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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Juan Victor Munoz,

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No. CV-12-2240-PHX-FJM

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Petitioner,

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No. CR-09-0784-1-PHX-FJM

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vs.

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**ORDER**

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United States,

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Respondent.

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Before the court is petitioner’s “Motion to Relate Back” (doc. 32), and the government’s response (doc. 34). Petitioner was found guilty by a jury of conspiracy to possess with intent to distribute cocaine in violation of 21 U.S.C. §§ 846, 841(a)(1), and 841(b)(1)(B)(ii); possession of a firearm in furtherance of a drug trafficking offense, in violation of 18 U.S.C. § 924(c); and, being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2).

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On December 31, 2013, after a *de novo* review, we adopted the report and recommendation of the United States Magistrate Judge, rejecting petitioner’s argument for specific performance of a plea agreement, and recommending that petitioner’s motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255 be denied (doc. 18). We also rejected petitioner’s motion to add two new grounds for relief, concluding that the new claims do not relate back to the original habeas petition, and therefore the new claims are

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1 time-barred. Order at 2 (citing Mayle v. Felix, 545 U.S. 644, 649, 125 S. Ct. 2562, 2566  
2 (2005)).

3 In this latest motion, petitioner again seeks to supplement his § 2255 petition by  
4 claiming that application of a recent Supreme Court decision in Bond v. United States, 134  
5 S. Ct. 2077 (2014), renders him “actually innocent of all the statutes in his indictment.”  
6 Motion at 6. He contends that his new motion is timely under § 2255(f)(3) because it was  
7 filed within one year of the Court’s decision in Bond. We disagree, and instead conclude that  
8 petitioner’s claim is untimely and without merit.

9 Generally, a petitioner has one year from the date on which his judgment of conviction  
10 becomes final to file an action seeking to vacate, set aside or correct a sentence. 28 U.S.C.  
11 § 2255(f)(1). Alternatively, under § 2255(f)(3), the one-year statute of limitations begins to  
12 run on the “date on which the right asserted was initially recognized by the Supreme Court,  
13 if that right has been newly recognized by the Supreme Court and made retroactively  
14 applicable to cases on collateral review.” 28 U.S.C. § 2255(f)(3). Petitioner contends that  
15 his latest motion is timely because he asserts a right newly recognized in Bond that is  
16 retroactively applicable to his case. We disagree. Not only did Bond not identify a new  
17 right, but it has no application to petitioner’s case.

18 In Bond, the Supreme Court considered whether application of the Chemical Weapons  
19 Convention Implementation Act of 1998 (the “Chemical Weapons Act”), 18 U.S.C. § 229,  
20 to a “purely local crime,” exceeded Congress’s enumerated powers and invaded the police  
21 powers reserved to the States. The petitioner in Bond was charged with possession and use  
22 of a chemical weapon in violation of the Chemical Weapons Act when she spread two legal,  
23 toxic chemicals on the car, mailbox and door knob of her husband’s mistress, in hopes of  
24 causing “an uncomfortable rash.” Id. at 2085. The issue presented in Bond was whether the  
25 Chemical Weapons Act, meant to prohibit weapons of mass destruction, can be  
26 constitutionally applied to a purely local crime.

27 The Court first recognized that, “lacking a police power, Congress cannot punish  
28 felonies generally.” Id. at 2086 (citation omitted). Therefore, federal criminal statutes may

1 not be applied to purely local criminal activity “unless Congress has clearly indicated that  
2 the law should have such reach.” Id. at 2083. Finding that there was no “clear indication  
3 that Congress meant [the Chemical Weapons Act] to reach purely local crimes,” the Court  
4 concluded that application of the Act to this “unremarkable local offense” would  
5 “dramatically intrude upon traditional state criminal jurisdiction.” Id. at 2083, 2088. Based  
6 on this holding, petitioner now argues that none of the federal criminal statutes under which  
7 he was convicted could be constitutionally applied to his purely local conduct, and he is  
8 therefore “actually innocent” of those crimes. Motion at 6. This is an overly broad and  
9 incorrect reading of the Court’s ruling.

10 First, Bond did not announce a newly recognized constitutional right. The case did  
11 not break new ground or impose a new obligation on the government. Instead, it simply  
12 considered application of the Chemical Weapons Act to the specific facts of that case.  
13 Therefore, Bond does not extend the statute of limitations under § 2255(f)(3) and petitioner’s  
14 current motion is time-barred.

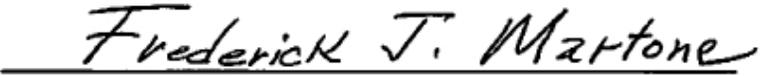
15 But even if timeliness was not an issue, the motion would nevertheless fail on its  
16 merits. In contrast to the Chemical Weapons Act, it is well established that each of the  
17 federal statutes under which petitioner was convicted are constitutional exercises of  
18 Congress’s power under the Commerce Clause. See Gonzales v. Raich, 545 U.S. 1, 15-16,  
19 125 S. Ct. 2195, 2205 (2005) (holding that the Controlled Substances Act, 21 U.S.C. §§ 841  
20 and 846, is a constitutional exercise of congressional power under the Commerce Clause);  
21 United States v. Hanna, 55 F.3d 1456, 1461-62 (9th Cir. 1995) (holding that 18 U.S.C. § 922  
22 (felon in possession) is constitutional under the Commerce Clause); and United States v.  
23 Lynch, 437 F.3d 902, 912 (9th Cir. 2006) (holding that 18 U.S.C. § 924 (use of a firearm in  
24 relation to a “drug trafficking crime”) is constitutional under the Commerce Clause).  
25 Therefore, the statutes under which petitioner was convicted are constitutional exercises of  
26 congressional authority. Petitioner’s claim of actual innocence is wholly without merit.

27 **IT IS ORDERED DENYING** petitioner’s “Motion to Relate Back” (doc. 32).

28 **IT IS FURTHER ORDERED DENYING** a certificate of appealability and leave

1 to proceed *in forma pauperis* on appeal because dismissal of the habeas petition is justified  
2 by a plain procedural bar and jurists of reason would not find the ruling debatable, and  
3 because petitioner has not made a substantial showing of the denial of a constitutional right.

4 DATED this 23<sup>rd</sup> day of January, 2015.

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7 Frederick J. Martone  
8 Senior United States District Judge  
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