding that a state-court finding is
26 unsupported by substantial evidence in the state-court
27 record, it is not enough that we would reverse in similar
28 circumstances if this were an appeal from a district
court decision. Rather, we must be convinced that an
appellate panel, applying the normal standards of

1 appellate review, could not reasonably conclude that the
2 finding is supported by the record.

3 *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004); see also
4 *Lambert*, 393 F.3d at 972.

5 Under 28 U.S.C. § 2254(e)(1), state court factual findings
6 are presumed to be correct unless rebutted by clear and convincing
7 evidence. The petitioner bears the burden of proving by a
8 preponderance of the evidence that he is entitled to habeas relief.
9 *Cullen*, 563 U.S. at 181. The state courts' decisions on the merits
10 are entitled to deference under AEDPA and may not be disturbed
11 unless they were ones "with which no fairminded jurist could
12 agree." *Davis v. Ayala*, - U.S. -, 135 S. Ct. 2187, 2208 (2015).

13 B. Procedural Default

14 A procedural default may be excused only if "a constitutional
15 violation has probably resulted in the conviction of one who is
16 actually innocent," or if the prisoner demonstrates cause for the
17 default and prejudice resulting from it. *Murray v. Carrier*, 477
18 U.S. 478, 496 (1986).

19 To demonstrate cause for a procedural default, the petitioner
20 must "show that some objective factor external to the defense
21 impeded" his efforts to comply with the state procedural rule.
22 *Murray*, 477 U.S. at 488. For cause to exist, the external
23 impediment must have prevented the petitioner from raising the
24 claim. See *McCleskey v. Zant*, 499 U.S. 467, 497 (1991).

25 With respect to the prejudice prong, the petitioner bears
26 "the burden of showing not merely that the errors [complained of]
27 constituted a possibility of prejudice, but that they worked to
28 his actual and substantial disadvantage, infecting his entire

1 [proceeding] with errors of constitutional dimension." *White v.*
2 *Lewis*, 874 F.2d 599, 603 (9th Cir. 1989) (citing *United States v.*
3 *Fraday*, 456 U.S. 152, 170 (1982)).

4 **III. Analysis**

5 **A. Claim Two**

6 In Claim Two, the petitioner asserts that his rights to due
7 process and a fair trial were violated by the court's denial of
8 the motion to sever the aggravated stalking charges from the murder
9 charge. (ECF No. 10 at 13). The Nevada Supreme Court addressed
10 this claim as follows:

11 Sanchez-Dominguez also argues that the aggravated
12 stalking charge should have been severed and tried
13 separately because it was unrelated to the other
14 offenses and highly prejudicial. The district court did
15 not abuse its discretion in refusing severance. The
16 record shows that Sanchez-Dominguez had an overarching
17 plan to terrorize and control Maria that ultimately
18 resulted in the burglary and murder. See NRS 173.115(2).
19 Also, the evidence that Sanchez-Dominguez burglarized
20 the home and killed Roberto was overwhelming, leaving
21 little reason to believe the jurors convicted him of
22 murder based on emotional outrage over the stalking,
23 rather than admissible evidence regarding the murder.

24 (Pet. Ex. 13 at 3 n.2).

25 "[I]t is not the province of the federal habeas court to
26 reexamine state court determinations on state-law questions. In
27 conducting habeas review, a federal court is limited to deciding
28 whether a conviction violated the Constitution, laws, or treaties
of the United States." *Estelle v. McGuire*, 502 U.S. 62, 68 (1991).
Therefore, as a general rule, federal courts may not review a trial
court's evidentiary rulings. *Crane v. Kentucky*, 476 U.S. 683, 689
(1986). A state court's evidentiary ruling, even if erroneous, is
grounds for federal habeas relief only if it is so fundamentally
unfair as to violate due process. *Dillard v. Roe*, 244 F.3d 758,

1 766 (9th Cir. 2001); see also *Windham v. Merkle*, 163 F.3d 1092,
2 1103 (9th Cir. 1998) (The federal court's "role is limited to
3 determining whether the admission of evidence rendered the trial
4 so fundamentally unfair as to violate due process."). Habeas relief
5 is thus available only if an evidentiary ruling or rule was
6 arbitrary, disproportionate to the end it was asserted to promote,
7 or so prejudicial that it rendered the trial fundamentally unfair.
8 See *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006); *Walters v.*
9 *Maass*, 45 F.3d 1355, 1357 (9th Cir.1995). Petitioner is entitled
10 to habeas relief only if the error has a "substantial and injurious
11 effect or influence in determining the jury's verdict." *Brecht v.*
12 *Abrahamson*, 507 U.S. 619, 627, 637 (1993).

13 Preliminarily, the court addresses the standard of review for
14 this claim. The petitioner argues that the state court's ruling on
15 this claim is not entitled to AEDPA deference because, although he
16 presented it as a due process claim in his appellate briefs, the
17 Nevada Supreme Court instead resolved the claim under an abuse of
18 discretion standard.

19 The petitioner is not entirely correct. While he did indeed
20 pose his claim as a violation of due process in his opening brief,
21 he also discussed the claim in reference to the abuse of discretion
22 standard. (See Ex. 11 at 20-22 (identifying standard of review as
23 abuse of discretion, but recognizing that even if joinder
24 permissible, the charges should be severed if joinder would cause
25 unfair prejudice, and "[i]n that sense, then, this is a
26 Constitutional issue")).⁴

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28 ⁴⁴ Citation is to original page of document.

1 To the extent the Nevada Supreme Court's opinion may be read
2 as failing to address the due process claim - a point that is
3 arguable but which the court need not decide - that does not
4 necessarily mean that the court failed to adjudicate the due
5 process claim on the merits and that the claim is therefore subject
6 to *de novo* review. "When a state court rejects a federal claim
7 without expressly addressing that claim, a federal habeas court
8 must presume that the federal claim was adjudicated on the merits-
9 but that presumption can in some limited circumstances be
10 rebutted." *Johnson v. Williams*, 568 U.S. 289, 301 (2013). Even if
11 the Nevada Supreme Court did not directly address the due process
12 claim, the presumption it adjudicated the claim on the merits has
13 not been rebutted here. This is particularly true because its
14 conclusion that the evidence against the petitioner on the murder
15 charge was "overwhelming" is consistent with a conclusion that the
16 joinder of charges did not have a substantial and injurious effect
17 on the jury's verdict. The court therefore concludes that the
18 Nevada Supreme Court adjudicated this claim on the merits, and
19 thus deferential review applies.

20 Turning to the merits, it is true that a large portion of the
21 evidence pertained to the petitioner's abuse and stalking of Maria.
22 Maria testified that that she was not happy in the marriage, that
23 the petitioner would call her stupid and good for nothing, that
24 she was "very afraid" of him, and that he attempted to isolate her
25 from her family. (Pet. Ex. 5 (Tr. 600-01, 606, 616-17)). She
26 testified that when she left him in 2008, and went to her parents'
27 house, the petitioner came looking for her there. When she went
28 outside to talk to him, he stabbed her in the stomach with a

1 screwdriver and told her to get her things and come home, which
2 she did. (*Id.* at 609-11).

3 Later, in the summer of 2008, during an argument that took
4 place while Maria was cooking, the petitioner grabbed a pot and
5 threw it at her and then grabbed a knife and put the dull edge to
6 her neck, telling her that if he ever saw her with someone else,
7 he would kill her and the other person. (*Id.* at 611-12).

8 During another argument in 2009, the petitioner attempted to
9 slap Maria, and when she stopped him, he instead punched her with
10 a closed fist, giving her a black eye. (*Id.* at 619).

11 Sometime later, the petitioner struck Maria with a belt, all
12 over her body, until he got tired, because she had not hemmed pants
13 he had told her to hem. (*Id.* at 620-21).

14 In yet another argument, the petitioner kicked Maria
15 repeatedly on her thighs with his work boots because of an
16 overdrawn account. (*Id.* at 622-23).

17 On September 23, 2009, after yet another argument, the
18 petitioner raped Maria after she got home from work. (*Id.* at 627-
19 29).

20 Several other witnesses testified as to the petitioner's
21 repeated attempts to contact or connect with Maria after being
22 served with the TPO, including at her place of work; most observed
23 that he was angry and anxious while doing so. (*See id.* at 561-69,
24 570-75 (Josh McCaskey); *id.* at 681-94 (Lucilla Garcia); *id.* at
25 771-75 (David Morton); *id.* at 823 et seq. (Bertha Montano); *id.* at
26 833 et seq. (Sam Glaster); *id.* at 847 et seq. (Jacob Moschetti)).

27 Maria's younger sister, Mayra, also testified. (Ex. 5 (Tr.
28 779)). Mayra had observed the petitioner yelling at Maria and

1 observed bruises on Maria. (*Id.* at 788-90). She testified that the
2 petitioner frequently called her family's house looking for Maria.
3 Once, when Mayra answered, the petitioner said that if Mayra hung
4 up, he would kill himself by swallowing pills. Mayra told him to
5 go ahead and kill himself, and then she heard a clicking of a gun
6 over the phone. (*Id.* at 800-01). Finally, Mayra testified that on
7 the night of Roberto's murder, the petitioner called her phone
8 twice, trying to find Maria, and that he sounded drunk and angry.
9 (*Id.* at 802-04). The petitioner said he wanted to talk to Maria
10 and that if he couldn't, he was going to do something stupid. (*Id.*
11 at 805).

12 The petitioner argues that this evidence was so strong and
13 inflammatory, and the evidence supporting premeditation and
14 deliberation so weak, that the jury could have convicted him of
15 first degree murder only because the stalking evidence made him
16 seem like a bad person. He argues that if the stalking charges had
17 been severed and the evidence in support of those charges excluded,
18 he would not have been convicted of first degree murder.

19 The petitioner's argument ignores the fact that he was charged
20 with first degree murder under both a premeditation theory and a
21 felony murder theory. Moreover, the petitioner does not argue that
22 the burglary charges should have been severed from the murder
23 charge. As the murder and burglary charges were tried together,
24 the petitioner's abuse and stalking of Maria in the years, months
25 and days before the murder was directly relevant to his intent
26 when he broke into the family's home, *i.e.*, it was evidence that

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1 when he entered the home, he did so with the intent to harm Maria.⁵
2 However inflammatory the stalking evidence may have been, its
3 inclusion did not render the trial fundamentally unfair because it
4 was directly relevant to the charges in the case. And even if the
5 admission of this evidence was fundamentally unfair, it was
6 harmless. As the Nevada Supreme Court held, it is difficult to
7 conclude that the jury would not have found the petitioner guilty
8 of felony murder, even if the stalking evidence had been excluded
9 or limited. The evidence of stalking did not therefore have a
10 substantial and injurious effect on the jury's verdict. As such,
11 the state courts were objectively reasonable in rejecting the
12 petitioner's due process and fair trial claim on this ground, and
13 the petitioner is not therefore entitled to relief on Claim Two of
14 the petition.⁶

15 **B. Claim Three**

16 In Claim Three, the petitioner asserts that his trial counsel
17 rendered ineffective assistance of counsel by failing to present
18 mitigation evidence during the penalty phase. (ECF No. 10 at 16).
19 Specifically, the petitioner asserts that evidence of his drug

21 ⁵ To the extent the petitioner suggests that in order to be liable for
22 felony murder of Roberto, he must have had the intent to harm Roberto
23 when entering the home, the argument is without merit. The purpose of
24 Nevada's felony-murder rule is "to deter felons from killing negligently
25 or accidentally by holding them strictly responsible for the killings
that are the result of a felony or an attempted one." *Payne v. State*,
406 P.2d 922, 924 (Nev. 1965). Thus, the victim of the murder need not
be the intended victim of the felony.

26 ⁶ Even if the court had concluded that the Nevada Supreme Court did not
27 adjudicate this claim on the merits and *de novo* review applied, the
28 petitioner would not be entitled to relief. On the basis of the evidence
in this case, the court concludes there was no violation of due process
stemming from the trial court's denial of the motion to sever the
charges.

1 abuse and personal history should have been introduced in order to
2 humanize him and reduce his culpability. (See *id.* at 16-20).

3 Claim Three is procedurally defaulted.⁷ In order to proceed
4 on this claim, the petitioner must demonstrate cause and prejudice
5 for the default. The petitioner here relies on *Martinez v. Ryan*,
6 566 U.S. 1 (2012). In *Martinez*, the Supreme Court held that the
7 absence or inadequate assistance of counsel in an initial-review
8 collateral proceeding may be relied upon to establish cause
9 excusing the procedural default of a substantial claim of
10 ineffective assistance of trial counsel. *Id.* at 9. Whether the
11 underlying claim is substantial and whether the petitioner
12 suffered any prejudice from the absence or ineffective assistance
13 of postconviction counsel are questions that are intertwined with
14 the merits of the claim itself.

15 Ineffective assistance of counsel claims are governed by
16 *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*,
17 a petitioner must satisfy two prongs to obtain habeas relief—
18 deficient performance by counsel and prejudice. 466 U.S. at 687.
19 With respect to the performance prong, a petitioner must carry the
20 burden of demonstrating that his counsel's performance was so
21 deficient that it fell below an "objective standard of
22 reasonableness." *Id.* at 688. "'Judicial scrutiny of counsel's
23 performance must be highly deferential,' and 'a court must indulge
24 a strong presumption that counsel's conduct falls within the wide
25 range of reasonable professional assistance.'" *Knowles v.*
26 *Mirzayance*, 556 U.S. 111, 124 (2009) (citation omitted). In

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28 ⁷ The court made this finding in its order on respondents' motion to
dismiss, dated August 20, 2018. (ECF No. 26 at 7).

1 assessing prejudice, the court "must ask if the defendant has met
2 the burden of showing that the decision reached would reasonably
3 likely have been different absent [counsel's] errors." *Strickland*,
4 466 U.S. at 696.

5 The petitioner argues that he grew up impoverished, came to
6 the United States on his own at a young age, and had limited
7 education, having stopped school at the ninth grade. He also argues
8 that he has a significant drug abuse history that started when he
9 was very young. All of this, he argues, should have been presented
10 in mitigation during the penalty phase. Instead, he asserts, his
11 counsel introduced virtually no mitigation evidence, apart from
12 the petitioner's own unsworn statement, and in fact conceded to
13 the jury that the petitioner would likely die in jail. The
14 petitioner asserts that the decision to not introduce mitigation
15 evidence was unreasonable and that he suffered prejudice as a
16 result.

17 Considering the evidence introduced at trial and during the
18 penalty phase, it is not reasonably likely that the mitigation
19 evidence petitioner identifies would have altered the outcome of
20 the proceedings. Before the penalty phase, the jury heard evidence
21 of the petitioner's repeated violent abuse of Maria over several
22 years before killing her brother. The abuse was significant and
23 sustained. In light of this evidence, it is not reasonably likely
24 that evidence of the petitioner's childhood and drug abuse would
25 have persuaded the jury to give the petitioner the opportunity at
26 parole, at least not any more than the petitioner's own statement,
27 in which he took responsibility for his actions and begged Maria
28 and her family for forgiveness. (See Pet. Ex. 9 (Tr. 25-26)). The

1 court therefore concludes that this claim lacks merit, and, as
2 such, the petitioner cannot demonstrate prejudice in order to
3 excuse its procedural default. Claim Three must therefore be
4 dismissed.

5 **V. Certificate of Appealability**

6 In order to proceed with an appeal, the petitioner must
7 receive a certificate of appealability. 28 U.S.C. § 2253(c)(1);
8 Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d
9 946, 950-951 (9th Cir. 2006); see also *United States v. Mikels*,
10 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must
11 make "a substantial showing of the denial of a constitutional
12 right" to warrant a certificate of appealability. *Allen*, 435 F.3d
13 at 951; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473,
14 483-84 (2000). "The petitioner must demonstrate that reasonable
15 jurists would find the district court's assessment of the
16 constitutional claims debatable or wrong." *Allen*, 435 F.3d at 951
17 (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold
18 inquiry, the petitioner has the burden of demonstrating that the
19 issues are debatable among jurists of reason; that a court could
20 resolve the issues differently; or that the questions are adequate
21 to deserve encouragement to proceed further. *Id.*

22 The court has considered the issues raised by the petitioner,
23 with respect to whether they satisfy the standard for issuance of
24 a certificate of appealability, and determines that none meet that
25 standard. Accordingly, the petitioner will be denied a certificate
26 of appealability.

1 **VI. Conclusion**

2 In accordance with the foregoing, IT IS THEREFORE ORDERED
3 that Claim Three of the amended petition is DISMISSED WITH
4 PREJUDICE and Claim Two of the amended petition (ECF No. 10) is
5 DENIED. This action is therefore DISMISSED WITH PREJUDICE.

6 IT IS FURTHER ORDERED that the petitioner is DENIED a
7 certificate of appealability, for the reasons set forth above.

8 The Clerk of Court shall enter final judgment accordingly and
9 CLOSE this case.

10 IT IS SO ORDERED.

11 DATED: This 28th day of February, 2020.

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15 UNITED STATES DISTRICT JUDGE
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