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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

David Jay Sterling,  
Movant/Defendant,  
v.  
United States of America,  
Respondent/Plaintiff.

No. CV-16-4602-PHX-DLR (DMF)  
CR-86-0063-PHX-PGR

**ORDER**

Before the Court are Movant David Jay Sterling’s First Amended Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 (Doc. 17), Respondent’s Motion to Dismiss § 2255 Motion (Doc. 21), United States Magistrate Judge Deborah M. Fine’s Report and Recommendation (“R&R”) (Doc. 30), and Petitioner’s Objections to the Magistrate Judge’s R&R (Doc. 34).

The Court has considered Movant’s 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 Report and Recommendation to which specific objections are made). The R&R, relying in part on *United States v. Watson*, 881 F.3d 782 (9th Cir. 2018), found that bank robbery is categorically a crime of violence under the “elements clause” of 18 U.S.C. § 924(c)(3) because it requires at least an implicit threat to use the type of physical force necessary to meet the *Johnson v. United States*, 135 S.Ct. 2251 (2015), standard. The Movant argues that because, as of the date of his objection, August 13, 2018, there was a pending petition for certiorari in the

1 *Watson* matter he should be granted a certificate of appealability. However, the Court  
2 notes that the petition for certiorari was denied by the Supreme Court on October 1, 2018.

3 The Court accepts the magistrate judge's recommendation to dismiss the petition  
4 within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Movant's Objections to  
5 Magistrate Judge's R&R. *See* 28 U.S.C. § 636(b)(1) (stating that the district court "may  
6 accept, reject, or modify, in whole or in part, the findings or recommendations made by  
7 the magistrate").

8 **IT IS THEREFORE ORDERED** that the Report and Recommendation of  
9 Magistrate Judge Deborah M. Fine (Doc. 30) to grant Respondents' Motion to Dismiss  
10 § 2255 Motion (Doc. 21) is **ACCEPTED**.

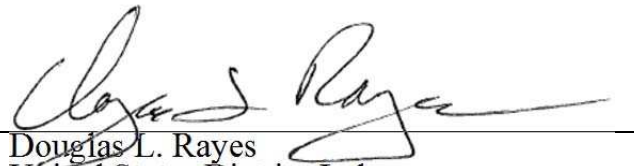
11 **IT IS FURTHER ORDERED** that Movant's First Amended § 2255 Motion  
12 (Doc. 17) is **DISMISSED WITH PREJUDICE**.

13 **IT IS FURTHER ORDERED** that a Certificate of Appealability is **DENIED**.

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment  
15 accordingly and terminate this action.

16 Dated this 12th day of October, 2018.

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Douglas L. Rayes  
United States District Judge