

1 NOT FOR PUBLICATION  
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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Davis Michael Romero,

10 Petitioner,

11 v.

12 Charles L. Ryan, *et al.*,

13 Respondents.  
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No. CV-14-01715-PHX-JJT

**ORDER**

15 At issue is United States Magistrate Judge John Z. Boyle's Report and  
16 Recommendation ("R&R") (Doc. 20) recommending that the Court deny and dismiss  
17 with prejudice Petitioner Davis Michael Romero's Petition for Writ of Habeas Corpus  
18 pursuant to 28 U.S.C. §2254 (Doc. 1). Petitioner timely filed Objections to the R&R  
19 (Doc. 21), and Respondents filed a Response to the Objections (Doc. 22). Also at issue is  
20 Petitioner's Motion to strike that response (Doc. 23).

21 Petitioner Objects to every finding and recommendation in the R&R, so the Court  
22 reviews the entire R&R *de novo*. 28 U.S.C. §636(b)(1). Upon that review, the Court  
23 concludes that each finding and recommendation in Judge Boyle's R&R is legally correct  
24 and justified on the record before us. The Court therefore will adopt in whole the R&R,  
25 and for the reasons set forth in it, it will deny and dismiss the Petition with prejudice.

26 As a starting point, Petitioner moves the Court to strike Respondents' Response to  
27 his Objections to the R&R on the ground that Respondents "are attempting to misapply  
28 Rule 72(b) of the Fed. R. Civ. Proc." (Doc. 23 at p. 1.) Although Petitioner does not

1 expressly state in his motion, the Court assumes he refers to that portion of Rule 72(b)(2)  
2 that provides in part:

3           **Objections.** Within 14 days after being served with a copy of  
4 the recommended disposition, a party may serve and file  
5 specific written objections to the proposed findings and  
6 recommendations. *A party may respond to another party's*  
*objections within 14 days after being served with a copy.*

7 Fed. R. Civ. Pr. 72(b)(2) (2009)(emphasis supplied). Petitioner argues Respondents have  
8 no right to respond to his objections to the R&R because Rule 72(b)(2) does not authorize  
9 such a response. Petitioner cites a 1983 Advisory Committee Note to Rule 72 providing  
10 that the rule does not apply to habeas corpus petitions under 28 U.S.C. §2254. Whether  
11 that is an accurate application of Rule 72 or not is beside the point. Judge Boyle's Order  
12 expressly provided that the parties would have 14 days from the date of service of the  
13 R&R to file objections to it. The Order also provided that “[t]hereafter, the parties have  
14 14 days within which to file a response to the objections.” (Doc. 20 at p. 22) (emphasis  
15 supplied). Regardless of the operation of Rule 72, Judge Boyle's Order provided  
16 Respondents the opportunity to file a response to Petitioner's Objections, which they  
17 filed timely. The Court will deny Petitioner's Motion to Strike the Response (Doc. 23.)

18           In the R&R, Judge Boyle thoroughly analyzed the issues involved in the instant  
19 Petition, and because this Court will adopt the recommendations set forth in the R&R, it  
20 will not restate those issues or their resolution here in detail. Petitioner spends all but the  
21 final page of his Objections arguing that Judge Boyle 1) incorrectly concluded that all but  
22 two of his grounds for relief were procedurally defaulted; and 2) failed to find that  
23 Petitioner had shown cause and prejudice necessary to overcome default on each of those  
24 grounds. It is true that Judge Boyle found procedural default on grounds One, Two, and  
25 parts of Three and Four. But Judge Boyle nonetheless went on to analyze in the  
26 alternative all of those grounds, as well as the non-defaulted grounds, on their merits—  
27 precisely what Petitioner seeks. In in his merits analysis, Judge Boyle correctly  
28 concluded that none of the claims had merit, and Petitioner devoted none of his

1 Objections to challenging those conclusions. As Judge Boyle's analysis is uncontested,  
2 exhaustive and clearly rendered with supporting reasoning, the Court will not repeat that  
3 analysis but by incorporation. Petitioner's grounds for relief as raised in the Petition are  
4 all without merit.

5 For all of these reasons,

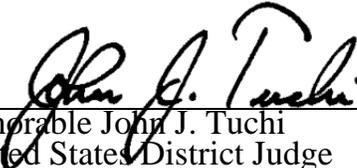
6 IT IS ORDERED adopting Magistrate Judge Boyle's R&R (Doc. 20) in its  
7 entirety and incorporating same into this Order.

8 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus  
9 pursuant to 28 U.S.C. § 2254 (Doc. 1) and dismissing this matter with prejudice.

10 IT IS FURTHER ORDERED denying Petitioner's Motion to Strike Respondents'  
11 Response to Petitioner's Objections to the Report and Recommendation (Doc. 23).

12 IT IS FURTHER ORDERED denying a Certificate of Appealability and leave to  
13 proceed *in forma pauperis* on appeal in this matter because the dismissal of the instant  
14 Petition is justified by a plain procedural bar and jurists of reason would not find the  
15 procedural ruling debatable.

16 Dated this 6<sup>th</sup> day of September, 2016.

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20 Honorable John J. Tuchi  
21 United States District Judge  
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