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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Abo Obaida Hussein,

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No. CV-08-1839-PHX-DGC (MEA)

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Petitioner,

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ORDER

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vs.

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Charles L. Ryan, Director of the Arizona
Department of Corrections; and the
Attorney General of the State of Arizona,

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Respondents.

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In February 2006, a state court jury convicted Abo Hussein on four counts of sexual contact with a minor. Hussein received a 52-year sentence. The Arizona Court of Appeals affirmed the conviction and sentence. Hussein did not seek review by the Arizona Supreme Court, nor did he seek collateral post-conviction relief.

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Hussein commenced this action by filing a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. Dkt. #1. United States Magistrate Judge Mark Aspey has issued a report and recommendation (“R&R”) that the petition be denied. Dkt. #28. Petitioner has filed objections to the R&R. Dkt. ##31, 34. For reasons that follow, the Court will accept the R&R and deny the petition.

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The petition asserts six grounds for relief based on alleged violations of Petitioner’s rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. Dkt. #1. The Magistrate Judge finds that each ground for relief is procedurally defaulted because Petitioner did not fairly present his constitutional claims to the state courts,

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1 the time to raise those claims in state court has expired, and Petitioner has not shown cause
2 and prejudice or a miscarriage of justice sufficient to overcome the procedural default.
3 Dkt. #28.

4 The Court may accept, reject, or modify the findings and recommendations made by
5 the Magistrate Judge. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The Court must
6 undertake a de novo review of those portions of the R&R to which specific objections are
7 made. *Id.*; *see United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003).

8 While Petitioner continues to assert a denial of his constitutional rights in the state
9 court proceedings (Dkt. #31, 34), he does not object to the Magistrate Judge's finding that
10 each federal claim raised in his habeas petition is barred by procedural default (*see id.*). The
11 Court will therefore accept the Magistrate Judge's recommendation and deny the petition as
12 procedurally defaulted. *See Reyna-Tapia*, 328 F.3d at 1121 (“[Section 636(b)(1)] makes
13 clear that the district judge must review the magistrate judge's findings and recommendations
14 de novo *if objection is made*, but not otherwise.”) (emphasis in original); *Thomas v. Arn*, 474
15 U.S. 140, 149 (1985) (same).

16 **IT IS ORDERED:**

- 17 1. The Magistrate Judge's R&R (Dkt. #28) is **accepted**.
- 18 2. The petition for writ of habeas corpus (Dkt. #1) is **denied**.
- 19 3. Petitioner's motion for discovery (Dkt. #26) and motion for new trial
20 (Dkt. #32) are **denied**.
- 21 4. The Clerk is directed to **terminate** this action.

22 DATED this 21st day of January, 2010.

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David G. Campbell
United States District Judge