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6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA  
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10 Abraham Barrera Moreno,

11 Petitioner,

12 vs.

13 Charles L. Ryan, et al.,

14 Respondents.  
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No. CV-12-01555-PHX-PGR (LOA)

ORDER

16 Having reviewed *de novo* the Report and Recommendation of Magistrate  
17 Judge Anderson notwithstanding that no party has filed any objections to the Report  
18 and Recommendation, the Court concludes that the Magistrate Judge correctly  
19 determined that the petitioner's habeas petition, filed pursuant to 28 U.S.C. § 2254,  
20 should be dismissed as time-barred.

21 First, the Court agrees with the Magistrate Judge that the one-year statute of  
22 limitations of the Antiterrorism and Effective Death Penalty Act began to run on  
23 October 15, 2010 pursuant to 28 U.S.C. 2244(d)(1)(A), the date his judgment of  
24 conviction became final, and that it expired on October 17, 2011, approximately nine  
25 months before the petitioner filed this action on July 13, 2012. To the extent that the  
26 petitioner argues that the Supreme Court's decision in Martinez v. Ryan, 132 S.Ct.

1 1309 (2012), issued on March 20, 2012, delayed the start of the limitations period  
2 pursuant to either 28 U.S.C. § 2244(d)(1)(C), which concerns newly recognized  
3 constitutional rights made retroactive by the Supreme Court, or § 2244(d)(1)(D),  
4 which concerns the discovery of the factual predicate of an alleged claim, the  
5 Magistrate Judge correctly concluded that Martinez has no applicability to this action  
6 as it does not concern the timeliness of a habeas petition.

7 Second, the Court agrees with the Magistrate Judge that the petitioner is not  
8 entitled to equitable tolling of the limitations period because he has not shown the  
9 existence of any extraordinary circumstance that would justify such tolling, nor has  
10 he shown that any external impediment frustrated the diligent pursuit of his claims.

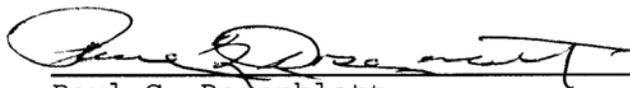
11 IT IS THEREFORE ORDERED that the Magistrate Judge's Report and  
12 Recommendation (Doc. 15) is accepted and adopted by the Court.

13 IT IS FURTHER ORDERED that the petitioner's Petition Under 28 U.S.C. §  
14 2254 for a Writ of Habeas Corpus by a Person in State Custody is denied and that  
15 this action is dismissed.

16 IT IS FURTHER ORDERED that no certificate of appealability shall issue and  
17 that the petitioner is denied leave to appeal *in forma pauperis* because the dismissal  
18 of the petitioner's habeas petition is justified by a plain procedural bar and jurists of  
19 reason would not find the procedural ruling debatable.

20 IT IS FURTHER ORDERED that the Clerk of the Court shall enter judgment  
21 accordingly.

22 DATED this 2<sup>nd</sup> day of January, 2014.

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24   
25 Paul G. Rosenblatt  
26 United States District Judge