

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Juan Manuel Valadez-Torres,
10 Petitioner,
11 v.
12 USA,
13 Respondent.
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No. CV-16-08157-PCT-JJT (JZB)
No. CR-06-01068-PHX-JJT

ORDER

15 At issue is the Report and Recommendation (“R&R”) (Doc. 11), submitted by
16 United States Magistrate Judge John Z. Boyle on June 12, 2017, recommending that this
17 Court deny and dismiss with prejudice Petitioner Juan Manuel Valadez-Torres’s Motion
18 to Vacate, Set Aside or Correct Sentence pursuant to 28 U.S.C. § 2255 (Doc. 1). When
19 Petitioner instituted this action, he also filed a Motion to Vacate (Doc. 43) in his
20 underlying criminal matter. The Court addresses both motions here. Petitioner has filed
21 no Response to the R&R and the time for such response is now well-expired. The Court
22 therefore is entitled to accept the R&R without further review. *United States v. Reyna-*
23 *Tapia*, 328 F.3d 1114, 1121 9th Cir. (2003). The Court nonetheless has engaged in *de*
24 *novo* review of the matter, and after such review, will adopt in the whole the R&R, and
25 the reasoning set forth by Judge Boyle in support of it.

26 Petitioner’s conviction and sentence became final in June 2007 because he chose
27 not to file an appeal upon entry of judgment. His 2255 motion therefor was due no later
28 than June 25, 2008, but was not filed until more than eight years after that—on July 8,

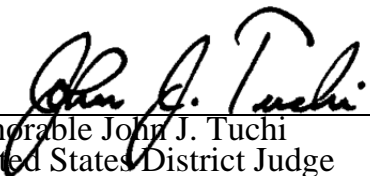
1 2016. Petitioner has not stated, and the Court finds no grounds for, equitable tolling. His
2 remaining claim, as stated in Ground Two of his Petition, for ineffective assistance of
3 counsel, is untimely. The court therefore will dismiss the 2255 Petition. And because
4 what remains of Petitioner's Motion to Vacate in his criminal matter is the same issue,
5 the Court will deny the motion there as well.

6 IT IS ORDERED in matter CV-16-8157-PHX-JJT(JZB) adopting in whole the
7 R&R prepared by Judge Boyle (Doc. 11), and denying and dismissing with prejudice the
8 Petition (Doc. 1).

9 IT IS FURTHER ORDERED in matter CR-06-1068-PHX-JJT denying
10 Defendant's Motion to Vacate (Doc. 43). The matter shall remain closed.

11 IT IS FURTHER ORDERED denying a certificate of Appealability and leave to
12 proceed *in forma pauperis* on appeal because the dismissal of the motions is justified by a
13 plain procedural bar and jurists of reason would not find the proceeding debatable..

14 Dated this 21st day of August, 2017.

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17 Honorable John J. Tuchi
18 United States District Judge
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