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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Robert Edward Powell,

No. CV-11-00271-TUC-FRZ

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Petitioner,

ORDER

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v.

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Charles L. Ryan, et al.,

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Respondents.

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Pending before the Court is a Report and Recommendation [Doc. 64] issued by United States Magistrate Judge D. Thomas Ferraro that recommends denying Petitioner's Amended Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. §2254.¹ Petitioner has submitted Petitioner's Reply and Objection to Magistrate's Report and Recommendation [Doc. 69] as well as a Motion of Objections to the United States Magistrates (*sic*) Report and Recommendations (*sic*) [Doc. 70] (collectively, "Objections"). As Petitioner's Objections do not undermine the analysis and proper conclusion reached by Magistrate Judge Ferraro, Petitioner's Objections are rejected and the Report and Recommendation is adopted.

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The Court has reviewed the record and concludes that Magistrate Judge Ferraro's

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¹The Court reviews de novo the objected-to portions of the Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The Court reviews for clear error the unobjected-to portions of the Report and Recommendation. *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999); *see also Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

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1 recommendations are not clearly erroneous and they are adopted. *See* 28 U.S.C. §
2 636(b)(1); Fed. R. Civ. P. 72; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th
3 Cir. 1999); *Conley v. Crabtree*, 14 F. Supp. 2d 1203, 1204 (D. Or. 1998).

4 Before Petitioner can appeal this Court's judgment, a certificate of appealability
5 must issue. *See* 28 U.S.C. §2253(c) and Fed. R. App. P. 22(b)(1). Federal Rule of
6 Appellate Procedure 22(b) requires the district court that rendered a judgment denying
7 the petition made pursuant to 28 U.S.C. §2254 to "either issue a certificate of
8 appealability or state why a certificate should not issue." Additionally, 28 U.S.C.
9 §2253(c)(2) provides that a certificate may issue "only if the applicant has made a
10 substantial showing of the denial of a constitutional right." In the certificate, the court
11 must indicate which specific issues satisfy this showing. *See* 28 U.S.C. §2253(c)(3). A
12 substantial showing is made when the resolution of an issue of appeal is debatable among
13 reasonable jurists, if courts could resolve the issues differently, or if the issue deserves
14 further proceedings. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Upon review
15 of the record in light of the standards for granting a certificate of appealability, the Court
16 concludes that a certificate shall not issue as the resolution of the petition is not debatable
17 among reasonable jurists and does not deserve further proceedings.

18 Accordingly, IT IS HEREBY ORDERED as follows:

- 19 (1) The Report and Recommendation [Doc. 64] is accepted and adopted;
20 (2) Petitioner's Motion of Objections to the United States Magistrates Report and
21 Recommendations [Doc. 70] is denied;
22 (3) Petitioner's §2254 habeas petition is denied and this case is dismissed with prejudice;
23 (4) A Certificate of Appealability is denied and shall not issue; and

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1 (5) The Clerk of the Court shall enter judgment and close the file in this case.

2 Dated this 13th day of August 2014.

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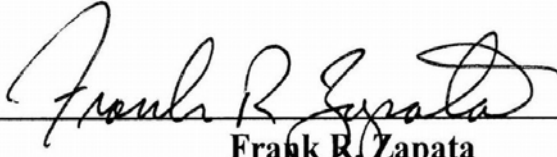
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Frank R. Zapata
Senior United States District Judge