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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

David Charles Fernandez, III,  
Petitioner,  
vs.  
Charles L. Ryan, et al.,  
Respondents.

No. CV-13-00355-PHX-NVW (MHB)

**ORDER  
AND  
DENIAL OF CERTIFICATE OF  
APPEALABILITY AND IN FORMA  
PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation (“R&R”) of Magistrate Judge Michelle H. Burns (Doc. 30) regarding petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (R&R at 12) (citing 28 U.S.C. § 636(b)). Petitioner filed objections on January 22, 2014 (Doc. 31).

The Court has considered the objections and reviewed the R&R de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the Court must make a de novo determination of those portions of the Report and Recommendation to which specific objections are made). The Court agrees with the Magistrate Judge’s determinations, accepts the recommended decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner’s objections. *See* 28 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate”).

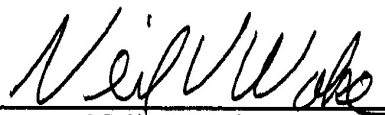
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IT IS THEREFORE ORDERED that the Report and Recommendation of the Magistrate Judge (Doc. 30) is accepted.

IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying and dismissing petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

Having considered the issuance of a Certificate of Appealability from the order denying Petitioner's Petition for a Writ of Habeas Corpus, a Certificate of Appealability and leave to proceed in forma pauperis on appeal are **denied** because of plain procedural bar.

Dated this 23rd day of January, 2014.



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Neil V. Wake  
United States District Judge