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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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JOSE ARVIZU-MONTIJO,

No. CV 08-1104-PHX-SMM (MEA)

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Petitioner,

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vs.

**MEMORANDUM OF DECISION AND ORDER**

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UNITED STATES OF AMERICA,

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Respondents,

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Pending before the Court is Petitioner’s Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). The matter was referred to Magistrate Judge Mark E. Aspey for Report and Recommendation. On October 1, 2008, the Magistrate Judge filed a Report and Recommendation with this Court (Doc. 3). To date, no objections have been filed.

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**STANDARD OF REVIEW**

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The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1)(C); see Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991). Parties have ten days from the service of a copy of the Magistrate’s recommendation within which to file specific written objections to the Court. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6, 72. Failure to object to a Magistrate Judge’s recommendation relieves the Court of conducting *de novo* review of the Magistrate Judge’s factual findings and waives all objections to those findings on appeal. See Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998). A failure to object to a Magistrate Judge’s conclusion “is

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1 a factor to be weighed in considering the propriety of finding waiver of an issue on appeal.”

2 Id.

3 **DISCUSSION**

4 Having reviewed the Report and Recommendation of the Magistrate Judge, and no  
5 Objections having been made by any party thereto, the Court hereby incorporates and adopts  
6 the Magistrate Judge’s Report and Recommendation.

7 **CONCLUSION**

8 For the reasons set forth,

9 **IT IS ORDERED** that the Court adopts the Report and Recommendation of the  
10 Magistrate Judge (Doc. 3).

11 **IT IS FURTHER ORDERED** that Petitioner’s Motion to Vacate, Set Aside or  
12 Correct Sentence (Doc. 1) is **DENIED**, terminating this case. The Clerk of the Court shall  
13 enter judgment accordingly.

14 DATED this 31<sup>st</sup> day of October, 2008.

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17 Stephen M. McNamee  
18 United States District Judge  
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