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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Arthur Montoya, Jr.,
Petitioner,
v.
Charles L. Ryan, et. al.,
Respondents.

No. CV-16-4185-PHX-DLR

**ORDER
and
DENIAL OF CERTIFICATE OF
APPEALABILITY AND IN FORMA
PAUPERIS STATUS**

Pending before the Court is the Report and Recommendation (R&R) of Magistrate Judge James F. Metcalf (Doc. 10) regarding Petitioner Arthur Montoya, Jr.'s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 1). The R&R recommends that the Petition be denied and dismissed with prejudice. The Magistrate Judge advised the parties that they had fourteen days to file objections to the R&R. (Doc. 10 at 16-17 (citing Fed. R. Civ. P. 72(b)). Petitioner filed objections on June 19, 2017, (Doc. 11), to which Respondents replied (Doc. 12).

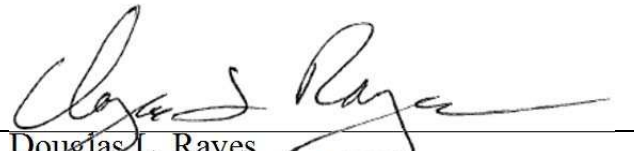
Although Petitioner's Objection to Report and Recommendation is a reiteration of his version of the facts of the case, re-urging the same points made in the habeas petition, the Court nonetheless has considered the objections and reviewed the R&R de novo. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1) (stating that the court must make a de novo determination of those portions of the R&R to which specific objections are made). The Court agrees with the Magistrate Judge's determinations, accepts the recommended

1 decision within the meaning of Rule 72(b), and overrules Petitioner’s objections. *See* §
2 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole or in
3 part, the findings or recommendations made by the magistrate”).

4 **IT IS ORDERED** that R&R of Magistrate Judge Metcalf (Doc. 10) is
5 **ACCEPTED**. The Clerk of the Court enter judgment denying and dismissing
6 Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc.
7 1) with prejudice. The Clerk shall terminate this action.

8 **IT IS FURTHER ORDERED** that, having considered the issuance of a
9 Certificate of Appealability from the order denying Petitioner’s Petition for a Writ of
10 Habeas Corpus, a Certificate of Appealability and leave to proceed in forma pauperis on
11 appeal are **DENIED** because dismissal of the Petition is justified by a plain procedural
12 bar.

13 Dated this 29th day of June, 2017.

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19 Douglas L. Rayes
20 United States District Judge
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