



1 recommendation.” (*Id.* at 5:20-22) (citation omitted). Petitioner timely filed objections  
2 to the R & R (Doc. 13), and Respondents timely filed a response thereto (Doc. 14).

### 3 **I. Standard of Review**

4 The relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C),  
5 “does not on its face require any review at all . . . of any issue that is not the subject of an  
6 objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1989); *see also United States v. Reyna-*  
7 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (citations omitted) (“Neither the Constitution  
8 nor the statute requires a district judge to review, de novo, findings and recommendations  
9 that the parties themselves accept as correct.”). Conversely, a “district judge *must*  
10 determine de novo any part of the magistrate judge’s disposition that has been *properly*  
11 *objected to.*” Fed.R.Civ.P. 72(b)(3) (emphasis added); *see also* 28 U.S.C. § 636(b)(1)  
12 emphasis added) (“A judge of the court shall make a de novo determination of those  
13 portions of the report . . . or recommendations to which objection is made.”) “Although  
14 the Ninth Circuit has not yet ruled on the matter, other circuits and district courts within  
15 the Ninth Circuit have held when a petitioner raises a general objection to an R & R,  
16 rather than specific objections, the Court is relieved of any obligation to review it.”  
17 *Martin v. Ryan*, 2014 WL 5432133, at \*2 (D. Ariz. 2014) (citing *See, e.g., Warling v.*  
18 *Ryan*, 2013 WL 5276367, at \*2 (D.Ariz. 2013) (“[A] general objection ‘has the same  
19 effect as would a failure to object.’”); *Gutierrez v. Flannican*, 2006 WL 2816599  
20 (D.Ariz. 2006) (citing *Goney v. Clark*, 749 F.2d 5, 7 (3d Cir. 1984); *Lockert v. Faulkner*,  
21 843 F.2d 1015, 1019 (7th Cir.1988); *Howard v. Sec. of Health and Human Servs.*, 932  
22 F.2d 505, 509 (6th Cir.1991); *United States v. One Parcel of Real Prop.*, 73 F.3d 1057,  
23 1060 (10th Cir.1996)).

### 24 **II. R & R**

25 Judge Duncan recited the factual and procedural background of this petition and  
26 included cites to relevant portions of the record. (Doc. 12 at 23-2:27). In his petition,  
27 Gonzalez argued for equitable tolling of the one year period for filing his petition. The  
28 obvious implication, as Judge Duncan stated, is that Petitioner “acknowledges[] [that] his

1 petition is untimely.” (*Id.* at 12:5). To be complete though, Judge Duncan analyzed the  
2 issue of whether Gonzalez’ petition was untimely and soundly concluded that it was not –  
3 having been filed nearly five years late.

4 Turning to the issue of equitable tolling, Judge Duncan found that Petitioner could  
5 not avail himself of that doctrine because Petitioner did not address much less satisfy his  
6 burden of showing that “he pursued his rights diligently and that some extraordinary  
7 circumstance prevented him from filing the petition.” (Doc. 12 at 4:8-10) (citing *Holland*  
8 *v. Florida*, 560 U.S. 631, 649 (2010)). Instead, relying upon *Martinez v. Ryan*, 132 S.Ct.  
9 1309 (2012) and *Ha Van Nguyen v. Curry*, 736 F.3d 1287 (9th Cir. 2013), Petitioner  
10 argued that he was entitled to file an untimely habeas petition.

11 Judge Duncan found Petitioner’s argument based upon *Martinez* to be  
12 “unpersuasive because *Martinez* does not address the limitations bar in Section  
13 2244(d)(2) and it does not excuse an untimely habeas petition. (*Id.* at 4:13-17) (*E.g.*,  
14 *Madueno v. Ryan*, 2014 WL 2094189, at \*7 (D. Ariz. May 20, 2014); *Marshall v. Ryan*,  
15 2014 WL 710954, at \*5 (D. Ariz. Feb. 25, 2014); *Moreno v. Ryan*, 2014 WL 24151, at \*5  
16 (D. Ariz. Jan. 2, 2014)). Further, Judge Duncan found “unavailing” Petitioner’s  
17 argument that in *Ha Van Nguyen* “the Ninth Circuit extended *Martinez* to allow for  
18 untimely habeas petitions[.]” (*Id.* at 4:18-20). Judge Duncan offered the following  
19 rationale:

20 [U]nlike here, *Ha Van Nguyen* involved an attempt to add a  
21 claim to a timely filed habeas petition after the expiration of  
22 the statute of limitations. . . . Because Gonzalez never timely  
23 filed a habeas petition, there has never been a petition that he  
can use to relate back his claims of ineffective assistance of  
counsel.

24 (*Id.* at 4:20-23) (citation omitted).

25 Judge Duncan also rejected Petitioner’s final argument for equitable tolling,  
26 namely that “his current counsel could not timely obtain a copy of his legal file from his  
27 previous counsel.” (Doc. 12 at 4:24-25) (citation omitted). Judge Duncan rejected this  
28 argument for two reasons. First, Petitioner did not provide the necessary factual

1 predicate to support equitable tolling. More particularly, Petitioner did “not include the  
2 date of the request, the length of the delay or any other facts that would bring this case  
3 within the scope of *Spitsyn v. Moore*, 345 F.3d 796, 800 (9th Cir. 2003), *as amended*  
4 (Nov. 3, 2003).” (*Id.* at 4: 26-27). Continuing, Judge Duncan further reasoned that “the  
5 nearly five-year delay in filing [Petitioner’s] habeas petition raises a substantial question  
6 regarding [his] diligence in seeking to obtain his file.” (*Id.* at 4:28-5:2). Finally, Judge  
7 Duncan pointed out that Petitioner’s nearly five year delay “is far beyond the seven or 20  
8 day delay resulting from a withheld file as noted in *Lott v. Mueller*, 304 F.3d 918, 925  
9 (9th Cir. 2002).” (*Id.* at 5:2-3).

### 10 **III. Objections and Response**

11 Petitioner did not object at all to the R & R’s “Background” section.<sup>1</sup> Nor did  
12 Petitioner object in any way to Judge Duncan’s analysis of the statute of limitations issue  
13 and his finding of untimeliness. Instead, cutting and pasting from his memorandum in  
14 support of his petition, Petitioner repeats verbatim his argument that he is entitled to  
15 equitable tolling. *Compare* Doc. 2 at 8:18-9:11 *with* Doc. 13 at 3:1-6; and *compare* Doc.  
16 2 at 12:3-9 *with* Doc. 13 at 3:17-4:2. Petitioner concludes by “ask[ing] this Court to  
17 reject” the recommendation that his Petition be dismissed and to, instead, “consider the  
18 merits of the Petition.” (Doc. 13 at 4:7-8).

19 According to Respondents, “this Court has no obligation to conduct a review of  
20 the R & R before adopting it.” (Doc. 14 at 3) (citation omitted). Respondents are taking  
21 this position for two closely related reasons. First, in his objections, Petitioner did not  
22 identify “any specific flay” in Judge Duncan’s analysis. (*Id.*). Second, Respondents  
23 accurately state that Petitioner did not “provide any specific reason why . . . Judge[]  
24 [Duncan’s] finding—that *Martinez* and *Nguyen* are not applicable to his case—is

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25  
26 <sup>1</sup> In his objections, Petitioner “relie[d] on the facts as set forth in his  
27 Memorandum in Support of Petition for Writ of Habeas Corpus filed on March 13,  
28 2014.” (Doc. 13 at 2:11-12) (citation omitted). To the extent Petitioner may be  
suggesting that there is some discrepancy between the facts relied upon by Judge Duncan  
and those in Petitioner’s Memorandum, the obligation was on Petitioner to specifically  
object to Judge Duncan’s background. Petitioner did not do that, however, as noted  
above.

1 incorrect[,]” and this “his objection has the same effect as would a failure to object.” (Id.  
2 at 3) (citing Warling, 2013 WL 5276367, at \*2) (internal quotation marks and other  
3 citations omitted). Rather, Respondents contend that in his objections Petitioner merely  
4 “reiterates” earlier arguments made in his petition and his reply. (Id. at 2). Respondents  
5 are correct.

#### 6 **IV. Failure to Make Specific Objections**

7 Petitioner’s objections lack the requisite specificity, which is fatal. The “obvious  
8 purpose” of the specificity requirement “is judicial economy—to permit magistrate  
9 judges to hear and resolve matters not objectionable to the parties.” *Warling*, 2013 WL  
10 5276367, at \*2. (citing *Thomas*, 474 U.S. at 149; *Reyna–Tapia*, 328 F.3d at 1121).  
11 “Because de novo review of an entire R & R would defeat the efficiencies intended by  
12 Congress, a general objection “has the same effect as would a failure to object.” *Id.*  
13 (citing *Howard*, 932 F.2d at 509; *Haley v. Stewart*, 2006 WL 1980649, at \*2 (D.Ariz.  
14 2006)). Furthermore, “[w]here, as here, Petitioner's objections point to not a single flaw  
15 in the R&R's analysis, they have the same effect as would a complete failure to object.”  
16 *See Price v. Ryan*, 2016 WL 344466, at \*1 (D. Ariz. Jan. 28, 2016) (citing *Warling*, 2013  
17 WL 5276367 at \*2). Given the complete lack of any specific objections to Judge  
18 Duncan’s R & R, the Court has not obligation to and will not review Petitioner’s so-  
19 called “objections.”

#### 20 **V. CONCLUSION**

21 Accordingly,

22 **IT IS ORDERED** that Magistrate Judge Duncan’s R&R (Doc. 12) is **accepted**  
23 and **adopted** as the order of this Court.


24 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
25 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

26 **IT IS FURTHER ORDERED** that a Certificate of Appealability and leave to  
27 proceed *in forma pauperis* on appeal are denied because dismissal of the petition is  
28 justify by a plain procedural bar and jurists of reason would not find the ruling debatable.

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**IT IS FINALLY ORDERED** directing the Clerk of the Court to terminate this action and enter judgment accordingly.

**Dated** this 28th day of November, 2016.



Honorable Diane J. Humetewa  
United States District Judge