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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Jonathan McAllister, Sr.,

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No. CV 13-1042-PHX-JAT

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Petitioner,

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**ORDER**

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vs.

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Charles L. Ryan, et al.,

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Respondents.

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On June 18, 2014, Magistrate Judge Aspey issued a Report and Recommendation

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recommending the Petition in this case be denied. (Doc. 23). The Report and

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Recommendation was mailed to Petitioner at his address of record, but returned

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undeliverable. (Doc. 24). Only July 22, 2014, this Court issued an Order adopting the

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Report and Recommendation (Doc. 25), which was mailed to Petitioner, but also returned

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as undeliverable (Doc. 28). In this Court's Order of May 29, 2013, this Court advised

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Petitioner that it was his responsibility to keep his address current with the Court and warned

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him that the failure to do so could ultimately result in the dismissal of his case. (Doc. 5 at

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Following the Court issuing its final judgment (Doc. 26), on July 23, 2014 Petitioner

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filed a notice of change of address (Doc. 27). On July 24, 2014, the Court's internal record

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reflects that the Clerk of the Court re-mailed the Report and Recommendation (Doc. 23), this

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Court's Order adopting the Report and Recommendation (Doc. 25), and the Clerk's judgment

1 (Doc. 26) to Petitioner at the address listed in his change of address. These items were NOT  
2 returned to the Court.

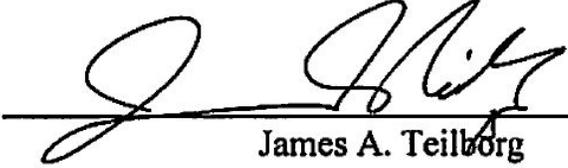
3 On April 6, 2015, over 8 months after the Clerk of the Court re-mailed the documents  
4 to Petitioner at the address provided in his notice of change of address, Petitioner moved to  
5 re-open this case claiming he did not know his habeas petition had been dismissed. (Doc. 29).  
6 Petitioner specifically states, "The Petitioner was released [on April 11, 2014] as a homeless  
7 person from the Arizona Department of Corrections and had no address where court  
8 decisions could be mailed to." *Id.*

9 Petitioner's allegation is belied by the record, wherein he filed a notice of change of  
10 address on July 23, 2014 (Doc. 27) and the Court re-mailed all documents to that updated  
11 address. Following that re-mailing, Petitioner did not, within the time provided by Federal  
12 Rule of Civil Procedure 59(e), move to re-open this case. Instead, Petitioner waited over 8  
13 months (until he was in custody again), to have any interest in pursuing this case. On these  
14 facts, the Court finds that Petitioner has not shown cause to re-open his habeas petition to  
15 allow him to file objections to the Report and Recommendation. Therefore,

16 **IT IS ORDERED** that the motion to re-open (Doc. 29) is denied.

17 DATED this 1<sup>st</sup> day of May, 2015.

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James A. Teilborg  
Senior United States District Judge