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

Victor M Caballero,
Petitioner,

v.

Charles L Ryan, et al.,
Respondents.

No. CV-16-00529-TUC-JGZ

ORDER

Pending before the Court is Magistrate Judge Bruce Macdonald's Report and Recommendation (R&R) recommending that this Court deny Petitioner's 28 U.S.C. § 2254 Petition for a Writ of Habeas Corpus. (Doc. 22.) No objection to the R&R has been filed. Fed. R. Civ. P. 72 (b)(2) (granting a party 14 days to serve and file specific written objections to an R&R).

When reviewing a Magistrate Judge's Report and Recommendation, this Court "shall make a de novo determination of those portions of the report . . . to which objection is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991) (*citing Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983)). Failure to object to a Magistrate Judge's recommendation relieves the Court of conducting de novo review of the Magistrate Judge's factual findings; the Court then may decide the dispositive motion on the applicable law. *Orand v. United States*, 602 F.2d 207, 208 (9th Cir. 1979) (*citing Campbell v. United States Dist. Ct.*, 501 F.2d 196 (9th Cir. 1974)). Having reviewed the record in this case, the Court

1 will adopt Magistrate Judge Macdonald’s recommendation. *See* 28 U.S.C. § 636(b)(1);
2 Fed. R. Civ. P. 72; *Thomas v. Arn*, 474 U.S. 140, 149–54 (1985).

3 Petitioner must obtain a certificate of appealability (COA) before he may appeal this
4 Court’s judgment. *See* 28 U.S.C. §2253(c); Fed. R. App. P. 22(b)(1); Rule 11(a) of the
5 Rules Governing Section 2254 Cases. “The district court must issue or deny a certification
6 of appealability when it enters a final order adverse to the applicant.” Rule 11(a) of the
7 Rules Governing Section 2254 Cases. Pursuant to 28 U.S.C. § 2253(c)(2), a COA may
8 issue only when the petitioner “has made a substantial showing of the denial of a
9 constitutional right.” The court must indicate which specific issues satisfy this showing.
10 *See* 28 U.S.C. §2253(c)(3). With respect to claims rejected on the merits, a petitioner “must
11 demonstrate that reasonable jurists would find the district court’s assessment of the
12 constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
13 For procedural rulings, a COA will issue only if reasonable jurists could debate whether
14 the petition states a valid claim of the denial of a constitutional right and whether the court’s
15 procedural ruling was correct. *Id.* Upon review of the record in light of the standards for
16 granting a certificate of appealability, the Court concludes that a certificate shall not issue,
17 as the resolution of the petition is not debatable among reasonable jurists. Accordingly,

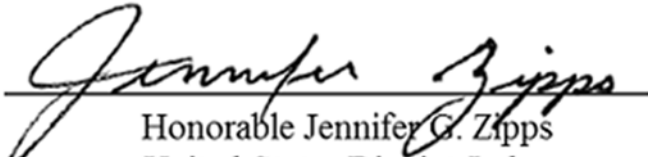
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IT IS ORDERED that:

1. Magistrate Judge Macdonald's Report and Recommendation (Doc. 22) is ADOPTED;
2. Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) is DENIED;
3. The Clerk of Court shall enter judgment accordingly and close the file in this action.

Dated this 2nd day of July, 2019.


Honorable Jennifer G. Zipp
United States District Judge