

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

<b>GEORGE ALAN MYERS,</b>	)	
	)	
<b>Petitioner,</b>	)	<b>2:10-cv-00595-JWS (JRI)</b>
	)	
<b>vs.</b>	)	<b>ORDER FROM CHAMBERS</b>
	)	
<b>CHARLES RYAN, <i>et al.</i>,</b>	)	<b>[Re: Report at docket 16]</b>
	)	
<b>Respondents.</b>	)	
	)	

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**I. MATTER PRESENTED**

Petitioner Myers sought a writ of *habeas corpus* pursuant to 28 U.S.C. § 2254. The matter was fully briefed. At docket 16 Magistrate Judge Irwin filed a report recommending that the petition be dismissed with prejudice. Myers has not filed any objections, and the time for objections has expired. The matter is ripe for decision.

**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.”<sup>1</sup> When reviewing a magistrate judge’s report and recommendation in a case such as this one, the district court conducts *de*

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<sup>1</sup>28 U.S.C. § 636(b)(1).

*novo* review of all conclusions of law,<sup>2</sup> and any findings of fact to which objections have been made.<sup>3</sup> Uncontested findings of fact are reviewed for clear error.<sup>4</sup>

### **III. DISCUSSION**

Having reviewed the file and applied the standard of review articulated above, this court concludes that Judge Irwin's careful analysis is correct. He has correctly concluded that the petition is untimely. He has also correctly concluded that Myers has not shown that the equitable tolling applies to extend the time for filing the petition.

### **IV. CONCLUSION**

For the reasons above, this court adopts the magistrate judge's recommended findings and conclusions. Based thereon, the petition for a writ of *habeas corpus* is **DISMISSED with prejudice**. The Clerk of Court will please close the case file.

This court further concludes that Myer is not entitled to a certificate of appealability. To appeal Myers must apply to the Court of Appeals for the necessary certificate. See 28 U.S.C. § 2253(c)(2) and Fed. R. App. P. 22(b).

DATED this 16th day of June 2011.

/s/ JOHN W. SEDWICK  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup>*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).

<sup>3</sup>28 U.S.C. § 636(b)(1).

<sup>4</sup>*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).