

1 NOT FOR PUBLICATION  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 Javier Portillo-Diaz,

10 Petitioner,

11 v.

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

13 Respondents.  
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No. CV-15-01172-PHX-JJT

**ORDER**

15 At issue is Petitioner Javier Portillo-Diaz's Petition under 28 U.S.C. §2254 for  
16 Writ of Habeas Corpus (Doc. 1). United States Magistrate Judge James F. Metcalf issued  
17 a Report and Recommendation ("R&R") in the matter recommending denial and  
18 dismissal of the Petition (Doc. 16). The time to object passed over two months ago and  
19 no party has objected, timely or otherwise. The Court thus may accept the R&R without  
20 further review. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). The  
21 Court nonetheless has conducted its own review of the Petition, and for the reasons set  
22 forth in the R&R, which the Court will adopt in whole, it will deny and dismiss the  
23 Petition.

24 In the 44-page R&R, Judge Metcalf thoroughly and painstakingly analyzed the  
25 many issues and sub-issues raised in the instant Petition, and because this Court will  
26 adopt the recommendations set forth in the R&R, it will not restate those issues or their  
27 resolution here. The Court finds Judge Metcalf's analysis on each point to be correct.  
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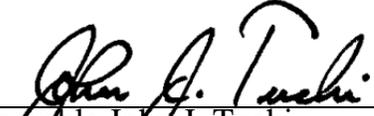
IT IS ORDERED adopting Magistrate Judge Metcalf's R&R (Doc. 16) in its entirety and incorporating same into this Order.

IT IS FURTHER ORDERED denying the substantive actual innocence claims in Grounds Three and Four of the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1).

IT IS FURTHER ORDERED dismissing the remainder of the Petition with prejudice.

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

Dated this 2<sup>nd</sup> day of September, 2016.

  
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Honorable John J. Tuchi  
United States District Judge