

1 NOT FOR PUBLICATION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 Raul Varela,

10 Petitioner,

11 v.

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

13 Respondents.
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No. CV-15-01971-PHX-JJT

ORDER

15 At issue are the Petition for Writ of Habeas Corpus filed by Raul Varela on
16 October 1, 2015 (Doc. 1), to which Charles Ryan and the Atty. Gen. of the state of
17 Arizona filed a Response (Doc. 13); and the Report and Recommendation (“R&R”)
18 prepared in this matter by United States Magistrate Judge James F. Metcalf (Doc. 21),
19 which recommends that this Court deny the Petition.

20 The time for any party to file objections to the R&R ran as of November 29, 2016.
21 No party filed any objections, either as of that date or at any time thereafter. Such failure
22 to file objections to the R&R is considered a waiver of a party’s right to *de novo*
23 consideration of the issues. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.
24 2003) (*en banc*). It also constitutes a waiver of a party’s right to appellate review of the
25 findings of fact in an order or judgment entered pursuant to the R&R. *See Robbins v.*
26 *Carey*, 481 F.3rd 1143, 1146-47 (9th Cir. 2007). Nonetheless, this Court has undertaken
27 *de novo* review of the issues presented in the Petition and associated briefing. Upon that
28 review, the Court concludes that Magistrate Judge Metcalf’s recommendations are

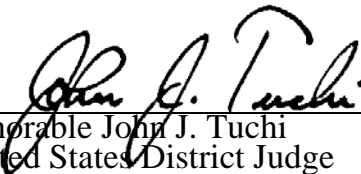
1 wholly sound. The Court adopts in whole Judge Metcalf's R&R and the underlying
2 reasoning. The Court expressly finds sufficient evidence was presented to the jury at trial
3 in the underlying matter from which that jury could rationally conclude that all elements
4 of Count 3 of the charges against Petitioner were met. And in any event, the conclusion
5 of the Arizona Court of Appeals to that effect was not unreasonable. For all of those
6 reasons, the Court will deny the Petition.

7 IT IS ORDERED adopting the R&R (Doc. 21) in whole.

8 IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus
9 (Doc. 1).

10 IT IS FURTHER ORDERED denying a Certificate of Appealability upon the
11 Court's conclusion that jurists of reason would not find its assessment of the
12 constitutional claims to be debatable or wrong.

13 Dated this 13th day of February, 2017.

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16 _____
17 Honorable John J. Tuchi
18 United States District Judge
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