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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

John Everett Wheeler,  
Petitioner,  
v.  
Charles L. Ryan; et al.,  
Respondents.

No. CV-18-08081-PHX-NVW (DMF)

**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 Deborah M. Fine (Doc. 62) regarding petitioner’s Amended Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 (Doc. 22). 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. (R&R at 16 (citing 28 U.S.C. § 636(b)(1))). Petitioner filed objections on September 20, 2018 (Doc. 66). Respondents filed a response to Petitioner’s Objections on September 24, 2018 (Doc. 67).

The Court has considered the objections and reviewed the Report and Recommendation 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 determinations, accepts the recommended decision within the meaning of Rule 72(b), Fed. R. Civ. P., and overrules Petitioner’s objections. *See* 28

1 U.S.C. § 636(b)(1) (stating that the district court “may accept, reject, or modify, in whole  
2 or in part, the findings or recommendations made by the magistrate”).

3 IT IS THEREFORE ORDERED that Report and Recommendation of the  
4 Magistrate Judge (Doc.62) is accepted.


5 IT IS FURTHER ORDERED that Petitioner’s Motion for Clarification (Doc. 40),  
6 and Motion to Strike Respondents’ Answer (Doc. 60) each be denied as moot.

7 IT IS FURTHER ORDERED that Petitioner’s Motion to Expand the Record and  
8 Request Discovery (Doc. 33), Motion for Deposition and Discovery (Doc. 34), Motion  
9 for Extension of Time to File Reply and Supporting Documents (Doc. 43), Motion to  
10 Expand the Record (Doc. 44), Motion to Amend/Correct Appendi[x] A (Doc. 46),  
11 Motion for Extension of Time to File Supplemental Memorandum of Points and  
12 Authority (Doc. 54), and Motion to Expand the Record and Compel Disclosure (Doc.  
13 57), each be denied.

14 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment denying  
15 and dismissing petitioner's Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C.  
16 § 2254 (Doc. 22) with prejudice. The Clerk shall terminate this action.

17 A request for a certificate of appealability is denied because appellant has not  
18 shown that “jurists of reason would find it debatable whether the petition states a valid  
19 claim of the denial of a constitutional right and that jurists of reason would find it  
20 debatable whether the district court was correct in its procedural ruling.” *Slack v.*  
21 *McDaniel*, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253(c)(2); *Gonzalez v.*  
22 *Thaler*, 132 S. Ct. 641, 648 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

23 Dated this 26th day of September, 2018.

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27 Neil V. Wake  
28 Senior United States District Judge