

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Gabriel Luz-Hernandez,
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10 Petitioner,

11 v.

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

13 Respondents.

No. CV-14-02516-PHX-JJT

ORDER

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15 At issue is the Report and Recommendation (R&R) submitted in this matter by
16 Magistrate Judge Deborah M. Fine on April 5, 2016. (Doc. 12.) In the R&R, Judge Fine
17 recommended that the Court deny and dismiss the Petition for Writ of Habeas Corpus
18 pursuant to 28 U.S.C. § 2254 (Doc. 1). The time to object to the R&R has expired and
19 Petitioner filed no objection, which entitles the Court to treat Petitioner as assenting to
20 the adoption of the R&R. *See United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
21 2003). The Court nonetheless has conducted an independent review of the R&R on the
22 merits, and upon so doing concludes it is appropriate to dismiss the Petition as untimely.

23 Petitioner's Rule 32 proceeding for Post-Conviction Relief was dismissed June 5,
24 2013, and from that date he had 35 days—until July 11, 2013—to petition the Arizona
25 Court of Appeals for review of that decision. He did not seek review, so the one-year
26 statute of limitations under AEDPA began running that day and expired July 10, 2014.
27 Petitioner did not file his Petition until November 14, 2014, which was untimely by four
28 months and four days. Judge Fine correctly concluded that statutory tolling was

1 inapplicable to this matter, and that Petitioner did not make the required showing for
2 equitable tolling, as set forth in detail in her R&R.

3 For the reasons set forth above and in detail in the R&R,

4 **IT IS ORDERED** adopting the Report and Recommendation (Doc. 12) in whole.

5 **IT IS FURTHER ORDERED** denying and dismissing with prejudice the Petition
6 (Doc. 1), and directing the Clerk of the Court to close this matter.

7 **IT IS FURTHER ORDERED** denying a certificate of appealability and leave to
8 proceed *in forma pauperis* on appeal, upon the Court's finding that Petitioner has not
9 made a substantial showing of the denial of a constitutional right in his claim for relief.

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11 Dated this 9th day of May, 2016.

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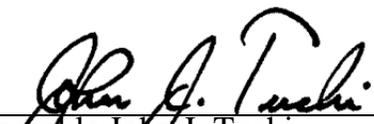
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Honorable John J. Tuchi
United States District Judge