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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Gregory McCauley,

No. CV-15-0045-TUC-RCC (BGM)

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Petitioner,

REPORT AND RECOMMENDATION

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v.

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J. T. Shartle, Warden,

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Respondent.

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Currently pending before the Court is Petitioner Gregory McCauley’s Reply Response and Motion to Find Respondent in Default Pursuant to Rule 55(a) Fed. R. Civ. P. (Doc. 10). Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure, this matter was referred to Magistrate Judge Macdonald for Report and Recommendation. The Magistrate Judge recommends that the District Court deny Petitioner’s motion (Doc. 10).

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As an initial matter, the Court reminds Petitioner that seeking additional relief in a Reply Memorandum is improper. *See* LRCiv. 7.2. Such requests should be brought in a separate memorandum. *See id.*

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Petitioner seeks default judgment because Respondent’s Return and Answer to

1 Petition Under 28 U.S.C. § 2241 for A Writ of Habeas Corpus and Motion to Dismiss
2 Petition (“Answer”) (Doc. 9) was allegedly untimely. Petitioner’s contention is without
3 merit. On March 9, 2015, the Court issued its Order directing Respondent to “answer the
4 Petition within 20 days of the date of service.” Order 3/9/2015 (Doc. 6). Service was
5 executed upon Respondent Louis Winn on March 12, 2015. *See* Certified Mail Receipt
6 3/16/2015 (Doc. 7). Respondent filed his Answer (Doc. 9) on April 1, 2015, exactly
7 twenty (20) days after service of the Petition and in accordance with the Court’s March 9,
8 2015 Order (Doc. 6). Respondent’s Answer (Doc. 9) indicates that it was served via
9 United States Mail upon Petitioner on April 1, 2015. Answer (Doc. 9) at 12.
10 Accordingly, Respondent’s Answer was timely filed, and default judgment is
11 inappropriate in this case.
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15 Additionally, the Court takes judicial notice that Louis W. Winn, Jr. is no longer
16 warden of United States Penitentiary–Tucson (“USP–Tucson”). The Court will substitute
17 the new Warden of USP–Tucson, J. T. Shartle, as Respondent pursuant to Rule 25(d) of
18 the Federal Rules of Civil Procedure.
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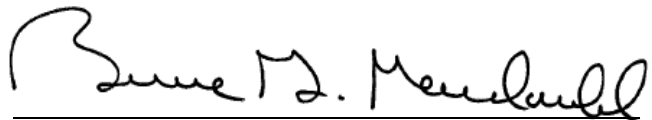
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21 Accordingly, the Magistrate Judge RECOMMENDS that the District Judge enter
22 an order:

- 23 (1) SUBSTITUTING J.T. Shartle, Warden as Respondent for Louis W. Winn,
24 Jr. pursuant to Rule 25(d) of the Federal Rules of Civil Procedure and Rule
25 43(c)(2) of the Federal Rules of Appellate Procedure; and
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27 (2) DENYING Petitioner’s Motion to Find Respondent in Default Pursuant to
28 Rule 55(a) Fed. R. Civ. P. (Doc. 10).

1 Pursuant to Section 636(b), Title 28 of the United States Code, and Rule 72(b)(2)
2 of the Federal Rules of Civil Procedure, any party may serve and file written objections
3 within fourteen (14) days after being served with a copy of this Report and
4 Recommendation. A party may respond to another party's objections within fourteen
5 (14) days after being served with a copy. Fed. R. Civ. P. 72(b)(2). No replies shall be
6 filed unless leave is granted from the District Court. If objections are filed, the parties
7 should use the following case number: **CV-15-0045-TUC-RCC**.
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10 Failure to file timely objections to any factual or legal determination of the
11 Magistrate Judge may result in waiver of the right of review. The Clerk of the Court
12 shall send a copy of this Report and Recommendation to all parties.
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14 Dated this 14th day of January, 2016.

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17 Honorable Bruce G. Macdonald
18 United States Magistrate Judge
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