

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Braulio Trejo Martin,

Petitioner,

v.

Charles Ryan, et al.,

Respondents.

No. CV-17-02160-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 David K. Duncan (Doc. 16) regarding Petitioner Braulio Trejo Martin’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. 16 at 17 (citing 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6 and 72).) The deadline to file an objection has long since passed, yet Petitioner has not filed an objection.

Nevertheless, the Court has 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 Court agrees with the Magistrate Judge’s determination that Petitioner filed the pending Petition after expiration of the AEDPA statute of limitations, statutory and equitable tolling do not render the petition timely, and thus are procedurally barred.

1 The Court accepts the recommended decision within the meaning of Rule 72(b),  
2 Fed. R. Civ. P., and overrules Petitioner’s objections. See 28 U.S.C. § 636(b)(1) (stating  
3 that the district court “may accept, reject, or modify, in whole or in part, the findings or  
4 recommendations made by the magistrate”).

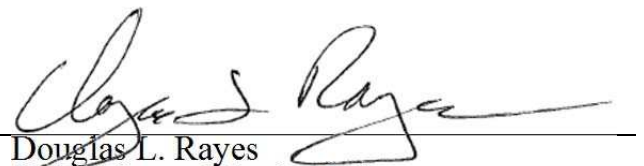
5 **IT IS ORDERED** that the Magistrate Judge’s R&R (Doc. 16) is **ACCEPTED**.

6 **IT IS FURTHER ORDERED** that the Clerk of the Court enter judgment  
7 denying and dismissing Petitioner’s Petition for Writ of Habeas Corpus filed pursuant to  
8 28 U.S.C. § 2254 (Doc. 1) with prejudice. The Clerk shall terminate this action.

9 Having considered the issuance of a Certificate of Appealability from the order  
10 denying Petitioner’s Petition for a Writ of Habeas Corpus, a Certificate of Appealability  
11 and leave to proceed in forma pauperis on appeal are **DENIED** because the dismissal of  
12 the Petition is justified by a plain procedural bar and reasonable jurists would not find the  
13 ruling debatable, and because Petitioner has not made a substantial showing of the denial  
14 of a constitutional right.

15 Dated this 18th day of May, 2018.

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

  
\_\_\_\_\_  
Douglas L. Rayes  
United States District Judge