

1 NOT FOR PUBLICATION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 Felipe Montiel-Guarda,
10 Petitioner,

11 v.

12 USA,

13 Respondent.
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No. CV-17-08083-PCT-JJT (JZB)

ORDER

15 At issue is the Report and Recommendation (“R&R”) prepared in this matter by
16 United States Magistrate Judge John Z. Boyle (Doc. 11) analyzing the pleadings and
17 recommending that the Court deny as untimely Mr. Montiel-Guarda’s Motion to Correct
18 his Sentence pursuant to 28 U.S.C. § 2255. (Doc. 1.) The time to object to the R&R has
19 passed and Movant has filed no objections. The Court thus may accept the R&R without
20 further review per *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). It
21 nonetheless chooses to review the R&R on the merits and, upon doing so, concludes the
22 analysis therein is correct.

23 The Ninth Circuit Court of Appeals dismissed Movant’s direct appeal, upon his
24 motion, on August 31, 2015. From that date, Movant had one year, or until September 1,
25 2016, to file his 2255 motion, absent any tolling. Movant has provided no basis for tolling
26 the deadline, as Judge Boyle correctly found. Movant filed his Motion on May 1, 2017—
27 eight months too late.
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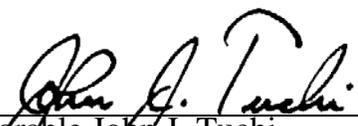
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IT IS ORDERED adopting in whole the R&R prepared by Judge Boyle (Doc. 11.)

IT IS FURTHER ORDERED denying as untimely the Motion to Correct his Sentence pursuant to 28 U.S.C. § 2255. (Doc. 1.) The Clerk of Court shall enter judgment and close this matter.

IT IS FURTHER ORDERED denying a Certificate of Appealability because Defendant has made no substantial showing that reasonable jurists would find the District Court's assessment of the constitutional claims debatable or wrong.

Dated this 12th day of February, 2018.



Honorable John J. Tuchi
United States District Judge