



1 default. (Doc. 12 at 23). Accordingly, Judge Metcalf recommends the Petition be  
2 dismissed with prejudice. (*Id.* at 24).

3 Judge Metcalf advised the parties that they had fourteen days to file objections and  
4 that the failure to file timely objections "will be considered a waiver of [Petitioner's]  
5 right to *de novo* consideration of the issues." (Doc. 12 at 25) (citing *United States v.*  
6 *Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*)). Petitioner has not filed an  
7 objection and the time to do so has expired. Respondents have also not filed an  
8 objection. Absent any objections, the Court is not required to review the findings and  
9 recommendations in the R&R. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989) (The  
10 relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), "does not on  
11 its face require any review at all . . . of any issue that is not the subject of an objection.");  
12 *Reyna-Tapia*, 328 F.3d at 1121 (same); Fed.R.Civ.P. 72(b)(3) ("The district judge must  
13 determine *de novo* any part of the magistrate judge's disposition that has been properly  
14 objected to.").

15 Nonetheless, the Court has reviewed Judge Metcalf's comprehensive and well-  
16 reasoned R&R and agrees with its findings and recommendations. The Court will,  
17 therefore, accept the R&R and dismiss the Petition. *See* 28 U.S.C. § 636(b)(1)(C) ("A  
18 judge of the court may accept, reject, or modify, in whole or in part, the findings or  
19 recommendations made by the magistrate judge."); Fed.R.Civ.P. 72(b)(3) (same).

20 Accordingly,

21 **IT IS ORDERED** that Magistrate Judge Metcalf's R&R (Doc. 12) is **accepted**  
22 and **adopted** as the order of this Court.


23 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus  
24 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **dismissed with prejudice**.

25 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing  
26 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*  
27 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural  
28 bar and jurists of reason would not find the procedural ruling debatable.

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

**Dated** this 3rd day of November, 2017.



Honorable Diane J. Humetewa  
United States District Judge