

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

LUCIANO ARRIAGA

v. *BERRY LARSON, Warden, et al.*

THE HONORABLE JOHN W. SEDWICK

CASE NO. 2:09-cv-00494-JWS

PROCEEDINGS: **ORDER FROM CHAMBERS**

Date: March 9, 2010

In a report at docket 23 Magistrate Judge Duncan recommends that respondent's motion at docket 19 to dismiss for failure to exhaust remedies in state court be granted and that Luciano Arriaga's petition for a writ of habeas corpus at docket 1 be denied without prejudice. The time for objections has run, and none have been filed. In a matter such as this one, this court reviews the magistrate judge's recommended findings of fact for clear error and his recommended conclusions of law *de novo*. Having applied that standard of review, this court adopts the recommended findings and conclusions. Based thereon, the motion at docket 19 is GRANTED, and the petition at docket 1 is **DENIED** without prejudice.

Finally, **IT IS FURTHER ORDERED** that this court will not issue a Certificate of Appealability, because dismissal of the petition is justified by a plain procedural bar and jurists of reason would not find this issue debatable. If Arriaga wishes to appeal this decision, he must apply to the Court of Appeals for the necessary Certificate of Appealability.
