

1 E.) Petitioner sought direct review of his convictions and sentences, which were
2 ultimately affirmed by the Arizona Supreme Court on March 27, 2013. (Docs. 16-1,
3 Exhs. A, F, G; 16-2, Exhs. H, I.) Petitioner filed a Rule 32 Petition for Post-Conviction
4 Relief and a State Petition for Writ of Habeas Corpus, which were denied in 2014. (Doc.
5 16-2, Exhs. J-O.)

6 Petitioner filed the instant federal habeas petition on September 24, 2014, raising
7 four claims for relief. (Doc. 1.) In Ground One, Petitioner claims the Arizona Supreme
8 Court violated his due process rights by failing to consider the merits of the claims raised
9 in his state petition for writ of habeas corpus. In Ground Two, Petitioner claims the trial
10 court interfered with his ability to obtain transcript excerpts and the state appellate court
11 denied him counsel, both in violation of Petitioner's Fifth, Sixth, and Fourteenth
12 Amendment rights. In Ground Three, Petitioner claims this first trial court denied him
13 due process by constructively amending the indicted charge by giving a "defective jury
14 instruction on the charge of second-degree murder excising its two clauses for the
15 consideration of self-defense, which confounded the jurors and caused their inability to
16 reach a verdict." In Ground Four, Petitioner claims the first trial court improperly
17 declared a mistrial in violation of his due process rights. (Doc. 1 at 6-9.) Respondents
18 filed a Limited Answer (Doc. 16), in which they argue that Petitioner's claims are
19 procedurally barred. (Doc. 16.)

20 **II. Standard of Review**

21 The Court may accept, reject, or modify, in whole or in part, the findings or
22 recommendations made by a magistrate judge. *See* 28 U.S.C. § 636(b)(1). The Court
23 must undertake a *de novo* review of those portions of the R&R to which specific
24 objections are made. *See id.*; Fed. R. Civ. P. 72(b)(3); *United States v. Reyna-Tapia*, 328
25 F.3d 1114, 1121 (9th Cir. 2003). However, a petitioner is not entitled as of right to *de*
26 *novo* review of evidence and arguments raised for the first time in an objection to the
27 R&R, and whether the Court considers the new facts and arguments presented is
28 discretionary. *United States v. Howell*, 231 F.3d 615, 621-622 (9th Cir. 2000).

1 **III. Discussion**

2 **A. Respondents' Answer**

3 First, in his reply in support of his petition, Petitioner moves to strike
4 Respondents' limited answer as nonresponsive to a rule or order under Rule 12(f) of the
5 Federal Rules of Civil Procedure, for failure to comply with Rule 5 of the Rules
6 Governing Section 2254 Cases, and because it is a disguised motion to dismiss. (Doc. 22
7 at 1.) Petitioner has objected to the Magistrate Judge's ruling denying this request.

8 The Court agrees with the Magistrate Judge and finds Petitioner's arguments are
9 without merit. As addressed by the Magistrate Judge, this Court's October 30, 2014
10 Order (Doc. 4) specifically permitted Respondents to file an answer limited to affirmative
11 defenses, including procedural bar. As cited by Petitioner (Doc. 27 at 3-4), Rule 5 of the
12 Rules Governing § 2254 Cases requires "[t]he answer [to] respond to the allegations of
13 the petition." Respondents' Limited Answer (Doc. 16) did just that by "fram[ing] the
14 issues in dispute." *Williams v. Calderon*, 52 F.3d 1465, 1482 (9th Cir. 1995).

15 Further, Petitioner's objections concerning the Attorney General's conflict of
16 interest are also rejected. Petitioner previously moved for disqualification of the Attorney
17 General's Office from this case because Attorney General Mark Brnovich is married to
18 Judge Susan Brnovich, who presided over Petitioner's criminal proceedings. (Doc. 10.)
19 First, as the Magistrate Judge noted, Mark Brnovich was not the Attorney General at the
20 time of Petitioner's conviction, as he was sworn in on January 5, 2015. (Doc. 19 at 4.)
21 Nevertheless, the Magistrate Judge specifically ordered that Attorney General Brnovich
22 be screened from personally participating or discussing this matter. (Doc. 19 at 6.) Thus,
23 the Court finds that there are sufficient safeguards in place to protect Petitioner's interests
24 in light of any possible conflict that would arise in this action. Therefore, the Court
25 adopts the Magistrate Judge's denial of Petitioner's request to strike the answer.

26 **B. Habeas Petition**

27 Next, Petitioner has objected to the R&R's finding that his claims are procedurally
28 defaulted and barred from review. Petitioner's objection however, does not point to any

1 specific flaw in the Magistrate Judge’s analysis or findings. Instead, he offers only
2 general objections. To that end, these objections largely consist of criticisms of the justice
3 system and a general reiteration of the complaints that were addressed by the Magistrate
4 Judge, but without any reference to the Magistrate Judge’s findings with regard to those
5 complaints.

6 Under Rule 72 of the Federal Rules of Civil Procedure, the district judge must
7 review *de novo* those portions of the R&R that have been “properly objected to.”
8 Fed.R.Civ.P. 72(b). A proper objection requires “*specific written* objections to the
9 proposed findings and recommendations.” *Id.*; see 28 U.S.C. § 636(b)(1) (emphasis
10 added). The inherent purpose of this requirement is judicial economy. *See Thomas v. Arn*,
11 474 U.S. 140, 149 (1985); *Reyna-Tapia*, 328 F.3d at 1121. Because *de novo* review of an
12 entire R&R would defeat this purpose, a general objection serves to have the same effect
13 as if Petitioner had failed to object entirely. As a result, the Court has no obligation to
14 review Petitioner’s general objection to the R&R. *See Thomas*, 474 U.S. at 149 (no
15 review at all is required for “any issue that is not the subject of an objection.”). Thus, the
16 Court could summarily adopt the R&R in full. However, out of an abundance of caution,
17 the Court will review *de novo* the R&R’s conclusion on each of Petitioner’s claims.

18 The Court finds that the Magistrate Judge correctly concluded that Ground One
19 fails because it is not cognizable on federal habeas corpus review. *See Lewis v. Jeffers*,
20 497 U.S. 764, 780 (1990) (federal habeas corpus relief is not available for errors of state
21 law). Petitioner challenges the Arizona Supreme Court’s application of Arizona law to
22 dismiss his state petition for writ of habeas corpus. This claim turns on the interpretation
23 and application of state law, and Petitioner’s due process characterization does not
24 transform it into a federal claim.

25 The Court further finds that the Magistrate Judge correctly found that Petitioner
26 did not exhaust his claims in Grounds Two, Three, and Four, and they are procedurally
27 barred from review. *See Insyxiengmay v. Morgan*, 403 F.3d 657, 668 (9th Cir. 2005)
28 (addressing the full and fair presentation of claims in state court for purposes of the

1 exhaustion requirement). Petitioner did not appeal the denial of his Rule 32 Petition, and
2 thereby did not present his claims in Ground Two to the Arizona Court of Appeals.
3 Petitioner did not present his claims in Grounds Three or Four on direct appeal or in post-
4 conviction relief proceedings. Petitioner's subsequent state habeas petition, which was
5 dismissed because it was not the proper mechanism for presenting his claims, did not
6 serve to fairly present Petitioner's claims for purposes of the exhaustion requirement. *See*
7 *Castille v. Peoples*, 489 U.S. 346, 351 (1989); *Roettgen v. Copeland*, 33 F.3d 36, 38 (9th
8 Cir. 1994). Therefore, Petitioner did not exhaust these claims and they are procedurally
9 barred.

10 While Petitioner challenges the fairness of the legal system, believing among other
11 things that its officers have been infected with "legal glaucoma" (Doc. 27 at 9), he does
12 not assert any basis to establish cause for the procedural default of his claims, nor does he
13 maintain a claim of actual innocence. *See Coleman v. Thompson*, 501 U.S. 722, 731
14 (1991) (discussing "cause" and "prejudice"); *Schlup v. Delo*, 513 U.S. 298, 327 (1995)
15 (discussing "fundamental miscarriage of justice"). Therefore, the Court will adopt the
16 R&R recommending that the petition be denied.

17 **C. Motion to Stay**

18 Lastly, Petitioner has filed a Motion to Stay State Court Civil Proceeding (Doc.
19 11), in which he requests that this Court stay the wrongful death action pending in the
20 Maricopa County Superior Court, Case No. CV2012-093251, which arises from the death
21 of the victim at issue in Petitioner's underlying convictions.

22 Assuming, without deciding, that 28 U.S.C. § 2251 authorizes this Court to stay
23 his state court civil proceeding, which Petitioner argues, he fails to show that such a stay
24 is justified. Petitioner primarily objects to the R&R on the basis that if he were to prevail
25 on the instant habeas petition, it would foreclose the availability of civil remedies against
26 him for the death of the victim. This argument fails. While Petitioner's federal habeas
27 petition challenges the validity of his conviction, he does not claim that he is innocent of
28 the crime. The outcome of this action therefore has little bearing on any wrongful death

1 action pursued against Petitioner. And, for the reasons above, the Court concludes that
2 Petitioner is not entitled to habeas relief. Thus, the Court will also adopt the R&R
3 recommending that Petitioner's Motion to Stay be denied. Accordingly,

4 **IT IS ORDERED:**

5 1. That Magistrate Judge's Reports and Recommendations (Docs. 18, 26) are
6 **accepted** and **adopted** by the Court;

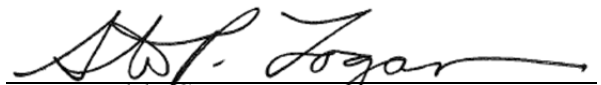
7 2. That the Motion to Stay (Doc. 11) is **denied**;

8 3. That the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254
9 (Doc. 1) is **denied** and **dismissed with prejudice**;

10 4. That a Certificate of Appealability and leave to proceed *in forma pauperis*
11 on appeal are **denied** because the dismissal of the Petition is justified by a plain
12 procedural bar and jurists of reason would not find the procedural ruling debatable and
13 because Petitioner has not made a substantial showing of the denial of a constitutional
14 right; and

15 5. That the Clerk of Court shall **terminate** this action.

16 Dated this 31st day of August, 2015.

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19 Honorable Steven P. Logan
20 United States District Judge
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