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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Adam Alcantar,

Petitioner,

v.

Charles L. Ryan, et al.,

Respondents.

No. CV-14-01221-PHX-NVW (MHB)

ORDER

By prior order of June 3, 2015, this Court accepted the Report and Recommendation (“R&R”) of Magistrate Judge Michelle H. Burns (Doc. 14) issued April 30, 2015, 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)(1); Rules 72, 6(a), 6(b), Federal Rules of Civil Procedure. No objection had been filed. Judgment was entered in favor of Respondent. (Doc. 16.)

On June 8, 2015, Petitioner filed a Motion to Reopen (Doc. 17) on the basis that he had not received the Report and Recommendation. By order of June 16, 2015, the Court allowed Petitioner to file late Objections, which he did file on July 9, 2015. (Doc. 19.) The Court grants Petitioner’s Motion to Reopen and treats those Objections as having been timely filed.

The Court has considered the objections and reviewed the Report and Recommendation de novo. See Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that

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

7 On July 9, 2015, Petitioner also filed a Motion for Evidentiary Hearing. (Doc.
8 20.) That Motion is untimely, coming as it does in an objection to a Report and
9 Recommendation at the conclusion of the case. In any event, Petitioner shows no basis
10 for further evidentiary hearing beyond the record in the state court.

11 IT IS THEREFORE ORDERED that the order (Doc. 15) and Judgment (Doc. 16)
12 of June 3, 2015, are set aside.

13 IT IS FURTHER ORDERED that Petitioner's Motion for Evidentiary Hearing
14 (Doc. 20) is denied.

15 IT IS FURTHER ORDERED that the Report and Recommendation of the
16 Magistrate Judge (Doc. 14) is accepted and Petitioner's Objections (Doc. 19) are
17 overruled.

18 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying
19 and dismissing petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C.
20 § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

21 Having considered the issuance of a Certificate of Appealability from the order
22 denying Petitioner's Petition and Amended Petition for a Writ of Habeas Corpus, the
23 Court FINDS: Certificate of Appealability and leave to proceed in forma pauperis on
24

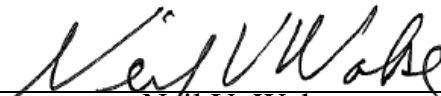
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appeal are **denied** because dismissal of the petition is justified by a plain procedural bar and jurists of reason would not find the ruling debatable.

Dated this 18th day of August, 2015.



Neil V. Wake
United States District Judge