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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Duane Thomas Lee,  
10 Movant-Defendant,  
11 v.  
12 USA,  
13 Respondent-Plaintiff.  
14

No. CV-16-08138-PCT-JAT  
CR-05-594-PCT-JAT

**ORDER**

15 On December 14, 2018, the Magistrate Judge to whom this case was assigned  
16 issued a Report and Recommendation (R&R) recommending that this Court deny the  
17 Successive Motion to Vacate, Set Aside or Correct Sentence in this case. (Doc. 23).  
18 Specifically, the Magistrate Judge found that the collateral attack Movant is bringing in  
19 this case was waived by Movant's plea agreement. (*Id.*).

20 This Court "may accept, reject, or modify, in whole or in part, the findings or  
21 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). It is "clear that  
22 the district judge must review the magistrate judge's findings and recommendations *de*  
23 *novo if objection is made*, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d  
24 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*) (emphasis in original). Movant filed objections to  
25 the R&R.

26 After Movant filed his objections, the United States Supreme Court issued its  
27 decision in *Class v. United States*, 138 S.Ct. 798 (2018). Following that decision, this  
28 Court ordered the parties to file supplemental briefs. Both parties now appear to agree

1 that the R&R's conclusion that Movant waived his ability to bring his current  
2 constitutional challenge by his plea agreement was foreclosed by *Class.* (*see e.g.* Doc. 30  
3 at 3). Accordingly, the R&R will be rejected because of the intervening change in the  
4 law.

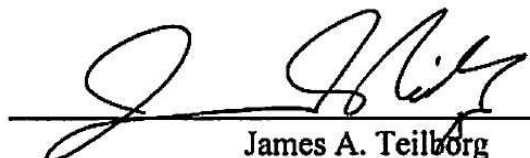
5 In its supplement, the United States argues various alternative reasons why the  
6 Motion in this case should be denied. The Court will re-refer this case to the Magistrate  
7 Judge for the preparation of a new R&R; the United State may seek leave to brief those  
8 arguments, as necessary, upon re-referral.

9 **IT IS ORDERED** that the Report and Recommendation (Doc. 23) is rejected.

10 **IT IS FURTHER ORDERED** that this matter is re-referred to Magistrate Judge  
11 James F. Metcalf pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure  
12 for further proceedings and a further report and recommendation.

13 Dated this 27th day of March, 2018.

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James A. Teilborg  
Senior United States District Judge