

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

<p>RICHARD CLARE JACKSON,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="padding-left: 40px;">vs.</p> <p>MENDOZA, <i>et al.</i>,</p> <p style="padding-left: 40px;">Respondents.</p> <hr style="width: 100%;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>3:10-cv-08005 JWS (ECV)</p> <p>ORDER AND OPINION</p> <p>[Re: Report and Recommendation]</p>
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I. MATTER PRESENTED

At docket 6, petitioner Richard C. Jackson filed his Amended Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. At docket 15, respondents Mendoza, *et al.*, filed their response opposing the petition. Petitioner Jackson replied at docket 19. Magistrate Judge Edward C. Voss filed his report and recommendation at docket 20. No objections to the report and recommendation were filed.

II. STANDARD OF REVIEW

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.”¹ When reviewing a magistrate

¹28 U.S.C. § 636(b)(1).

judge's report and recommendation in a habeas case, the district court reviews *de novo* conclusions of law² and findings of fact to which parties object.³ The court reviews for clear error uncontested findings of fact.⁴

III. BACKGROUND

The court has reviewed the report and recommendation and found that it accurately summarizes the background facts of this case. Moreover, petitioner does not object to any of the magistrate judge's findings of fact.⁵ Accordingly, the court adopts the background summary as its own.

IV. DISCUSSION

Having carefully reviewed the magistrate judge's report and recommendation under the standard of review articulated above, the court agrees with the magistrate judge's conclusions of law that the four grounds for relief set forth in petitioner's amended petition for writ of habeas corpus are procedurally defaulted. Accordingly, the court **ACCEPTS** the report and recommendation at docket 20. Because petitioner Jackson's claims are procedurally defaulted and petitioner has failed to demonstrate cause and prejudice for the default or that "failure to review his claims will result in a fundamental miscarriage of justice," petitioner's amended petition is **DISMISSED with prejudice**.⁶ Because jurists of reason would not find the court's procedural ruling

²*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

³28 U.S.C. § 636(b)(1).

⁴*Taberer v. Armstrong World Indus., Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).

⁵*Jones v. Wood*, 207 F.3d 557, 562 n.2 (9th Cir. 2000) ("Failure to object to a magistrate judge's recommendation waives all objections to the judge's findings of fact.")

⁶*Edwards v. Carpenter*, 529 U.S. 446, 451 (2000).

debatable, this court declines to issue a certificate of appealability.⁷ If petitioner Jackson wishes to appeal, he may request the necessary certificate from the Court of Appeals. See Fed. R. App. P. 22(b).

DATED this 30th day of March, 2011.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

⁷*Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000).