



1 The findings and recommendations, which were served on all parties on the same date,  
2 provided that objections could be served within thirty days and replies within fourteen days after  
3 the filing of any objections. On February 16, 2016, petitioner filed objections. (Doc. No. 24.)  
4 On February 23, 2016, petitioner filed a supplemental brief. (Doc. No. 25.) Although over  
5 fourteen days have passed since petitioner filed objections, respondent has filed no reply.

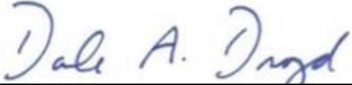
6 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), having carefully reviewed  
7 the entire file *de novo* and considered petitioner's objections. The court finds petitioner's  
8 objections, which focus on his claim of actual innocence with respect to his sentence, to be  
9 unpersuasive. Accordingly, the court will adopt the findings and recommendations.<sup>1</sup>

10 For the reasons set forth above:

- 11 1. The findings and recommendations filed January 28, 2016, be adopted;
- 12 2. The court declines to issue a certificate of appealability; and
- 13 3. The court directs the clerk of court to enter judgment for respondent in this action.

14 IT IS SO ORDERED.

15 Dated: March 30, 2016

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17 \_\_\_\_\_  
18 UNITED STATES DISTRICT JUDGE

19 <sup>1</sup> The court notes that petitioner's reliance on the decision in *Johnson* would appear to be  
20 unwarranted in any event. The Supreme Court in *Johnson* struck down the residual clause of the  
21 Armed Career Criminal Act, codified at 18 U.S.C. § 924(e)(2)(B). 135 S. Ct. at 2563 ("We hold  
22 that imposing an increased sentence under the residual clause of the Armed Career Criminal Act  
23 violates the Constitution's guarantee of due process."). However, that decision in no way  
24 abrogated the ACCA's other prongs defining a "violent felony." Thus, crimes that "ha[ve] as an  
25 element the use, attempted use, or threatened use of physical force against the person of another"  
26 are still considered "violent felonies" for the purpose of imposing sentence enhancements under  
27 the ACCA, as well as for purposes of applying those sections of the U.S. Sentencing Guidelines  
28 that mimic the Act's language. *See id.* ("Today's decision does not call into question application  
of the Act to the four enumerated offenses, or the remainder of the Act's definition of a violent  
felony."). Having been convicted of committing robbery pursuant to Texas Penal Code § 29.02—  
an essential element of which is "intentionally, knowingly, or recklessly caus[ing] bodily injury to  
another; or intentionally or knowingly threat[ing] or plac[ing] another in fear of imminent bodily  
injury or death"—petitioner can be deemed a violent felon without reference to the residual  
clause set out in § 4B1.2 of the Federal Sentencing Guidelines, rendering the holding *Johnson*  
inapplicable to his situation.