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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Mark Jordan,

No. CV 21-19-TUC-JAS (BGM)

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Petitioner,

ORDER

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v.

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D. Colbert, Warden,

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Respondent.

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DISCUSSION

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Pending before the Court is a Report and Recommendation issued by United States Magistrate Judge Macdonald. The Report and Recommendation recommends dismissing Petitioner's § 2241 Petition. The Court has reviewed the entire record in this case (*see* Docs. 1 through 45) and the relevant legal authority bearing on this case. Petitioner filed objections to the Report and Recommendation.¹

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As a threshold matter, as to any new evidence, arguments, and issues that were not timely and properly raised before United States Magistrate Judge Macdonald, the Court exercises its discretion to not consider those matters and considers them waived.² *See*

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¹ Unless otherwise noted by the Court, internal quotes and citations have been omitted when citing authority throughout this Order.

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² As a general matter, the Court notes that it has had numerous problems with parties in many cases attempting to raise new issues that could have been raised before the United States Magistrate Judge. The Court does not abide such actions, and allowing such actions undermines the Court's ability to properly manage the hundreds of cases pending before the Court. *See United States v. Ramos*, 65 F.4th 427, 435 n. 5 (9th Cir. 2023) ("Ramos's motion for reconsideration argued that the district court failed to conduct de novo review because the order adopting the report and recommendation stated that 'as to any new ... arguments ... not timely ... raised before [the magistrate judge], the Court exercises its

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1 *United States v. Howell*, 231 F.3d 615, 621-623 (9th Cir. 2000) (“[A] district court has
2 discretion, but is not required, to consider evidence presented for the first time in a party’s
3 objection to a magistrate judge’s recommendation . . . [I]n making a decision on whether
4 to consider newly offered evidence, the district court must . . . exercise its discretion . . .
5 [I]n providing for a *de novo* determination rather than *de novo* hearing, Congress intended
6 to permit whatever reliance a district judge, in the exercise of sound judicial discretion,
7 chose to place on a magistrate judge’s proposed findings and recommendations . . . The
8 magistrate judge system was designed to alleviate the workload of district courts . . . To
9 require a district court to consider evidence not previously presented to the magistrate judge
10 would effectively nullify the magistrate judge’s consideration of the matter and would not
11 help to relieve the workload of the district court. Systemic efficiencies would be frustrated
12 and the magistrate judge’s role reduced to that of a mere dress rehearsal if a party were
13 allowed to feint and weave at the initial hearing, and save its knockout punch for the second
14 round . . . Equally important, requiring the district court to hear evidence not previously
15 presented to the magistrate judge might encourage sandbagging. [I]t would be
16 fundamentally unfair to permit a litigant to set its case in motion before the magistrate, wait
17 to see which way the wind was blowing, and—having received an unfavorable
18 recommendation—shift gears before the district judge.”); *United States v. Reyna-Tapia*,
19 328 F.3d 1114, 1122 (9th Cir. 2003) (“Finally, it merits re-emphasis that the underlying
20 purpose of the Federal Magistrates Act is to improve the effective administration of
21 justice.”).

22 Assuming that there has been no waiver, the Court has conducted a *de novo* review
23 as to Petitioner’s objections. *See* 28 U.S.C. § 636(b)(1)(C) (“Within fourteen days after
24 being served with [the Report and Recommendation], any party may serve and file written
25 objections to such proposed findings and recommendations as provided by rules of court.

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discretion to not consider those matters and considers them waived” even though,
27 according to Ramos, the case raised no waiver issue. But this argument misses the point.
28 The fact that the order contained extraneous language does not negate the district court’s
multiple assertions that it conducted *de novo* review and the magistrate judge’s proper
analysis in recommending denial of the motion to suppress.”).

1 A judge of the court shall make a *de novo* determination of those portions of the report or
2 specified proposed findings or recommendations to which objection is made. A judge of
3 the court may accept, reject, or modify, in whole or in part, the findings or
4 recommendations made by the magistrate judge. The judge may also receive further
5 evidence or recommit the matter to the magistrate judge with instructions.”).

6 In addition to reviewing the Report and Recommendation and any objections and
7 responsive briefing thereto, the Court’s *de novo* review includes review of the record and
8 authority before United States Magistrate Judge Macdonald which led to the Report and
9 Recommendation in this case.

10 Upon *de novo* review of the record and pertinent authority, the Court finds
11 Petitioner’s objections to be without merit, rejects those objections, and adopts United
12 States Magistrate Judge Macdonald’s Report and Recommendation. *See, e.g., United*
13 *States v. Rodriguez*, 888 F.2d 519, 522 (7th Cir. 1989) (“Rodriguez is entitled by statute to
14 *de novo* review of the subject. Under *Raddatz* [447 U.S. 667 (1980)] the court may provide
15 this on the record compiled by the magistrate. Rodriguez treats adoption of the magistrate’s
16 report as a sign that he has not received his due. Yet we see no reason to infer abdication
17 from adoption. On occasion this court affirms a judgment on the basis of the district court’s
18 opinion. Affirming by adoption does not imply that we have neglected our duties; it means,
19 rather, that after independent review we came to the same conclusions as the district judge
20 for the reasons that judge gave, rendering further explanation otiose. When the district
21 judge, after reviewing the record in the light of the objections to the report, reaches the
22 magistrate’s conclusions for the magistrate’s reasons, it makes sense to adopt the report,
23 sparing everyone another round of paper.”); *Bratcher v. Bray-Doyle Independent School*
24 *Dist. No. 42 of Stephens County, Okl.*, 8 F.3d 722, 724 (10th Cir. 1993) (“*De novo* review
25 is statutorily and constitutionally required when written objections to a magistrate’s report
26 are timely filed with the district court . . . The district court’s duty in this regard is satisfied
27 only by considering the actual testimony [or other relevant evidence in the record], and not
28 by merely reviewing the magistrate’s report and recommendations . . . On the other hand,

1 we presume the district court knew of these requirements, so the express references to *de*
2 *novo* review in its order must be taken to mean it properly considered the pertinent portions
3 of the record, absent some clear indication otherwise . . . Plaintiff contends . . . the district
4 court's [terse] order indicates the exercise of less than *de novo* review . . . [However,]
5 brevity does not warrant look[ing] behind a district court's express statement that it engaged
6 in a *de novo* review of the record.”); *Murphy v. International Business Machines Corp.*, 23
7 F.3d 719, 722 (2nd Cir. 1994) (“We . . . reject Murphy's procedural challenges to the
8 granting of summary judgment . . . Murphy's contention that the district judge did not
9 properly consider her objections to the magistrate judge's report . . . lacks merit. The judge's
10 brief order mentioned that objections had been made and overruled. We do not construe
11 the brevity of the order as an indication that the objections were not given due
12 consideration, especially in light of the correctness of that report and the evident lack of
13 merit in Murphy's objections.”); *Gonzales-Perez v. Harper*, 241 F.3d 633 (8th Cir. 2001)
14 (“When a party timely objects to a magistrate judge's report and recommendation, the
15 district court is required to make a *de novo* review of the record related to the objections,
16 which requires more than merely reviewing the report and recommendation . . . This court
17 presumes that the district court properly performs its review and will affirm the district
18 court's approval of the magistrate's recommendation absent evidence to the contrary . . .
19 The burden is on the challenger to make a *prima facie* case that *de novo* review was not
20 had.”); *Brunig v. Clark*, 560 F.3d 292, 295 (5th Cir. 2009) (“Brunig also claims that the
21 district court judge did not review the magistrate's report *de novo* . . . There is no evidence
22 that the district court did not conduct a *de novo* review. Without any evidence to the
23 contrary . . . we will not assume that the district court did not conduct the proper review.”).³

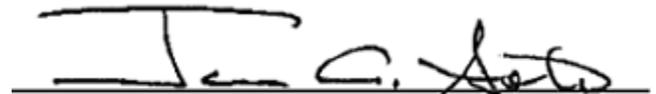
24 ³ See also *Pinkston v. Madry*, 440 F.3d 879, 893-894 (7th Cir. 2006) (“the district court's
25 assurance, in a written order, that the court has complied with the *de novo* review
26 requirements of the statute in reviewing the magistrate judge's proposed findings and
27 recommendation is sufficient, in all but the most extraordinary of cases, to resist assault on
28 appeal”; emphasizing that “[i]t is clear that Pinkston's argument in this regard is nothing
more than a collateral attack on the magistrate's reasoning, masquerading as an assault on
the district court's entirely acceptable decision to adopt the magistrate's opinion . . .”);
Garcia v. City of Albuquerque, 232 F.3d 760 (10th Cir. 2000) (“The district court's order
is terse . . . However, neither 28 U.S.C. § 636(b)(1) nor Fed.R.Civ.P. 72(b) requires the
district court to make any specific findings; the district court must merely conduct a *de*

1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED as follows:

- 3 (1) United States Magistrate Judge Macdonald’s Report and Recommendation (Doc.
4 38) is accepted and adopted.
5 (2) Petitioner’s objections are rejected.
6 (3) Petitioner’s § 2241 Petition is dismissed.
7 (4) This case is dismissed with prejudice.
8 (5) The Clerk of the Court shall enter judgment and close the file in this case.

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10 Dated this 10th day of March, 2025.

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14 Honorable James A. Soto
15 United States District Judge
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*nov*o review of the record . . . It is common practice among district judges . . . to [issue a
22 terse order stating that it conducted a *de novo* review as to objections] . . . and adopt the
23 magistrate judges’ recommended dispositions when they find that magistrate judges have
24 dealt with the issues fully and accurately and that they could add little of value to that
25 analysis. We cannot interpret the district court’s [terse] statement as establishing that it
26 failed to perform the required *de novo* review . . . We hold that although the district court’s
27 decision is terse, this is insufficient to demonstrate that the court failed to review the
28 magistrate’s recommendation *de novo*.”); *Goffman v. Gross*, 59 F.3d 668, 671 (7th Cir.
1995) (“The district court is required to conduct a *de novo* determination of those portions
of the magistrate judge’s report and recommendations to which objections have been filed.
But this *de novo* determination is not the same as a *de novo* hearing . . . [I]f following a
review of the record the district court is satisfied with the magistrate judge’s findings and
recommendations it may in its discretion treat those findings and recommendations as its
own.”).