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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Eduardo Cruz Castillo,

) No. CV-12-02169-PHX-FJM

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Plaintiff,

) **ORDER**

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vs.

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United States of America,

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Defendant.

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The court has before it the petitioner’s first amended Motion to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (doc. 5), respondents’ response (doc. 13), and the Report and Recommendation of the United States Magistrate Judge recommending that the motion be denied (doc. 14). No objection to the Report and Recommendation was filed and the time for doing so has expired.

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The court accepts the recommended decision of the Magistrate Judge pursuant to Rule 10, Rules Governing § 2255 Cases, and 28 U.S.C. § 636(b). Therefore, **IT IS ORDERED DENYING** the amended Motion to Vacate, Set Aside or Correct Sentence (doc. 5).

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Because petitioner has not made a substantial showing of the denial of a constitutional right and because the dismissal of the petition is justified by a plain procedural bar and jurists

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of reason would not find the procedural ruling debatable, **IT IS FURTHER ORDERED DENYING** a certificate of appealability and leave to proceed *in forma pauperis* on appeal.

DATED this 16th day of July, 2013.

Frederick J. Martone
Frederick J. Martone
Senior United States District Judge