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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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United States of America,
Plaintiff/Respondent,

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No. CR-09-01283-PHX-NVW
No. CV-10-02792-PHX-NVW (DKD)

10

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vs.

ORDER

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Ramon Ruiz-Gonzalez,
Defendant/Movant.

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Before the Court is Defendant’s Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. Section 2255 (Doc. 1) and the government’s Response (Doc. 5).

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The defendant filed no reply. On May 18, 2011, United States Magistrate Judge David K.

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Duncan issued a Report and Recommendation (“R&R”) (Doc. 6) recommending that

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Defendant’s Motion to Vacate, Set Aside or Correct Sentence be denied and dismissed.

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No objections were filed to the R&R.

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Because the parties did not file objections to the R&R, the Court need not review

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any of the Magistrate Judge’s determinations on dispositive matters. *See* 28 U.S.C. §

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636(b)(1); Fed. R. Civ. P. 72(b); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th

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Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)] does not . . .

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require any review at all . . . of any issue that is not the subject of an objection.”). The

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absence of a timely objection also means that error may not be assigned on appeal to any

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defect in the rulings of the Magistrate Judge on any non-dispositive matters. Fed. R. Civ.

1 P. 72(a) (“A party may serve and file objections to the order within 10 days after being
2 served with a copy [of the magistrate’s order]. A party may not assign as error a defect in
3 the order not timely objected to.”); *Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174
4 (9th Cir. 1996); *Phillips v. GMC*, 289 F.3d 1117, 1120-21 (9th Cir. 2002).

5 Notwithstanding the absence of an objection, the Court has reviewed the R&R and
6 agrees with the Magistrate Judge’s determinations. Accordingly, the Court will accept
7 the R&R and dismiss the Motion to Vacate, Set Aside or Correct Sentence. *See* 28
8 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole
9 or in part, the findings or recommendations made by the magistrate judge”).

10 Having considered the issuance of a Certificate of Appealability from the order denying
11 Defendant’s Motion to vacate/set aside sentence pursuant to 28 U.S.C. § 2255, the Court FINDS
12 that Certificate of Appealability and leave to proceed *in forma pauperis* on appeal are **Denied**.
13 Defendant has not made a substantial showing of the denial of a constitutional right.

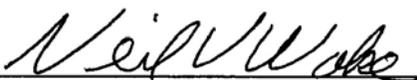
14 IT IS THEREFORE ORDERED accepting the Report and Recommendation of
15 Magistrate Judge Duncan (Doc. 6).

16 IT IS FURTHER ORDERED that Defendant’s Motion to Vacate, Set Aside or
17 Correct Sentence pursuant to 28 U.S.C. Section 2255 (Doc. 1) is denied and dismissed
18 with prejudice.

19 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment
20 accordingly and terminate this action.

21 IT IS FURTHER ORDERED directing the Clerk of the Court to terminate the
22 Motion to Vacate (Doc. 25) filed in CR-09-01283-PHX-NVW.

23 DATED this 21st day of June, 2011.

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Neil V. Wake
United States District Judge