

1 with Leave to Amend or Leave to file a Second Successive Petition (Doc. 16).
2 Respondents filed a response to Petitioner’s Motion to Stay the Habeas Proceedings and
3 for Leave to Amend (Doc. 18). Petitioner subsequently replied to the response from the
4 Respondents and requested an Evidentiary Hearing (Docs. 19, 20). Petitioner also filed a
5 Motion for Leave to Amend the previously filed Petition (Doc. 21), and subsequently
6 lodged an Amended / Supplement (Doc. 22). Petitioner does not object to the correctness
7 of the factual background in the R&R, which the Court adopts and incorporates. For the
8 following reasons, the Court accepts and adopts the R&R, and denies the petition.

9 A district judge “may accept, reject, or modify, in whole or in part, the findings or
10 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). When a party files
11 a timely objection to an R&R, the district judge reviews *de novo* those portions of the
12 R&R that have been “properly objected to.” Fed. R. Civ. P. 72(b). A proper objection
13 requires specific written objections to the findings and recommendations in the R&R. *See*
14 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); 28 U.S.C. §
15 636(b)(1). It follows that the Court need not conduct any review of portions to which no
16 specific objection has been made. *See Reyna-Tapia*, 328 F.3d at 1121; *see also Thomas v.*
17 *Arn*, 474 U.S. 140, 149 (1985) (discussing the inherent purpose of limited review is
18 judicial economy). Further, a party is not entitled as of right to *de novo* review of
19 evidence or arguments which are raised for the first time in an objection to the R&R, and
20 the Court’s decision to consider them is discretionary. *United States v. Howell*, 231 F.3d
21 615, 621-622 (9th Cir. 2000).

22 The Writ of Habeas Corpus alleged a Sixth Amendment violation based on
23 competency issues, a due process violation based on prosecutorial misconduct and an
24 allegation of a multiplicitous indictment (Doc. 1 at 6-8). The Petitioner objected to the
25 R&R (Doc. 15) arguing that section 2255 provides for relief from the one year deadline
26 under certain circumstances, and that Judge Fine failed to address the competency issues
27 raised in the Petition (Doc. 15 at 2). Additionally, the Petitioner argued the government
28 was involved in prosecutorial misconduct and that the indictment was multiplicitous in

1 violation of the Fifth Amendment (Doc. 15 at 3).

2 The Court concludes that Magistrate Judge Fine's recommendations are correct.
3 The Court adopts Judge Fine's R&R and the underlying reasoning. The Court expressly
4 finds that after the Petitioner chose not to file a Petition for review with the Arizona
5 Supreme Court, the convictions became final on November 8, 2010, which was the date
6 that the Petitioner could no longer appeal to the Arizona Supreme Court (Doc. 10-2 at
7 210). This Court further finds that the Petitioner filed his Petition with this Court on
8 November 24, 2015 which was not timely. The equitable tolling arguments from the
9 Petitioner are not persuasive. The Court did not find any extraordinary circumstances or
10 diligence on the part of the Petitioner that would trigger his entitlement to equitable
11 tolling.

12 The Court has undertaken an extensive review of the sufficiently developed record
13 and the issues presented in the objections, without the need of an evidentiary hearing.
14 Having carefully reviewed the record, the Petitioner has not shown that he is entitled to
15 habeas relief pursuant to 28 U.S.C. § 2244. Finding none of Petitioner's objections have
16 merit, the R&R will be adopted in full. Accordingly,

17 **IT IS ORDERED:**

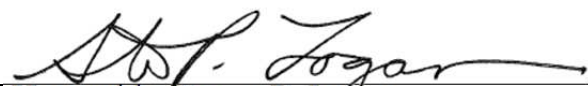
- 18 1. That Magistrate Judge Fine's Report and Recommendation (Doc. 14) is
19 **accepted** and **adopted** by the Court;
- 20 2. That the Motion to Stay the Habeas Proceedings with Leave to Amend or
21 Leave to file a Second Successive Petition (Doc. 16) is **denied**;
- 22 3. That the Motion for Evidentiary Hearing (Doc. 20) is **denied**;
- 23 4. That the Motion for Leave to Amend the Petition (Doc. 21) is **denied**;
- 24 5. That the Petitioner's Objections (Doc. 15) are **overruled**;
- 25 6. That the Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2244
26 (Doc. 1) is **denied** and this action is **dismissed with prejudice**;
- 27 7. That a Certificate of Appealability and leave to proceed *in forma pauperis*
28 on appeal are **denied** because the dismissal of the Petition is justified by a plain

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procedural bar and reasonable jurists would not find the ruling debatable; and

8. That the Clerk of Court shall **terminate** this action.

Dated this 11th day of July, 2017.


Honorable Steven P. Logan
United States District Judge