

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL EDUARDO AGUILAR — PETITIONER
(Your Name)

VS.

ARIZONA DEPT. OF CORREC. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
SUPREME COURT OF THE UNITED STATES

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

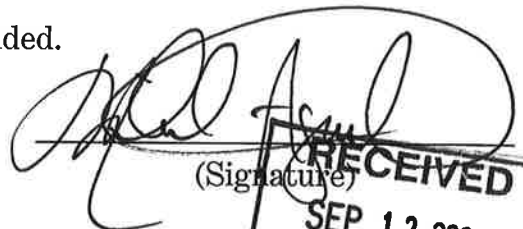
Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____

_____, or

a copy of the order of appointment is appended.


(Signature)
RECEIVED
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OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Michael Endara Anular, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Self-employment	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Income from real property (such as rental income)	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Interest and dividends	\$ 0.00	\$ 0.00	\$ 0.00	\$ N/A
Gifts	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Alimony	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Child Support	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Retirement (such as social security, pensions, annuities, insurance)	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Disability (such as social security, insurance payments)	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Unemployment payments	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Public-assistance (such as welfare)	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Other (specify): _____	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A
Total monthly income:	\$ 0.00	\$ N/A	\$ 0.00	\$ N/A

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A
N/A	N/A	N/A	\$ N/A

4. How much cash do you and your spouse have? \$ _____
 Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

- Home Value N/A
- Other real estate Value N/A
- Motor Vehicle #1 Year, make & model N/A Value N/A
- Motor Vehicle #2 Year, make & model N/A Value N/A
- Other assets Description N/A Value N/A

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A
N/A	\$ N/A	\$ N/A

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
N/A	N/A	N/A
N/A	N/A	N/A
N/A	N/A	N/A

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home) Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No Is property insurance included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ N/A	\$ N/A
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ N/A	\$ N/A
Home maintenance (repairs and upkeep)	\$ N/A	\$ N/A
Food	\$ N/A	\$ N/A
Clothing	\$ N/A	\$ N/A
Laundry and dry-cleaning	\$ N/A	\$ N/A
Medical and dental expenses	\$ N/A	\$ N/A

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ <u>N/A</u>	\$ <u>N/A</u>
Recreation, entertainment, newspapers, magazines, etc.	\$ <u>N/A</u>	\$ <u>N/A</u>
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ <u>N/A</u>	\$ <u>N/A</u>
Life	\$ <u>N/A</u>	\$ <u>N/A</u>
Health	\$ <u>N/A</u>	\$ <u>N/A</u>
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: _____	\$ <u>N/A</u>	\$ <u>N/A</u>
Taxes (not deducted from wages or included in mortgage payments)		
(specify): <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Installment payments		
Motor Vehicle	\$ <u>N/A</u>	\$ <u>N/A</u>
Credit card(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Department store(s)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other: <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Alimony, maintenance, and support paid to others	\$ <u>N/A</u>	\$ <u>N/A</u>
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ <u>N/A</u>	\$ <u>N/A</u>
Other (specify): <u>N/A</u>	\$ <u>N/A</u>	\$ <u>N/A</u>
Total monthly expenses:	\$ <u>N/A</u>	\$ <u>N/A</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? N/A

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

If yes, how much? N/A

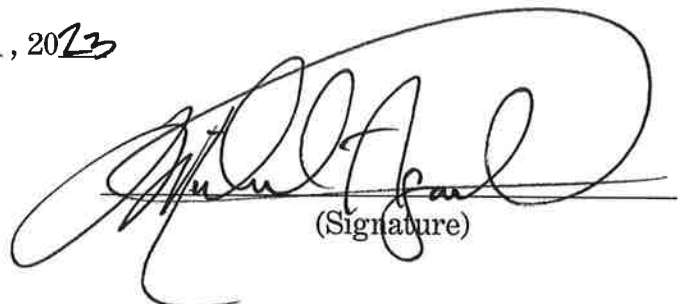
If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

FROM MARCH 30, 2012 TO NOVEMBER 24, 2021, I WAS IMPRISONED FROM A WRONGFUL CONVICTION. ON MAY 1, 2022, I DEFENDED MYSELF AGAINST A PROSTITUTE HIGH ON 14,000 UNITS OF METH-AMPHETAMINE, WHOM WENT FOR HER LOADED GUN. I WAS FACE MURDER.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: August 30, 2023


(Signature)

CHANGE IN ASSETS (No. 9 cont'd)

ON APRIL 29, 2016, YOURS TRULY SETTLED AN EXCESSIVE USE OF FORCE CLAIM IN THE AMOUNT OF \$50,000.00. SEE AGUILAR V. LAWALL, No. CV 12-00679-TUC-JAS (D. ARIZ.). IN DECEMBER OF 2021, YOURS TRULY LEARNED FIDUCIARY COUNSEL HAD SQUANDERED MOST OF THE SETTLEMENT AWARDED AND FILED A BAR CHARGE WITH THE STATE BAR OF ARIZONA AS THE RESULT. SEE FILE No. 21-2731. CURRENTLY, THE MATTER REMAINS PENDING BEFORE THE ARIZONA SUPREME COURT.

FOR ADDITIONAL INFORMATION, PLEASE CALL SENIOR BAR COUNSEL CRAIG D. HENLEY AT (602) 340-7270. STATE BAR COUNSEL IS SITUATED IN A BETTER POSITION IN PROVIDING DETAILS CONCERNING REIMBURSEMENT OF MONIES SQUANDERED BY STACY SCHEFF OF THE LAID OFFICE OF STACY SCHEFF IN TUCSON, ARIZONA.

1 No.

2 _____
3 IN THE SUPREME COURT OF THE UNITED STATES

4 _____
5 MICHAEL EDUARDO AGUILAR - PETITIONER - APPLICANT
6 _____

7 vs.
8 _____

9 ARIZONA DEPARTMENT OF CORRECTIONS
10 REHABILITATION AND REENTRY - RESPONDENTS
11 _____

12 APPLICATION FOR AN EXTENSION OF TIME TO
13 FILE A PETITION FOR WRIT OF CERTIORARI
14 ADDRESSED TO ELENA KAGAN, CIRCUIT JUSTICE
15 _____

16 FROM THE UNITED STATES COURT OF APPEALS
17 FOR THE NINTH CIRCUIT
18 _____

19 MICHAEL AGUILAR
20 VCOB # 220506002
21 P.O. BOX 951
22 TUCSON, ARIZONA
23 85702
24 _____
25 _____
26 _____
27 _____
28 _____

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2

3
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5 441 U.S. 410 (1979)

1

6
7 STATUTE

8
9 20 U.S.C. § 2254

1

10
11 RESOURCE REFERENCE

12
13 THE FEDERALIST No. 91

14 (A. HAMILTON) (CLINTON BOSSITER ED. 1961) 13

JURISDICTION

THE UNITED STATES SUPREME COURT HAS JURISDICTION TO REVIEW CASES IN THE UNITED STATES COURT OF APPEALS UNDER 28 U.S.C. § 1254(1). 28 U.S.C. § 1254(1). IN RE JOHNSON, 72 S. CT. 1028, 96 L. ED. 1377, 1952 U.S. LEXIS 2013 (1952).

JUDGMENT TO BE REVIEWED

ON JUNE 15, 2023, THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT DENIED APPLICANT MICHAEL EDUARDO AGUILAR'S REQUEST FOR A CERTIFICATE OF APPEALABILITY. SEE APPENDIX A. RELEVANT IS THE FACT APPLICANT'S PETITION FOR WRIT OF HABEAS CORPUS PROCEEDING AS PROVIDED BY 28 U.S.C. § 2254, IS CURRENTLY PENDING IN THE NINTH CIRCUIT UNDER A MOTION FOR RECONSIDERATION OF THE DENIAL OF AGUILAR'S REQUEST FOR A CERTIFICATE OF APPEALABILITY. APPENDIX B.

BASED ON THE FOLLOWING REASONS, PURSUANT TO SUPREME COURT RULES 13.5, 30.2, AGUILAR ASKS FOR A 60 DAY EXTENSION TO FILE A PETITION FOR WRIT OF CERTIORARI. SUPREME COURT RULE 13.5, 30.2, 30.3; WILKINS V. UNITED STATES, 441 U.S. 469, 99 S. CT. 1429, 60 L. ED. 2D 365, 1979 U.S. LEXIS 96 (1979).

FRAUD ON THE COURT

"IN PRESCRIBING A RULE APPLICABLE ONLY TO THE CONDUCT OF PERSONNEL WITHIN THE JUDICIAL BRANCH, [ALL COURTS] ACT IN A SPHERE WHERE THE SCOPE OF [ITS] SUPERVISORY POWERS IS AT ITS APEX." DANSON V. MARSHALL 561 F.2d 930, 934 (9TH CIR. 2009) (QUOTING UNITED STATES V. RUBIO-VILLAREAL 967 F.2d 294, 298 (9TH CIR. 1992)). FOR IN APPLICANT'S FORTHCOMING PETITION FOR WRIT OF CERTIORARI, HE WILL PRESENT ADDITIONAL EVIDENCE AS A COMPELLING REASON FOR GRANTING THE PETITION, WHICH WILL NOT BE LIMITED TO THE "DEPARTURE" FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, [INCLUDING THE FACT THE NINTH CIRCUIT] SANCTIONED SUCH A DEPARTURE BY A LOWER COURT, AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER." SUPREME COURT RULE 10(a). AGUILAR HAS ALREADY PRESENTED EVIDENCE OF A "DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDING." (C.F. APPENDICES A, B (NINTH CIRCUIT RULE 27-10(b) REQUIRES MOTION PANELS PROCEED WITHOUT CIRCUIT JUDGE SUBSTITUTION)). TALLMAN, (CIRCUIT JUDGE, BEST STATED WHAT APPLICANT PRESENTS BELOW: "IF ONE IS REMEMBERED FOR THE RULES ONE BREAKS, THEN OUR COURT MUST BE UNFORGETTABLE." HENRY V. RYAN, 766 F.3d 1059, 1067 (9TH CIR. 2014) (TALLMAN, C.J., DISSSENTING).

THE MANIFEST DISCARRIAGE OF JUSTICE

ON MARCH 30, 2012, A BB GUN WAS PLANTED IN ORDER TO CHARGE AGUILAR WITH TWO COUNTS OF ATTEMPTED ARMED ROBBERY. SEE AGUILAR V. SHINN, NO. CV 19-00359-TLC-JGZ, DOC. 1 AT 6 ET SEQ. (D. ARIZ., JULY 15, 2019); SEE ALSO APPENDIX C AT 5:9 ("I ASSUMED THAT WHAT WAS IN HIS HAND WAS A PISTOL."); ON OCTOBER 30, 2013, WHEN TRIAL COUNSEL HAD AN OPPORTUNITY TO IMPREACH THE STATE'S ONLY DIRECT EVIDENCE AGAINST APPLICANT WITH AGUILAR'S CELL PHONE, COUNSEL REFUSED AND SUBSEQUENTLY DESTROYED THE PHONE. AGUILAR V. SHINN, SUPRA, AT DOC. 1, 17 ET SEQ.; SEE ALSO APPENDIX C AT 8:15-16 ("AGUILAR ARGUES THAT HIS COUNSEL SHOULD HAVE USED EVIDENCE OF COMMUNICATIONS IN HIS CELL PHONE TO IMPREACH S.B.'S TESTIMONY THAT S.B. DID NOT KNOW AGUILAR."). ON DECEMBER 24, 2014, THE ARIZONA COURT OF APPEALS AFFIRMED APPLICANT'S CONVICTIONS AND SENTENCE; HOLDING AS HARMLESS ERROR THE FACT THE BB GUN HAD BEEN ADMITTED INTO EVIDENCE AT TRIAL THROUGH HEARSAY TESTIMONY, DESPITE THE FACT (1) A RECORDING OF THE 911 CALL HAS THE ABSENT-FROM-TRIAL ALLEGED VICTIM REPORTING "I THINK HE HAS A GUN" AND "HE MIGHT HAVE A GUN," (2) A STATE CRIME SCENE SPECIALIST TELLING THE JURY AGUILAR'S PRINTS WERE NOT ON THE BB GUN, AND (3) AT CLOSING REBUTTAL, THE PROSECUTING ATTORNEY TELLING THE JURY,

1 "It doesn't have to be that way" on multiple occa-
2 sions. Doc. 1 at 6 et seq.; Appendix C at 7:12-8:12.

3
4 On July 6, 2015, Aguilar filed the first
5 of two petitions for writ of habeas corpus, alerting
6 the federal court of his actual innocence. Aguila-
7 lar v. Ryan, No. CV 15-00296-TLC-LCK (LCK).
8 Doc. 1 at 6 et seq. (D. Ariz. July 6, 2015). It took
9 sixteen months for the district court to rule the
10 petition as unexhausted and procedurally defaulted,
11 ignoring entirely Applicant's claim of actual
12 innocence. Aguilar v. Ryan, No. CV-15-00296-TLC-
13 LCK, 2016 U.S. Dist. LEXIS 159383 (D. Ariz.
14 Nov. 17, 2016). And despite the fact Aguilar was
15 precluded from returning to the state appellate
16 court for the purpose of exhausting the claims
17 respondents argued were procedurally defaulted,
18 Magistrate Judge Lynette C. Kimmins granted leave
19 for Aguilar to file a successive petition, based on
20 the fact Applicant had pending a state-court
21 post-conviction proceeding. Id. at *4-*5. The Ninth
22 Circuit subsequently denied the first of two
23 requests for certificate of appealability. Aguilar
24 has thus far sought. Aguilar v. Ryan, No. 16-17229,
25 2017 U.S. App. LEXIS 27188 (9th Cir. Apr. 14, 2017).
26
27 Eugene'sler, both the Ninth Circuit
28 and Magistrate Judge Kimmins completely ig-

1 JORGE AGUILAR'S CLAIM OF ACTUAL INNOCENCE AND
2 THE RECORD EVIDENCE OF A MANIFEST MISCARRIAGE
3 OF JUSTICE, ALONG WITH A LONG-STANDING HISTORY
4 OF EXCEPTIONS TO THE FAILURE-TO-EXHAUST SUD.
5 SEE, E.G., FRISBIE V. COLLINS, 342 U.S. 519, 522 (1952)
6 (NONEXHAUSTION PROPERLY OVERLOOKED BECAUSE "SPE-
7 CIAL CIRCUMSTANCES" REQUIRED "PROMPT FEDERAL INTER-
8 VENTION"); SMITH V. MURRAY, 477 U.S. 527, 533-534
9 (1986); KULLMAN V. WILSON, 477 U.S. 436, 454 (1986)
10 (PLURALITY OPINION) (BOTH RULING THAT CREDIBLE CLAIM
11 OF INNOCENCE SUPPLIES "MISCARRIAGE OF JUSTICE" EX-
12 CEPTION TO STATE'S DEFENSES); SEE ALSO CASTILE V.
13 PEOPLES, 439 U.S. 346, 349-350 (1979); GRANBERY
14 V. GREER, 481 U.S. 129, 131 (1987) (CITING CASES) ("WE
15 HAVE ALREADY DECIDED THAT THE FAILURE TO EX-
16 HAUST STATE REMEDIES DOES NOT DEPRIVE AN AP-
17 PELLATE COURT OF JURISDICTION TO CONSIDER THE
18 MERITS OF A HABEAS CORPUS APPLICATION."). THE
19 MAGISTRATE JUDGE ALSO DEEMED APPLICANT'S INITIAL
20 HABEAS PETITION AS "PREMATURE." AGUILAR V. BIAN,
21 2016 U.S. DIST. LEXIS 159383, AT *5. IGNORING
22 AGUILAR'S CLAIM OF ACTUAL INNOCENCE, JUDGE KIMMORCK
23 RULED BECAUSE APPLICANT HAD A STATE POST-CONVIC-
24 TIONAL PROCEEDING PENDING THE PETITION WAS PREMATURE.
25 Id. THE SUPREME COURT "HAS REPEATEDLY HELD THAT
26 'THE PENDING OF AN ACTION IN THE STATE COURT IS
27 NO BAR TO PROCEEDINGS CONCERNING THE SAME
28 MATTER IN THE FEDERAL COURT HAVING JURISDICTION!'"

1 EXXON MOBIL CORP. V. SARDI BASIC INDUS. CORP. 544
2 U.S. 280, 292 (2005) (QUOTING McCLELLAN V. CARLAND
3 217 U.S. 269, 282 (1910).

4 5 MANIFEST MISFEASANCE OF JUSTICE PART TWO

6
7 AFTER THE STATE COURT TOOK OVER FOUR
8 YEARS TO ADJUDICATE APPLICANT'S POST-CONVICTION
9 RELIEF PROCEEDING, AGUILAR FILED A SUCCESSIVE PE-
10 TITION FOR WRIT OF HABEAS CORPUS. AGUILAR V. SHINN,
11 NO. CV 19-00359-TLC-JGZ AT DOC. 1. UNFORTUNATELY,
12 THE DISTRICT COURT IGNORED THE SECOND PETITION, FORCING
13 APPLICANT TO FILE A PETITION FOR WRIT OF MAN-
14 DAMUS IN THE COURT OF APPEALS. SEE HERE AGUILAR
15 V. UNITED STATES DIST. COURT, NO. 19-72329 AT
16 DOCKET ENTRY NO. 1. IT TOOK MAGISTRATE JUDGE
17 JACQUELINE RATEAU TWO YEARS TO RECOMMEND THE suc-
18 CESSIVE PETITION BE DENIED. AGUILAR V. SHINN, 2021
19 U.S. DIST. LEXIS 260874 (D. ARIZ. JUL. 22, 2021). IT
20 WAS NOT UNTIL APPLICANT SERVED OUT HIS NINE-YEAR,
21 SEVENTH-MONTH, TWENTY-FOUR-DAY PRISON SENTENCE THAT
22 AFTERWARDS DISTRICT JUDGE JENNIFER G. ZIPPS BE-
23 LIEVED AGUILAR'S SECOND PETITION. APPENDIX C. AND
24 SINCE HIS ARREST ON MAY 5, 2022, APPLICANT HAS
25 BEEN FORCED BY JUDGE ZIPPS TO PROSECUTE AN AP-
26 PEAL FROM A VACUUM, WITHOUT HIS HABEAS RECORD.
27 SEE AGUILAR V. SHINN, NO. CV 19-00359-TLC-
28 JGZ AT DOCS. 87, 90, 93, 95; SEE ALSO AGUILAR V.

1 UNITED STATES DIST. COURT FOR THE DIST. OF ARI-
2 ZONA (IN RE AGUILAR) No. 22-70207 AT DOCKET
3 ENTRY No. 1.

4
5 ON OCTOBER 31, 2022, AGUILAR FILED A
6 NOTICE OF APPEAL; AND, ON NOVEMBER 2, 2022, THE
7 SECOND HABEAS PETITION WAS DOCKETED IN THE NINTH
8 CIRCUIT AS "AGUILAR V. ARIZONA DEPARTMENT OF COR-
9 RECTIONS REHABILITATION AND REENTRY." SEE APPENDIX
10 D. ON JANUARY 3, 2023, APPLICANT FILED HIS MOTION
11 FOR CERTIFICATE OF APPEALABILITY IN THE APPELLATE
12 COURT. No. 22-16707 AT DOCKET ENTRY No. 8.

13
14 WITHOUT PROMPTING, ON FEBRUARY 2, 2023,
15 JUDGE ZIPPS FILED AN ORDER DECLARING, "THE COURT
16 OF APPEALS FOR THE NINTH CIRCUIT HAS DENIED AGUIL-
17 LAR'S APPEAL IN THIS ACTION AND STATED NO FURTHER
18 FILINGS WILL BE ENTERTAINED IN THIS CLOSED CASE."
19 SEE APPENDIX E. IT IS QUITE OBVIOUS JUDGE ZIPPS
20 WAS UNETHICAL; AND BELOW IS ADDITIONAL EVIDENCE
21 FOR AN INFERENCE THE JUDGE WAS ACTING IN CON-
22 CERT WITH THE NINTH CIRCUIT IN ORDER TO DECEIVE
23 APPLICANT WHO ABANDONING HIS DECADE-LONG BAT-
24 TLE IN ESTABLISHING HIS ACTUAL INNOCENCE.

25
26 IF FRAUD REACHES THE LEVEL OF FRAUD ON THE
27 COURT, RELIEF IS ALWAYS MERITED, AND NO DISTINCTION
28 BETWEEN "INTRINSIC" OR "EXTRINSIC" FRAUD NEEDS TO BE

1 MAKE. IN THE ORDINARY INDEPENDENT SUIT, ONLY JUSTICE
2 BETWEEN THE PARTIES IS AT ISSUE, IN FRAUD ON THE
3 COURT CASES, THE INTEGRITY OF THE COURTS IS AT IS-
4 SUE. SEE CAREYER V. CITY OF CHAMPLIN, 152 F.3d 787,
5 799 (8th Cir 1998) (FINDING OF FRAUD ON COURT IS
6 JUSTIFIED ONLY BY MOST EGREGIOUS MISCONDUCT DIRECTED
7 TOWARD AT COURT ITSELF, SUCH AS BRIBERY OF JUDGES,
8 JURY TAMPERING OR FABRICATION OF EVIDENCE); SEE
9 ALSO HAZEL-ATLAS GLASS CO. V. HARTFORD-EMPIRE CO.,
10 322 U.S. 238 245-246 (1944) ("THIS IS NOT SIMPLY
11 A CASE OF A JUDGMENT OBTAINED WITH THE AID OF A
12 WITNESS WHO, ON THE BASIS OF AFTER-DISCOVERED EVI-
13 DENCE, IS BELIEVED POSSIBLE TO HAVE BEEN GUILTY OF
14 PERJURY.").

15
16 ON FEBRUARY 21, 2023, APPLICANT FILED A
17 PLEADING IN THE DISTRICT COURT ENTITLED "IMPORTANT
18 NOTICE TO THE COURT" IN RESPONSE TO THE FEBRUARY
19 2, 2023 ORDER, WHICH ATTEMPTED TO MISLEAD AGUILAR
20 INTO BELIEVING HIS HABEAS APPEAL HAD BEEN ADJUDI-
21 CATED. AGUILAR V. SHINDI, AT DOC. 105. APPLICANT
22 CONCLUDED THE IMPORTANT NOTICE AS FOLLOWS:

23
24 ON FEBRUARY 5, 2023, SCORES OF UN-
25 SUSPECTING MEN, WOMEN AND CHILDREN
26 IN SOUTHERN TURKEY AND NORTHERN
27 SYRIA WENT TO SLEEP WITH THE
28 THOUGHT OF AN EARTHQUAKE FURTHEST

1 FROM THEIR MINDS. THEY AWAKE IN ETER-
2 NITY. MICHAEL ASKS, "IS THE ADVANCE-
3 MENT OF A CORRUPT STATUS QUID WORTH
4 THE INEVITABLE CONSEQUENCES ONE MUST
5 EVENTUALLY SUFFER AS THE RESULT?"

6 IN THE MATTER OF AGUILAR V. SHINN
7 AND THE PERVERSION OF JUSTICE AS
8 TO JACQUELINE RATEAU AND JENNIFER
9 ZIPPS? GUILTY. ABSOLUTE INDI-
10 NITY? NOT IN ETERNITY.

11
12 AGUILAR V. SHINN, No. CV 19-00359-TLC-JGZ Doc.
13 105 AT 6. TWO DAYS AFTER THE IMPORTANT NOTICE
14 WAS FILED, THE NINTH CIRCUIT AFFIRMED AGUILAR V.
15 COCA, CV/21-00009-TLC-JGZ. SEE MICHAEL EDUARDO
16 AGUILAR V. CORRECTIONAL OFFICER COCA ET AL, APPLI-
17 CATION No. 23A 54 (JULY 21, 2023). HOWEVER, IT WAS
18 NOT UNTIL JUNE 9, 2023 THAT APPLICANT BECAME
19 AWARE OF THE FACT ON THE DAY AGUILAR V. COCA
20 WAS DECIDED BY THE NINTH CIRCUIT, SO WAS AGUILAR'S
21 HABEAS MATTER PENDING BEFORE THE APPELLATE COURT.
22 SEE APPENDIX F AT HABEAS 22-16707. AGUILAR
23 IMMEDIATELY NOTICED THE NINTH CIRCUIT OF THE "ERROR."
24 IN RESPONSE, THE APPELLATE COURT IMMEDIATELY DENIED
25 APPLICANT'S REQUEST FOR A CERTIFICATE OF APPEAL-
26 ABILITY. APPENDIX A. WHAT ALLOWS FOR AN INFERENCE
27 THAT JUDGE ZIPPS WAS INVOLVED, IS THE FACT THE
28 RESPONDENTS - APPELLEES WERE IDENTIFIED AS THAT IN

1 THE CAPTION OF THE DISTRICT COURT, AND NOT AS
2 "ARIZONA DEPARTMENT OF CORRECTIONS REHABILITATION
3 AND REENTRY" THE NINTH CIRCUIT HAS DOCKETED THE
4 RESPONDENTS- APPELLEES AS. C.F. APPENDICES A, B.

5
6 APPLICANT ASSURES THE COURT THERE REMAINS
7 HOPE FOR THE NINTH CIRCUIT:

8
9 WE ALSO IGNORE RECENT SUPREME
10 COURT AUTHORITY THAT HAS REVERSED
11 US FOR DOING THE SAME THING IN THE
12 PAST.¹ NO CIRCUIT IS AS ROUTINELY
13 REVERSED FOR JUST THIS TYPE OF
14 BEHAVIOR. WE OUGHT TO KNOW BETTER.

15
16 HENRY V. RYAN, 766 F.3d 1059, 1067 (9TH CIR. 2014)
17 (TALLMAN, C.J., DISSSENTING).

18
19 ¹ SEE, E.G., CRESPIN V. RYAN, 56 F.4th 794, 801
20 (9TH CIR. JAN 3, 2023) ("IF OUR COURT'S DECISION WAS SO
21 IMPORTANT THAT IT MERITS CONTINUED PUBLICATION NOT-
22 WITHSTANDING CRESPIN'S DEATH, THEN SURELY IT WAS
23 IMPORTANT ENOUGH TO GET RIGHT. INSTEAD, THIS DECISION
24 CONSTITUTES THE LATEST IN A REGRETTABLELY LONG LINE
25 OF CASES FLAUNTING THE SUPREME COURT'S REPEATED
26 ADDITIONS, CREATING IMPERMISSIBLE EXTENSIONS OF
27 THE COURT'S PRECEDENTS.") (VANDYKE, C.J., DISSSENTING).

ADDITIONAL REASONS JUSTIFYING

AN EXTENSION OF TIME

Applicant is inherently incapable of simply ignoring unconstitutional treatment of others and systemic corruption within the government. On May 19, 2023, Aguilar filed a pleading in connection with a prisoner class action lawsuit. See Appendix G. Rather than referring the matter to Judge Zipp - whom before Applicant had litigated throughout his decade-long federal court journey for justice - Senior District Judge Honorable Roslyn O. Silver referred the matter before Senior District Judge Honorable Raker C. Collins. Id. At any point, the Honorable Collins may order Aguilar to act, which would impose upon his time for the filing of a petition for writ of certiorari.

Applicant is also awaiting a decision by the Honorable Raker C. Collins in Oregon v. Napier, No. CV 22-00074-TLC-RCC, see Appendix H.

Unfortunately, because Aguilar refuses to allow a repeat of what previous trial counsel did to him, Applicant must now prepare to represent himself at trial; where the indictment is for first-degree murder but the facts and evi-

1 ENCE ONLY SHOULD SELF-DEFENSE. SEE APPENDIX I.
2 BECAUSE THE CASE INCLUDES CORRUPT LOCAL AND FED-
3 ERAL LAW-ENFORCEMENT, AND MEMBERS OF THE
4 HELL'S ANGELS AND MEXICAN MAFIA, IN ALL LIKELI-
5 HOOD TRIAL COUNSEL WAS SPOOKED OR THREATENED. FOR
6 AGUILAR WAS ONLY PATIENT AND TRUSTING OF COUNSEL,
7 TO A POINT.

8
9 THE SUPREME COURT HAS FOR DECADES JUSTI-
10 FIED THE RULE WHERE AN ACTION CHALLENGING AN
11 IMPRISONMENT IS NOT NECESSARILY MOOTED BY THE PETI-
12 TIONER'S RELEASE FROM CUSTODY PRIOR TO FINAL TRIAL
13 AND APPELLATE ADJUDICATION OF THE PETITION. CARAFAS
14 V. LAVALLEE, 391 U.S. 234 (1968). Moreover, the COURT
15 HAS HELD THAT PERSONS WHO HAVE COMPLETED SERVING
16 SENTENCES FOR CRIMINAL CONVICTIONS MAY RETAIN "A
17 SUBSTANTIAL STAKE IN [OVERTURNING] THE JUDGMENT
18 OF CONVICTION WHICH SURVIVES THE SATISFACTION OF
19 THE SENTENCE." CARAFAS V. LAVALLEE, 391 AT 237
20 (CITING FISDICK V. UNITED STATES, 329 U.S. 211, 222
21 (1946)); SEE ALSO SPENCER V. KEMNA, 523 U.S. 1, 9, 12
22 (1998) ("IN RECENT DECADES, WE HAVE BEEN WILLING
23 TO PRESUME THAT A WRONGFUL CRIMINAL CONVICTION
24 HAS CONTINUING COLLATERAL CONSEQUENCES (OR, WHAT IS
25 EFFECTIVELY THE SAME, TO COUNT COLLATERAL CONSE-
26 QUENCES THAT ARE REMOTE AND UNLIKELY TO OCCUR).
27 ... [I]N THE CONTEXT OF CRIMINAL CONVICTION, THE PRE-
28 SUMPTION OF SIGNIFICANT COLLATERAL CONSEQUENCES IS

1 LIKELY TO COMPORT WITH REALITY.")

3 Calculus

5 HABEAS CORPUS HAS BEEN AN IMPORTANT
6 MEANS BY WHICH THE AVAILABILITY OF FEDERAL
7 COURT REVIEW OF THE CONSTITUTIONALITY OF STATE-
8 IMPOSED INCARCERATION CHECKS "THE PREVALENCY OF A
9 LOCAL SPIRIT" AND THE DANGERS TO FEDERAL LAW AND
10 RIGHT INHERENT IN GRANTING "JURISDICTION OF NATIONAL
11 CAUSES" TO "STATE JUDGES, HOLDING THEIR OFFICE DIL-
12 ING PLEASURE, OR FROM YEAR TO YEAR [WHO ARE]
13 TOO LITTLE INDEPENDENT" OF THE LOCAL SPIRIT "TO
14 BE RELIED UPON FOR THE INFLEXIBLE EXECUTION OF
15 THE NATIONAL LAWS." THE FEDERALIST NO. 81, AT 496
16 (A. HAMILTON) (CLINTON ROSSITER ED. 1961). "THERE CAN
17 BE NO DOUBT THAT IN ENACTING § 2254, CONGRESS
18 SOUGHT TO INTERPOSE THE FEDERAL COURTS BETWEEN
19 THE STATES AND THE PEOPLE, AS GUARDIANS OF THE
20 PEOPLE'S FEDERAL RIGHTS - TO PROTECT THE PEOPLE FROM
21 UNCONSTITUTIONAL ACTION." REED V. ROSS, 468 U.S. 110
22 (1984) (INTERNAL QUOTATIONS AND CITATIONS OMITTED).

24 ACTING AS THEIR FEDERAL COURT "GUARDIAN,"
25 JUDGE ZIPPS FAST-TRACKED A PROCEEDING TO MAKE
26 IT POSSIBLE FOR A PAIR OF AFFLUENT LITTLE BOYS TO
27 PLAY GIRLS SOCCER AT THE OPENING OF THE SEASON.
28 SEE DOE V. HORNE, NO. CV 23-00195-TLK-JGZ, 2023

1 U.S. DIST. LEXIS 125499, E.Supp.31, 2023 WL
2 41661931 (D. ARIZ. JUL. 20, 2023). FOR ALMOST A
3 DECADE IN PRISON APPLICANT PATIENTLY WAITED FOR
4 JUDGE ZIPPS TO FULFILL HER ROLE AS HIS GUARDI-
5 AN. POOR AND DESPISED, AGUILAR WAS ONLY MARGINAL-
6 ALIZED. APPLICANT MICHAEL EDUARDO AGUILAR NOW
7 BEGS CIRCUIT JUSTICE ELENA KAGAN AND THE UNITED
8 STATES SUPREME COURT TO ACT AS HIS GUARDIAN
9 IN A BATTLE WHERE THE LOCAL SPIRIT POSSESSES MORE
10 THAN STATE COURT JUDGES. APPLICANT BEGS FOR A
11 SIXTY DAY EXTENSION TO ALLOW HIM TO FILE A PETITION
12 FOR A WRIT OF CERTIORARI.

13
14 DATED: AUGUST 30, 2023.

15
16 RESPECTFULLY SUBMITTED,

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18 BY 

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21 MICHAEL EDUARDO AGUILAR
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APPENDIX A

AGUILAR v. SHIND

No. 22-16707

ORDER

JULY 15, 2023

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

JUN 15 2023

MICHAEL EDWARD AGUILAR,

Petitioner-Appellant,

v.

DAVID SHINN; et al.,

Respondents-Appellees.

No. 22-16707

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

D.C. No. 4:19-cv-00359-JGZ
District of Arizona,
Tucson

ORDER

Before: O'SCANNLAIN and BENNETT, Circuit Judges.

This appeal is from the denial of appellant's 28 U.S.C. § 2254 petition and subsequent motion for reconsideration. The court has considered all filings submitted by appellant in support of his request for a certificate of appealability. The request for a certificate of appealability (Docket Entry No. 8) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015); *Lynch v. Blodgett*, 999 F.2d 401, 403 (9th Cir. 1993) (order).

All pending motions are denied as moot.

DENIED.

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APPENDIX B

AGUILAR v. ARIZONA
DEPARTMENT OF
CORRECTIONS REHABILITATION
AND REENTRY
No. 22-16702
ORDER
August 7, 2023

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

AUG 7 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHAEL EDWARD AGUILAR,

No. 22-16707

Petitioner-Appellant,

D.C. No. 4:19-cv-00359-JGZ

v.

District of Arizona,
Tucson

ARIZONA DEPARTMENT OF
CORRECTIONS REHABILITATION AND
REENTRY; et al.,

ORDER

Respondents-Appellees.

Before: TALLMAN and IKUTA, Circuit Judges.

Appellant's motion for an extension of time to file a motion for reconsideration (Docket Entry No. 20) is granted. Any motion for reconsideration is due by September 11, 2023.

Appellant's motion to correct the record on appeal (Docket Entry No. 16) and motion for clarification (Docket Entry No. 19) are denied. Appellant's motion for production of copies of filings submitted in the district court (Docket Entry No. 21) is denied without prejudice to refiling in that court.

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APPENDIX C

AGUILAR v. SHINDL
No. CV 19-00359-TLK-JGZ
ORDER
August 31, 2022

1 **WO**

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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Michael Edward Aguilar,
10 Petitioner,

No. CV-19-00359-TUC-JGZ

ORDER

11 v.

12 David Shinn, et al.,
13 Defendants.
14

15 Pending before the Court is a Report and Recommendation issued by Magistrate
16 Judge Jaqueline M. Rateau. (Doc. 68.) Magistrate Judge Rateau recommends dismissing
17 Petitioner Michael Aguilar’s § 2254 Petition for Writ of Habeas Corpus by a Person in
18 State Custody. (*Id.*) Aguilar filed an Objection, and Defendants responded. (Docs. 75,
19 76.)

20 Also pending before the Court is Aguilar’s Motion for Leave in Allowing Reply to
21 Response to Petitioner’s Objection to Report and Recommendation. (Doc. 77.)
22 Defendants responded to the motion. (Doc. 78.)

23 Having reviewed the record, the Court will deny Aguilar’s request to file a reply
24 and adopt the Report and Recommendation.

25 **STANDARD OF REVIEW**

26 When reviewing a Magistrate Judge’s report and recommendation, this Court “may
27 accept, reject, or modify, in whole or in part, the findings or recommendations made by the
28 Magistrate Judge.” 28 U.S.C. § 636(b)(1). “[T]he district judge must review the

1 Magistrate Judge’s findings and recommendations de novo if objection is made, but not
2 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)
3 (emphasis in original). District courts are not required to conduct “any review at all . . . of
4 any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985);
5 *see also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72. Further, a party is not entitled as of
6 right to de novo review of evidence or arguments which are raised for the first time in an
7 objection to the report and recommendation, and the Court’s decision to consider newly
8 raised arguments is discretionary. *Brown v. Roe*, 279 F.3d 742, 744 (9th Cir. 2002); *United*
9 *States v. Howell*, 231 F.3d 615, 621–22 (9th Cir. 2000).

10 BACKGROUND

11 The Court will adopt the Factual and Procedural Background of the Report and
12 Recommendation. (Doc. 68 at 1–4.) The Magistrate Judge cited the Arizona Court of
13 Appeals’ summary of the facts as follows:

14 In March 2012, S.B. and his girlfriend, J.M., heard a car horn honking
15 repeatedly outside the house in which they were staying. J.M. went outside
16 to investigate the cause of the noise. When S.B. heard a man screaming that
17 he was owed money, he followed J.M. outside. He then saw J.M talking to
Aguilar, who was in a car.

18 S.B. asked Aguilar “what the problem was,” and Aguilar replied that
19 J.M owed him money. When S.B. told Aguilar the he didn’t have any money,
20 Aguilar displayed what appeared to be a pistol and pointed it at both S.B. and
J.M. Aguilar stated, “I’m not leaving until I get my money and I will light
this bitch up . . . if I don’t.”

21 J.M. retreated into the house and called 9-1-1. She informed the
22 operator that a man outside the house had a gun. When the police arrived,
23 they located Aguilar hiding nearby and found a BB gun in “the middle of the
24 roadway close by. [FN1: The weapon was referred to as both a “BB gun” and
25 a “pellet gun.” Any distinction between the two terms is not relevant to the
issues in this appeal.] S.B. identified the BB gun as the weapon Aguilar had
used.

26 (*Id.* at 1–2 (quoting *State v. Aguilar*, No. 2 CA-CR 2014-0067, 2014 WL 7344041 (Ariz.
27 App. Dec. 24, 2014))).

28 //

DISCUSSION

I. Motion for Leave to File a Reply

Federal Rule of Civil Procedure 72(b)(2) does not permit the filing of a reply to a response to an objection, and Aguilar's request for leave to file a reply (Doc. 77) does not present good cause or other legal basis for granting his request. Moreover, Defendants' response does not raise new issues or evidence that would warrant further reply from Aguilar. Accordingly, the Court will deny Aguilar's request. *See ML Liquidating Tr. v. Mayer Hoffman McCann P.C.*, 2011 WL 10451619 (D. Ariz. Mar. 11, 2011) (noting no additional briefing is necessary because the last brief raised "responsive argument[s]" as opposed to "entirely new issues"); *cf. J.G. v. Douglas Cnty. Sch. Dist.*, 552 F.3d 786, 803 n.14 (9th Cir. 2008) (noting additional briefing is appropriate when new evidence is presented).

II. Objections

Aguilar raises several objections to the Report and Recommendation. (Doc. 75.) The Court will address each argument in turn.

A. Factual and Evidentiary Objections

1. Magistrate Judge's Consideration of the Record (Objection One)

Aguilar argues that the Magistrate Judge "refused" to incorporate the entire record into the Report and Recommendation. (Doc. 75 at 1–2.) He suggests that the Magistrate Judge only considered the pending petition, response, and reply, and did not consider other filings in this federal action or the state record. (*Id.* at 2.)

Aguilar misconstrues the Magistrate Judge's reference to the filings at issue as limiting the Magistrate Judge's consideration of the record. As demonstrated by the R&R, the Magistrate Judge did not limit her review to the petition, response, and reply. The R&R cites to Aguilar's state court filings, the state court record, and state court rulings. (Doc. 68.) Notably, the federal record includes more than 250 pages of the state court record. As to Aguilar's other filings in the pending action, Aguilar fails to demonstrate how any of his previous filings are relevant to the issues addressed in the R&R. Regardless, those

1 filings are part of the record and available for review by this Court and the Ninth Circuit
2 Court of Appeals.

3 Aguilar also argues that the habeas petition he filed in case 15-cv-00286-LCK, in
4 2015, should have been included in the record, and he points to the actual innocence claim
5 raised in that petition. (*Id.*) But Aguilar was required to raise in his pending petition for
6 writ of habeas corpus “all the grounds for relief.” Rule 2(c)(1), Rules Governing Section
7 2254 Cases. The Court dismissed the 2015 petition as premature in November 2016. (15-
8 cv-00286-LCK, Doc. 25 at 2–3.) In a subsequent order, the Court informed Aguilar that
9 when he “complete[d] PCR proceedings in state court, he should file a NEW case with a
10 petition that includes all the habeas claims he wishes to raise in federal court.” (15-cv-
11 00286-LCK, Doc. 43 at 3.) In addition, in the present case, the Court issued an Order
12 stating that it would allow Aguilar to file an amended petition presenting “*all* his claims
13 for relief.” (Doc. 10 at 3 (emphasis in original).)

14 Finally, even if Aguilar did not include an actual innocence claim in his petition, the
15 Magistrate Judge nevertheless considered actual innocence in determining whether there
16 was cause to excuse Aguilar’s procedural default of his claims. (Doc. 68 at 9–11.)

17 **2. Presumption of Correctness of Facts in State Court Decision**
18 **(Objection Two)**

19 Aguilar argues that the Magistrate Judge erred in giving the facts, as summarized
20 by the Arizona Court of Appeals in its decision, a presumption of correctness. (*Id.* at 3–
21 4.) Aguilar argues that the presumption of correctness for factual findings applies to
22 Arizona Supreme Court decisions, and not Arizona Court of Appeals decisions. (*Id.* at 3.)
23 Aguilar also argues that he should have been afforded an evidentiary hearing in place of
24 the presumption of correctness. (*Id.*) Aguilar points to conflicting evidence and states
25 “until it is determined on what basis the jury supported their verdict, there exists no
26 presumption of correctness.” (*Id.* at 3–4.)

27 Aguilar is incorrect as to the law. The presumption of correctness applies in habeas
28 relief and it “applies even if the finding was made by the state court of appeals[.]” *Pollard*

1 v. *Galaza*, 290 F.3d 1030, 1035 (9th Cir. 2002) (citing 28 U.S.C. § 2254(e)(1)).

2 Aguilar's challenges to the applicability of the presumption are unpersuasive. A
3 petitioner may rebut the presumption of correctness only "with clear and convincing
4 evidence." *Id.* The Magistrate Judge thoroughly discusses Aguilar's challenges to the
5 evidence. (Doc. 68 at 13–14.) Aguilar's challenges do not establish by clear and
6 convincing evidence that any particular finding by the Arizona Court of Appeals is
7 erroneous. (Doc. 75 at 3–4.) Aguilar's description of the evidence is selective. Viewed
8 as a whole, the record does not support his assertion that "his conviction is predicated solely
9 upon [a witness's statement that] 'I assumed that what was in his hand was a pistol.'" (Doc.
10 75 at 3.)

11 3. Denial of Evidentiary Hearing (Objection Three)

12 Aguilar argues that Magistrate Judge erred in denying him an evidentiary hearing.
13 (Doc. 75 at 4.) Aguilar points to a presentence report in an unrelated case, that states
14 witness S.B had used heroin since he was 22 years old. (*Id.* at 4–6.) Aguilar argues that
15 this information goes to S.B.'s credibility and it could not have been previously discovered
16 with due diligence, because the presentence report was created after his trial. (*Id.* at 6.)
17 Aguilar further argues the presentence report clearly established that S.B. was using heroin
18 the night Aguilar committed the crime and, therefore, Aguilar is innocent.¹ (*Id.*)

19 Aguilar failed to present this arguments in his Motion for an Evidentiary Hearing.
20 (*See* Doc. 37.) Thus, the Court will not consider it. *See Brown*, 279 F.3d at 744. Moreover,
21 the Court notes that Aguilar's contentions would not entitled him to an evidentiary hearing
22 on this issue. S.B.'s report of heroin addiction would not establish that S.B. was high on
23 the night in question or during his testimony at Aguilar's trial, and Aguilar's counsel
24 impeached S.B. with his prior felony conviction involving the sale of heroin as well as
25 S.B.'s inconsistent statements related to the incident. (Doc. 68 at 19–20.) S.B.'s
26 presentence report does not provide a basis to conclude that no reasonable factfinder would

27
28 ¹ Aguilar points to two other pieces of evidence he wishes to introduce at an
evidentiary hearing. But he only argues that the presentence investigation report entitles
him to an evidentiary hearing because it is newly discovered evidence.

1 have found Aguilar innocent. *Id.* Section 2254(e)(2)(B) (requiring, in addition to new
2 evidence, that the evidence be “clear and convincing” to establish that “no reasonable
3 factfinder would have found the applicant guilty”).

4 **B. Objections to Magistrate Judge’s Analysis of Grounds for Relief**

5 **1. Ground Two (Objection Four)**

6 In Ground Two, Aguilar argues that the admission of the 911 recording into
7 evidence at his trial violated his Sixth Amendment right to confront witnesses and his
8 Fourteenth Amendment right to a fair trial. (Doc. 1 at 12.) On direct appeal, the Arizona
9 Court of Appeals rejected this ground, citing the invited error doctrine. The court reasoned
10 that Aguilar did not object to the State’s introduction of the 911 recording into evidence,
11 and Aguilar was the first to request that the recording be played to the jury. (Doc. 1-4 at
12 8.) In rejecting Ground Two, the Magistrate Judge concluded that Aguilar fairly presented
13 the claim to the state court, but the state court’s clear and express rejection of the claim
14 under the invited error doctrine constituted an independent and adequate state law ground
15 that serves as a procedural bar to habeas corpus relief on the claim. (Doc. 68 at 8–9.)

16 In his Objection, Aguilar does not challenge the state court’s finding that he failed
17 to object to admission of the recording in the first instance. He argues that the state court’s
18 invited error analysis is misguided because once the 911 recording was admitted, the
19 playing of the recording was inevitable. (Doc. 75 at 6.)

20 Aguilar’s argument is not persuasive. As explained by the Magistrate Judge, the
21 Court of Appeals’ conclusion is an independent and adequate state court ground, and
22 “Aguilar failed to meet his burden . . . [to] challeng[e] the independence or adequacy of
23 the invited error doctrine.” (Doc. 68 at 9.) “For a state procedural rule to be ‘independent,’
24 the state law basis for the decision must not be interwoven with federal law.” *Bennett v.*
25 *Mueller*, 322 F.3d 573, 581 (9th Cir. 2003). “To be deemed adequate, the state law ground
26 for decision must be well-established and consistently applied.” *Id.* at 583. Aguilar does
27 not address either prong.²

28 ² Also in Ground Two, Aguilar asserts a claim of insufficient evidence. (Doc. 1 at 12.)
The Magistrate Judge found that Aguilar procedurally defaulted this claim because he

1 Aguilar objects to the Magistrate Judge’s conclusion that he failed to show actual
2 innocence and thus could not overcome the procedural default and procedural bar of his
3 Ground Two claims. (*See* Doc. 68 at 9–10.) He asserts that the Magistrate Judge’s analysis
4 is based on irrelevant distractions, record manipulation, and ignoring of Aguilar’s proffered
5 facts. (Doc. 75 at 7, 9–10.) Aguilar further argues that he need not explain these
6 contentions as the facts and evidence in Ground Three prove the Magistrate Judge’s and
7 PCR state court’s evaluations of the claim were unreasonable. (*Id.*)

8 The Court has reviewed the R&R and the Magistrate Judge’s citation of the
9 governing law and application of the law to the facts. The Court discerns no error in that
10 analysis.

11 **2. Ground One (Objection Five)**

12 In Ground One, Aguilar asserts that the BB gun was allowed into evidence without
13 sufficient foundation, depriving him of his Sixth Amendment right to confront witnesses
14 and his Fourteenth Amendment right to a fair trial. (Doc. 1 at 6.) In evaluating this same
15 claim, the Arizona Court of Appeals held that an officer’s testimony about the location of
16 the BB gun was hearsay and that the trial court erred in admitting it, but any error was
17 harmless because the fact supported by the inadmissible testimony was “otherwise
18 established” by untainted evidence. (Doc. 68 at 12–14.) The Magistrate Judge concluded
19 that Arizona Court of Appeals applied the correct legal standard—“that the error must be
20 found harmless beyond a reasonable doubt.” (*Id.* at 13.) The Magistrate Judge rejected as
21 “not supported by the record” Aguilar’s contention that the court of appeals’ factual
22 determination was unreasonable because it failed to “refer to where in the record S.B.
23 identified the weapon collected by [RG] as the weapon used.” (*Id.*)

24 Aguilar objects to the Magistrate Judge’s conclusion that the Arizona Court of
25 Appeals applied the correct legal standard—“harmless beyond a reasonable doubt.” (Doc.
26 75 at 8.) Aguilar argues that the court applied an “otherwise established” standard, citing

27 _____
28 failed to fairly present this claim, as a federal claim, to the state court. (Doc. 68 at 7–8.)
As the Magistrate Judge noted, Aguilar argued insufficiency based entirely on Rule 20 of
the Arizona Rules of Criminal Procedure. (*Id.*)

1 the court's inclusion of that phrase in its decision. (*Id.*) In addition, Aguilar argues that
2 the court erred in applying the correct standard, because the "otherwise established
3 evidence" amounted to an assumption from a witness who was high on illegal substances.
4 (*Id.*) As to each of his arguments, Aguilar misconstrues the Court of Appeals' decision.

5 As set forth in the R&R, the Court of Appeals reviewed the evidence presented as
6 to the BB gun and determined that, even without the erroneously admitted testimony, the
7 officer's other testimony established that the gun was present at the scene of the incident:
8 the officer testified that he collected the gun at that location and victim S.B. identified the
9 weapon that was collected as the weapon used in the robbery. (*Id.* at 13.) Because the
10 presence of the gun was "otherwise established" by untainted testimony, admission of the
11 tainted testimony could not have undermined the jury's finding of guilt beyond a
12 reasonable doubt.

13 **3. Ground Three (Objection Six)**

14 In Ground Three, Aguilar asserts a claim of ineffective assistance of counsel. (Doc.
15 1 at 17.) Aguilar argues that his counsel should have used evidence of communications in
16 his cell phone to impeach S.B.'s testimony that S.B. did not know Aguilar. (*Id.*) The
17 Magistrate Judge concluded that the PCR state court's decision was not unreasonable when
18 it found (1) counsel's performance was not deficient and (2) Aguilar did not suffer
19 prejudice. (Doc. 68 at 14–21.)

20 As thoroughly explained by the Magistrate Judge and PCR state court, Aguilar's
21 counsel was not ineffective. (*Id.*) Aguilar's conclusory arguments to the contrary do not
22 undermine that conclusion.

23 **4. Ground Four (Objection Seven)**

24 In Ground Four, Aguilar asserts that his trial counsel was ineffective in plea
25 negotiations. (Doc. 1 at 29–30.) Aguilar argues that but for his counsel's conduct, he
26 would have accepted a probation-available plea agreement. (*Id.*) The Magistrate Judge
27 rejected Aguilar's claim and thoroughly explained her reasoning. (Doc. 68 at 21–25.) In
28 particular, the Magistrate Judge found that state court reasonably concluded that a

1 probation-available plea was not offered and that Aguilar fails to overcome the doubly
2 deferential standard to the state court's decision that Aguilar's counsel was not ineffective.
3 (*Id.* at 24–25.)

4 Aguilar does not object to the Magistrate Judge's conclusion or reasoning with
5 respect to this claim. (Doc. 75 at 10.) Instead, Aguilar raises an entirely new claim that is
6 not in the petition. He asserts that counsel was ineffective in rejecting a separate "CES
7 plea," not the probation-available plea alleged in the petition. (*Compare* Doc. 1 at 29–30
8 *with* Doc. 75 at 10.) Because all claims for relief must be in the petition, the Court declines
9 to consider Aguilar's newly raised claim. *See* Rule 2(c)(1), Rules Governing Section 2254
10 Cases (mandating that all grounds for relief must be in the petition). To the extent Aguilar's
11 Objection is not a newly raised *claim*, the Court declines to consider the new argument.
12 *See Brown*, 279 F.3d at 744. In any event, Aguilar does not show that his counsel was
13 ineffective in stating that Aguilar does want the CES plea, when Aguilar previously
14 rejected the CES plea.

15 **III. Certificate of Appealability**

16 Pursuant to Rule 11(a) of the Rules Governing Section 2254 Cases, this Court must
17 issue or deny a certificate of appealability (COA) at the time it issues a final order adverse
18 to the applicant. *See United States v. Winkles*, 795 F.3d 1134, 1142 (9th Cir. 2015)
19 (requiring a COA to appeal the denial of a Rule 60(b) motion in a § 2255 case); *Payton v.*
20 *Davis*, 906 F.3d 812, 818 & n.8 (9th Cir. 2018) (applying *Winkles* to a case brought under
21 § 2254). A court may issue a COA only when the petitioner "has made a substantial
22 showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). This showing can
23 be established by demonstrating that "reasonable jurists could debate whether (or, for that
24 matter, agree that) the petition should have been resolved in a different manner" or that the
25 issues were "adequate to deserve encouragement to proceed further." *Slack v. McDaniel*,
26 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)). For
27 procedural rulings, a court may issue a COA only if reasonable jurists could debate (1)
28 whether the petition states a valid claim of the denial of a constitutional right, and (2)

1 whether the court's procedural ruling was correct. *Id.* The Court finds that reasonable
2 jurists would not find this Court's ruling debatable. Therefore, the Court will not issue a
3 COA.

4 **CONCLUSION**

5 For the foregoing reasons,

6 **IT IS ORDERED** that Aguilar's Motion for Leave in Allowing Reply to Response
7 to Petitioner's Objections to Report and Recommendation (Doc. 77) is **DENIED**.

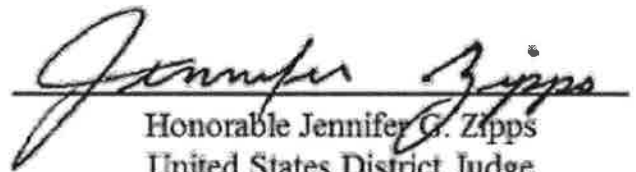
8 **IT IS FURTHER ORDERED** that the Report and Recommendation (Doc. 68) is
9 **ADOPTED**.

10 **IT IS FURTHER ORDERED** that Aguilar's Petition for Writ of Habeas Corpus
11 (Doc. 1) is **DISMISSED**.

12 **IT IS FURTHER ORDERED** that, pursuant to Rule 11 of the Rules Governing
13 Section 2254 Cases, in the event Petitioner files an appeal, the Court **denies** issuance of a
14 certificate of appealability.

15 **IT IS FURTHER ORDERED** that the Clerk of Court must enter judgment
16 accordingly, and close its file in this action.

17 Dated this 30th day of August, 2022.

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21 Honorable Jennifer G. Zipp
22 United States District Judge
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APPENDIX D

AGUILAR v. ARIZONA
DEPARTMENT OF CORRECTIONS
REHABILITATION AND REENTRY
CLERK OF COURT LETTER
NO. 22-16707
NOVEMBER 2, 2022



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

November 02, 2022

No.: 22-16707
D.C. No.: 4:19-cv-00359-JGZ
Short Title: Michael Aguilar v. Arizona Department of Corrections
Rehabilitation a, et al

Dear Appellant

The Clerk's Office of the United States Court of Appeals for the Ninth Circuit has received a copy of your notice of appeal and/or request for a certificate of appealability.

A briefing schedule will not be set until the court determines whether a certificate of appealability should issue.

Absent an emergency, all subsequent filings in this matter will be referred to the panel assigned to consider whether or not to grant the certificate of appealability.

All subsequent letters and requests for information regarding this matter will be added to your file to be considered at the same time the cause is brought before the court.

The U.S. Court of Appeals docket number shown above has been assigned to this case. You must indicate this Court of Appeals docket number whenever you communicate with this court regarding this case. Motions filed along with the notice of appeal in the district court are not automatically transferred to this court for filing. Any motions seeking relief from this court must be separately filed in this court's docket.

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APPENDIX E

AGUILAR v. SHINDAL
No. CV 19-00359-TJC-JGZ
ORDER
FEBRUARY 2, 2023

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

Michael Edward Aguilar,
Petitioner,
v.
David Shinn, et al.,
Defendants.


No. CV-19-00359-TUC-JGZ
ORDER

Pending before the Court is Aguilar’s Motion for Status Concerning More Time to File a Notice of Appeal. (Doc. 100.) The Court of Appeals for the Ninth Circuit has denied Aguilar’s appeal in this action and stated no further filings will be entertained in this closed case. (Doc. 99.)

Accordingly,

IT IS ORDERED that Aguilar’s Motion (Doc. 100) is **denied** as moot. This case shall remain closed.

Dated this 1st day of February, 2023.


Honorable Jennifer G. Zipp
United States District Judge

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APPENDIX F

AGUILAR V. COCA

No. 21-116789

GENERAL DOCKET, PAGE ONE

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 21-16789	Docketed: 10/26/2021
Nature of Suit: 3555 Prison Condition	Termed: 02/23/2023
Michael Aguilar v. Gene Coca, et al	
Appeal From: U.S. District Court for Arizona, Tucson	
Fee Status: IFP	

Case Type Information:

- 1) prisoner
- 2) state
- 3) civil rights

Originating Court Information:

District: 0970-4 : 4:21-cv-00009-JGZ-PSOT
Trial Judge: Jennifer G. Zipps, District Judge
Date Filed: 01/07/2021
Date Order/Judgment: **Date Order/Judgment EOD:** **Date NOA Filed:** **Date Rec'd COA:**
10/18/2021 10/18/2021 10/25/2021 10/25/2021

Prior Cases:

<u>15-15376</u>	Date Filed: 03/03/2015	Date Disposed: 03/24/2015	Disposition: Jurisdictional Defects - Judge Order
<u>16-17229</u>	Date Filed: 12/05/2016	Date Disposed: 04/14/2017	Disposition: COA Denied - Judge Order
<u>17-16163</u>	Date Filed: 06/05/2017	Date Disposed: 07/14/2017	Disposition: Rule 42-1 Dismissal - Clerk Order
<u>19-72329</u>	Date Filed: 09/12/2019	Date Disposed: 10/24/2019	Disposition: Denied - Judge Order

Current Cases:

	Lead	Member	Start	End
Related	21-16789	<u>22-16707</u>	11/02/2022	02/23/2023
	21-16789	<u>22-70207</u>	09/16/2022	10/19/2022

MICHAEL EDWARD AGUILAR (-: 220506002)
Plaintiff - Appellant,

Michael Edward Aguilar
Terminated: 10/26/2021
[NTC Pro Se]
ASPCS - ARIZONA STATE PRISON COMPLEX
SAFFORD
Tonto Unit
896 S. Cook Road
Safford, AZ 85546

Michael Edward Aguilar
Terminated: 12/10/2021
[NTC Pro Se]

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Appendix C

AGUILAR v. THORNELL
No. CV 23-00264-TLK-RCC
ORDER
JULY 10, 2023

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

Michael Aguilar,

Plaintiff,

v.

Ryan Thornell,

Defendant.

No. CV-23-00264-TUC-RCC

ORDER

On May 19, 2023, Plaintiff Michael Aguilar, who is confined in the Pima County Adult Detention Center, filed a “Motion for Ancillary Jurisdictional Relief” in *Jensen v. Thornell*, CV-12-00601-PHX-ROS (D. Ariz.), a class action lawsuit. In a June 8, 2023 Order, Senior District Judge Roslyn O. Silver directed the Clerk of Court to file the Motion as a new civil action. That same day, the Clerk of Court opened a new case, and Plaintiff’s Motion was filed as a Complaint.

In a June 22, 2023 Order, the Court dismissed Plaintiff’s Complaint with leave to amend and gave Plaintiff 30 days to (1) file an amended complaint on a court-approved form and (2) either pay the filing and administrative fees or file a complete Application to Proceed In Forma Pauperis. On July 3, 2023, Plaintiff filed a “Motion for Leave to File Form Four in place of Application to Proceed In Forma Pauperis” (Doc. 4).

I. Motion for Leave to File Form Four

In his Motion, Plaintiff states that his past attempts to obtain certification of his trust account statement “went ignored,” and “it is highly likely the required certification . . .

1 amounts to an analogous pipe dream.”¹ As a result, Plaintiff seeks leave to proceed in
2 forma pauperis upon submission of a completed *non-prisoner* Application to Proceed
3 Without Prepaying Fees or Costs, which Plaintiff has lodged alongside his Motion.

4 Plaintiff does not state that he has been denied access to a certified trust account
5 statement in connection with *this* action. And in the Court’s experience, prisoners are
6 rarely, if ever, unable to obtain a certified trust account statement where the particular
7 institution’s procedures for obtaining this document have been followed. In any event, as
8 noted previously, a prisoner seeking leave to proceed in forma pauperis in a civil action
9 must submit both an affidavit of indigence and a certified copy of a trust account statement
10 (or institutional equivalent) for the six months preceding the filing of the complaint. 28
11 U.S.C. § 1915(a)(2). These conditions are imposed by statute, *see* 28 U.S.C. § 1915(b)(1),
12 and Congress did not give courts discretion to depart from its statutory mandate.
13 Accordingly, Plaintiff’s Motion for Leave to File Form Four will be denied. Plaintiff will
14 have 30 days from the filing date of this Order to submit a properly executed and certified
15 Application to Proceed In Forma Pauperis, using the form included with this Order, or pay
16 the \$402.00 filing and administrative fees.

17 **II. Warnings**

18 **A. Address Changes**

19 Plaintiff must file and serve a notice of a change of address in accordance with Rule
20 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
21 relief with a notice of change of address. Failure to comply may result in dismissal of this
22 action.

23
24 ¹ Plaintiff also notes that his “Specialist” is an officer he sued for excessive force in
25 *Aguilar v. LaWall*, CV-12-00679-TUC-JAS. However, it is not clear that Plaintiff requires
26 this individual’s assistance to obtain a certified trust account statement. If Plaintiff finds
27 he is unable to fully complete the Application to Proceed In Forma Pauperis due to acts or
28 omissions of others beyond his control, he must file a declaration, signed under penalty of
perjury, setting forth facts to support his inability to comply. This declaration must state
(1) when and how Plaintiff requested a certified copy of his inmate trust account statement
and certification of a correctional official as to the status of his trust account, (2) the
individual(s) to whom such a request was made, and (3) the response(s), if any, Plaintiff
received.

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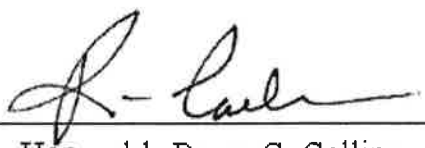
B. Possible Dismissal

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to comply with any order of the Court).

IT IS ORDERED:

- (1) The Motion for Leave to File Form Four is **DENIED**. (Doc. 4.)
- (2) Within **30 days** of the date this Order is filed, Plaintiff must either pay the \$350.00 filing fee and \$52.00 administrative fee **or** file a complete Application to Proceed In Forma Pauperis and a certified six-month trust account statement (or institutional equivalent).
- (3) If Plaintiff fails to either pay the \$350.00 filing fee and \$52.00 administrative fee or file a complete Application to Proceed In Forma Pauperis within 30 days, the Clerk of Court must enter a judgment of dismissal of this action without prejudice and without further notice to Plaintiff and deny any pending unrelated motions as moot.
- (4) The Clerk of Court must mail Plaintiff a court-approved form for filing an Application to Proceed In Forma Pauperis (Non-Habeas).
- (5) The deadline for filing an amended complaint (**July 24, 2023**) remains unchanged.

Dated this 10th day of July, 2023.



Honorable Raner C. Collins
Senior United States District Judge

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APPENDIX H

OBREGON v. NARDS
No. CV 22-00074-TJC-RCC
ORDER
JULY 3, 2023

OBREGON v. NARDS
No. CV 22-00074-TJC-RCC
DEFENDANT CHRIS NARDS'
OPPOSITION TO MICHAEL
EDUARDO ACUILAR'S MOTION
FOR JLS TERTII STANDING
JULY 11, 2023

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

Mario Armando Obregon,
Plaintiff,
v.
Mark Napier, et al.,
Defendants.

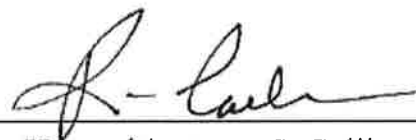
No. CV-22-00074-TUC-RCC

ORDER

Pending before the Court is Michael Edward Aguilar's Motion for Leave to Exceed LRCiv 7.2 Page Limit Re: Motion for Jus Tertii Standing. (Doc. 39.) Lodged with the Motion is a Proposed Motion for Jus Tertii Standing. (Doc. 40.) Having reviewed the filing,

IT IS ORDERED that the Motion is **GRANTED**. (Doc. 39.) The Clerk of Court shall file the lodged Motion to Intervene on the docket. (Doc. 40.)

Dated this 3rd day of July, 2023.



Honorable Raner C. Collins
Senior United States District Judge

1 **Laura Conover**
2 **Pima County Attorney**
3 **Civil Division**
4 Joey A. Flynn, SBN 015430
5 Deputy County Attorney
6 32 North Stone Avenue, Suite 2100
7 Tucson, Arizona 85701
8 Telephone: 520-724-5700
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10 Direct dial: 520-724-8289
11 **E-Service and Court Documents:** Tort@pcao.pima.gov
12 *Attorneys for Defendant Chris Nanos*

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

11 Mario Armando Obregon,
12 Plaintiff,
13 vs.
14 Christopher Nanos, et al.,
15 Defendants.

No. 4:22-CV-00074-RCC-PSOT

**DEFENDANT CHRIS NANOS’
OPPOSITION TO MICHAEL
EDWARD AGUILAR’S MOTION
FOR *JUS TERTII* STANDING**

17 Defendant Chris Nanos (“Nanos”) opposes inmate Michael Edward Aguilar’s
18 (“Aguilar”) Motion for *Jus Tertii* Standing (Doc 42). Aguilar’s motion to intervene must
19 be denied as an attempt to circumvent the Prison Litigation Reform Act¹ (“PLRA”), an
20 attempt to engage in the unauthorized practice of law, and for Aguilar’s lack of standing.

21 The court must also disregard irrelevant factual allegations raised by Aguilar
22 relating to Defendant’s motion for summary judgment to dismiss Plaintiff Mario
23 Obregon’s (“Obregon”) lawsuit for failure to exhaust his remedies under the PLRA. This
24 motion in opposition is supported by the following Memorandum.

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¹ U.S.C. §28 1915(g).

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Memorandum of Points & Authorities

I. Factual Background

On May 12, 2022, Plaintiff Obregon, a detainee at the Pima County Adult Detention Complex (“PCADC”), filed a Second Amended Complaint (“SAC”), seeking compensatory relief for “exposing [him] to COVID-19 and causing [him] to contract COVID-19.” (Doc 11 at ¶ E). Plaintiff Obregon alleges that Defendant Nanos risked Plaintiff’s life by failing to provide adequate training and supervision regarding COVID-19. *Id.* at p.3. Plaintiff Obregon alleges these events occurred during late January and early February 2022. *Id.* at p.3. Plaintiff’s SAC seeks only money damages for past harms allegedly suffered. *Id.* at p. 6.

Over one year later, on June 2, 2023, Michael Edward Aguilar (“Aguilar”), another inmate at PCADC, filed a Motion for Jus Tertii Standing (Doc 42) in forma pauperis, to intervene or join in Plaintiff Obregon’s case and act as Plaintiff’s legal counsel. Aguilar was allegedly housed in a cell next to Obregon’s during the Spring of 2023. (Doc 42 at 1:16-21).

Aguilar claims that because he has already helped Plaintiff Obregon with his court filings, he has jus tertii standing, which would allow him to vicariously assert Plaintiff Obregon’s right to access the courts. *Id.* at 3:15-19.² Aguilar further asserts PCADC violated Plaintiff Obregon’s right of access-to-the-courts by changing the two inmates’ housing assignments to prevent Aguilar from assisting Plaintiff Obregon in legal matters,

² Doc 42 at p. 3:15-20 states: “When Obregon learned Aguilar possessed minius (sic) experience litigating prisoner actions in the Federal Courts, he requested and was provided with assistance from Aguilar. See Plaintiff’s most recent pleadings.” Doc 42, Aguilar’s Motion for Jus Tertii Standing, and Doc. 33, Plaintiff’s Motion to file Sur-Reply, are both handwritten and appear to have been written by the same hand. The court may take judicial notice of this fact under Rule 201(c)(2), Fed. R. Evid.

1 after counsel undersigned learned that Aguilar was providing legal advice to Plaintiff
2 Obregon. Doc 42 at 3:15-4:3.³

3 Aguilar’s motion further argues that he has Article III standing because he may
4 experience a “threatened injury” due to “uncertainty surrounding COVID-19 and the lack
5 of precedence over a myriad of injurious possibilities yet to manifest.” *Id.* at: 6:21-26.

6 Importantly, Aguilar’s motion admits:

- 7 1. Aguilar is barred from filing additional lawsuits in forma pauperis under the
8 three-strike rule contained in the Prison Litigation Reform Act (“PLRA”),
9 U.S.C. §28 1915(g). Doc 42 at 27:14 - 28:18.
- 10 2. Aguilar is engaging in the unauthorized practice of law. *Id.* at 3:13-4:14.
- 11 3. Aguilar was booked into PCADC on May 6, 2022, which was after the events
12 described by Plaintiff Obregon in the SAC which occurred during late
13 January and early February 2022. *Id.* at 2: 7-22; Doc 11 at p. 3.

14 **II. ARGUMENT**

15 Aguilar’s motion to intervene must be denied as an attempt to circumvent the PLRA,
16 an attempt to engage in the unauthorized practice of law, and for Aguilar’s lack of standing.
17 Further, the court must disregard irrelevant factual allegations raised by Aguilar relating to
18 Defendant Nanos’ motion for summary judgment to dismiss Plaintiff Obregon’s lawsuit
19 for his failure to exhaust his remedies under the PLRA.

20 **A. The PLRA prevents Aguilar from bringing his own lawsuit.**

21 Because Aguilar admits that three of his prior actions and appeals brought under the
22 PLRA were dismissed for failure to state a claim, Aguilar is ineligible to bring any claim
23
24

25 ³ Counsel undersigned affirmatively states under Rule 11, Fed. R. Civ. P. and under
26 penalty of perjury that she had no knowledge and did not participate in any housing
assignments at PCADC pertaining to either Plaintiff Obregon or Aguilar.

1 on his own behalf. U.S.C. §28 1915(g). His attempt at intervention here should be denied
2 as an attempt to circumvent the PLRA.

3 **B. Aguilar is engaged in the unauthorized practice of law.**

4 It is well-established that one inmate cannot represent another inmate in civil rights
5 lawsuits under 42 U.S.C. §1983. *Johns v. Cnty. of San Diego*, 114 F.3d 874, (9th Cir. 1997)
6 “[C]onstitutional claims are personal and cannot be asserted vicariously. While a non-
7 attorney may appear pro se on his own behalf, ‘[h]e has no authority to appear as an
8 attorney for others than himself.’” *Id.* at 876 (internal citations omitted.)

9 Aguilar admits that he is engaging in the unauthorized practice of law by citing to
10 Obregon’s “most recent pleadings,” which here would be Plaintiff Obregon’s Motion to
11 file a Sur-Reply (Doc 33). This amounts to Aguilar’s admission that he is acting as Plaintiff
12 Obregon’s counsel, which is further evidenced by the similarities contained in the
13 handwriting in both Doc 33 and Aguilar’s motion (Doc 42). Aguilar, a non-lawyer, cannot
14 be permitted to act as Plaintiff Obregon’s attorney.

15 **C. Aguilar Lacks Standing**

16 **i. Jus Tertii Standing is Inapplicable**

17 Aguilar cites *Johnson v. Avery*, 393 U.S. 483, 490 (1969) for the proposition
18 Plaintiff Obregon has “the right to receive Aguilar’s assistance” (Doc 42 at 10:26-28) This
19 is an incorrect reading of *Johnson*.

20 “In *Johnson*, the Tennessee prison system had a regulation barring inmates from
21 advising or assisting each other about legal matters. The Court invalidated that rule—not
22 because prisoners have a constitutional right to “the assistance of fellow inmates”—but
23 because Tennessee failed to provide any other mechanism for helping inmates who were
24 incapable of preparing legal papers themselves.” *Blaisdell v. Frappiea*, 729 F.3d 1237,
25 1244 (9th Cir. 2013) (internal citations omitted.) “[I]nmates have a right to receive legal
26 advice from other inmates only when it is a necessary means for ensuring a reasonably

1 adequate opportunity to present claimed violations of fundamental constitutional rights to
2 the courts.”) *Id.* at 729 F.3d 1237, 1245 (9th Cir. 2013) (quoting *Lewis v. Casey*, 518 U.S.
3 at 350–51, 116 S.Ct. 2174 (1996)).

4 At no time has Plaintiff Obregon alleged that he did not have adequate access to the
5 court and the court record here shows the reverse is true. Plaintiff Obregon demonstrated
6 his own ability to access the court without the help of other inmates by previously filing a
7 complaint (Doc 1), a second amended complaint (Doc 11), and the original responsive
8 documents to Defendant’s motion for summary judgment. (Docs 30-31.1) Accordingly,
9 Plaintiff Obregon is not entitled to Aguilar’s assistance.

10 The Ninth Circuit in *Blaisdell*, *supra*, has further observed that access-to-courts
11 rights are also “tethered to principles of Article III standing.” *Blaisdell* at 729 F.3d 1237,
12 1244 (citation omitted.) Here, Plaintiff Obregon and Aguilar may each have his own right
13 to access to the court, but “they cannot vicariously assert that protection on each other’s
14 behalf.” *Id.* (citation omitted.) Thus, Aguilar’s motion fails as a matter of law.

15 **ii. Aguilar lacks Article III standing.**

16 Aguilar’s motion also argues that Aguilar has his own U.S. Const. Art. III standing
17 to join in this lawsuit because he may experience a “threatened injury” due to “uncertainty
18 surrounding COVID-19 and the lack of precedence over a myriad of injurious possibilities
19 yet to manifest.” (Doc 42 at: 6:21-26). However, this is a conclusory statement about an
20 unrealized injury that is insufficient to establish Article III standing.

21 “For there to be a judicially cognizable injury, ‘the party before [the court] must
22 seek a remedy for a personal and tangible harm.’” *Id.* (cleaned up.) *See also: Bernhardt v.*
23 *Cnty. of Los Angeles*, 279 F.3d 862, 868–69 (9th Cir. 2002) (citations omitted.) (“To satisfy
24 Article III’s standing requirements, a plaintiff must show (1) [he] has suffered an “injury
25 in fact” that is (a) concrete and particularized and (b) actual or imminent, not conjectural
26 or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant;

1 and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a
2 favorable decision.”)

3 Aguilar, who was not even an inmate in PCADC when the allegations underlying
4 the SAC occurred, cannot show any personal and tangible injury in fact that is traceable to
5 Defendant Nanos’ actions related to Plaintiff Obregon. Moreover, even if Aguilar could
6 demonstrate such a personal and tangible injury, a positive result in Plaintiff Obregon’s
7 case would not redress any alleged harm to Aguilar because Plaintiff Obregon’s lawsuit
8 seeks only monetary relief for himself and not for any other relief that could possibly
9 benefit Aguilar. Accordingly, Aguilar lacks standing to join or intervene in Plaintiff
10 Obregon’s lawsuit.

11 **iii. Rules 20, 21, & 24, Fed. R. Civ. P. prohibit Aguilar’s joinder.**

12 **a. Aguilar cannot join under Rules 20 or 21.**

13 Aguilar is not a person who may be joined under Rule 20(a)(1)(A) because he asserts
14 no right to relief “arising out of the same transaction, occurrence, or series of transactions
15 or occurrences...” Aguilar admits that he was not yet even an inmate when Plaintiff
16 Obregon sued for contracting Covid in February of 2022; thus, he could not have been in
17 the same pod with Plaintiff Obregon when he allegedly contracted Covid. It would be
18 impossible for any right asserted by Aguilar to arise “out of the same transaction,
19 occurrence, or series of transactions or occurrences” within the meaning of Rule 20(a).

20 Aguilar is also not the proper person to move for joinder. Under Rule 20, “... only
21 a person or entity that is already a party may make a motion for joinder.” *Bourgeois v.*
22 *Vanderbilt*, 251 F.R.D. 368, 370 (W.D. Ark. 2008) (cleaned up.) Because Aguilar is not a
23 party to the present lawsuit, he cannot use Rule 20(a) to join in Plaintiff Obregon’s lawsuit.

24 Rule 21 deals with misjoinder and nonjoinder of parties. As with Rule 20, Rule 21
25 is also inapplicable here. Rule 21 must be read in conjunction with Rules 18-20 and governs
26 only when one of those Rules have been violated. *United States v. Com. Bank of N. Am.*,

1 31 F.R.D. 133, 135 (S.D.N.Y. 1962) *citing*, 3 Moore's Federal Practice, 2902, 2904 (2d ed.
2 1948). Aguilar was not inadvertently or mistakenly omitted from this lawsuit, and he has
3 failed to show that he is entitled to join under Rules 18-20. Therefore, Aguilar has no right
4 to join under Rule 21.

5 Similarly, Aguilar may not attempt to intervene under Rule 24(b), Fed. R. Civ. P.
6 A court may permit Aguilar's intervention if Aguilar were to assert "a conditional right to
7 intervene by a federal statute..." or where he "shares with the main action a common
8 question of law or fact." Aguilar makes neither assertion. He cites no conditional right to
9 intervene, and for the reasons stated above, Aguilar shares no common question of law or
10 fact with Plaintiff Obregon. Thus, Aguilar should also be denied the court's permission to
11 intervene under Rule 24.

12 **III. COURT MAY NOT CONSIDER AGUILAR'S ALLEGATIONS**
13 **REGARDING THE PCADC'S GRIEVANCE PROCEDURE**

14 Aguilar's motion (Doc 42) contains factual allegations about Aguilar's experience
15 with PCADC's grievance procedure. *See* Doc 42 at 24:12-26:13. Aguilar's experience with
16 PCADC's grievance procedure is irrelevant to Plaintiff Obregon's own well-documented
17 experience. Therefore, Aguilar's additional facts are inadmissible under Rule 104 (b) Fed.
18 R. Evid. These additional facts should be disregarded by the court in its consideration of
19 Defendant Nanos' motion for summary judgment for Plaintiff Obregon's failure to exhaust
20 administrative remedies as a prerequisite to litigation under the PLRA (Doc 19), which is
21 still pending before this court.

22 ///

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LAURA CONOVER
PIMA COUNTY ATTORNEY
CIVIL DIVISION

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IV. CONCLUSION

For the foregoing reasons, Defendant Nanos respectfully requests that the Court deny Aguilar’s Motion for *Jus Tertii* Standing and disregard as irrelevant Aguilar’s additional factual allegations contained in that motion.

RESPECTFULLY SUBMITTED July 11, 2023.

LAURA CONOVER
PIMA COUNTY ATTORNEY

By: /s/Joey Flynn
Joey A. Flynn
Deputy County Attorney

LAURA CONOVER
PIMA COUNTY ATTORNEY
CIVIL DIVISION

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Additionally, copies mailed on this same date to the following recipient:

Mario Armando Obregon
BN 210304053
Pima County Adult Detention Center
P.O. Box 951
Tucson, AZ 85702
Pro Se Plaintiff

Michael Edward Aguilar
BN 220506002
Pima County Adult Detention Center
P.O. Box 951
Tucson, AZ 85702
Potential Pro Se Intervenor

By: /s/Sandy Tokin

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APPENDIX I

STATE V. AGUILAR
NO. CR 20221602-001
MOTION TO WITHDRAW
AUGUST 23, 2023

1 **LAW OFFICE OF JACOB AMARU**
2 530 S. Main Ave., Suite B
3 Tucson, AZ 85701
4 Phone: 520-465-6968/ Fax 866-651-6248
5 *State Bar No. 022333*
6 *PCBA No. 65715*
7 jake@defenselawtucson.com
8 *Attorney for Michael Aguilar*

9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
10 **IN AND FOR THE COUNTY OF PIMA**

11 THE STATE OF ARIZONA,) Case No. CR20221602-001
12)
13 Plaintiff,) **MOTION TO WITHDRAW**
14)
15 vs.) Honorable Judge Marnier
16)
17 MICHAEL AGUILAR,) Division 10
18)
19 Defendant.)
20)
21)

22 COMES NOW JACOB M. AMARU, attorney for Michael Aguilar, and pursuant to
23 Rule 6.3, Arizona Rules of Criminal Procedure, respectfully applies to the Court for an
24 order permitting him to withdraw as counsel of record for the Defendant, for the
25 following reasons:

26 The relationship between the undersigned and the Defendant is irreparably broken.
27 Undersigned is the fifth or sixth attorney on this case and has made his absolute best
28 efforts to work with Mr. Aguilar. This has including using multiple people from his
office to ensure that Mr. Aguilar has regular visits at the Jail.

In January of 2023, Mr. Aguilar made multiple claims of ineffective assistance of
counsel and ethical misconduct that were unfounded and later withdrawn by Mr. Aguilar.

1 Undersigned made a meaningful effort to repair the relationship but Mr. Aguilar
2 continues to persevere and to make claims that make a working relationship impossible.
3

4 Due to the sensitive nature of the specific details of the conflict between attorney
5 and client, if the Court requires additional information; defense counsel respectfully
6 requests that the hearing on the Motion Withdrawn be heard Ex-Parte. The State has no
7 objection to this request.
8

9 RESPECTFULLY SUBMITTED this 23 day of AUGUST, 2023.

10 **LAW OFFICE OF JACOB AMARU**

11 
12
13 _____
14 JACOB M. AMARU, ESQ.
15 *Attorney for Michael Aguilar*

16 ORIGINAL of the foregoing delivered/
17 mailed this 23 day of AUGUST 2023, to:

18 Clerk of the Court
19 Pima County Superior Court
20 110 West Congress Street
21 Tucson, Arizona, 85701

22 Honorable Judge Marner
23 Division 10
24 Pima County Superior Court

25 Dawn Aspacher, ESQ.
26 Pima County Attorney's Office
27 32 North Stone Avenue
28 Tucson, Arizona, 85701

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APPENDIX ~

ACABILAR v. THORWELL
CV 19-00359-TLC-JSZ
RESPONSE TO MOTION FOR
PORTIONS OF HABEAS
RECORD TO FILE RULE
60(b) MOTION FOR
RELIEF FROM JUDGMENT
AUGUST 7, 2023

1 KRISTIN K. MAYES
ATTORNEY GENERAL
2 (FIRM STATE BAR NO. 14000)

3 AMY M. THORSON
ASSISTANT ATTORNEY GENERAL
CRIMINAL APPEALS SECTION
4 400 WEST CONGRESS, BLDG. S-215
TUCSON, ARIZONA 85701-1367
5 TELEPHONE: (520) 628-6520
Amy.Thorson@azag.gov
6 E-mail: CADocket@azag.gov
(State Bar Number 20705)
7 ATTORNEYS FOR RESPONDENTS

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10
11 Michael Edward Aguilar,
12 Petitioner,
13 -vs-
14 Ryan Thornell,¹ et al.,
15 Respondents.

CIV 19-00359-TUC-JGZ

RESPONSE TO MOTION FOR
PORTIONS OF HABEAS RECORD
TO FILE RULE 60(B) MOTION
FOR RELIEF FROM JUDGMENT

16 Respondents hereby respond to Petitioner Michael Aguilar’s “Motion for
17 Portions of the Habeas Record to File Rule 60(b) Motion for Relief from
18 Judgment,” docketed on July 27, 2023. (Dkt. # 107). Aguilar seeks a copy of his
19 habeas petition and a copy of the docket, apparently in preparation for filing a
20 motion for relief from the judgment. (*Id.* at 9.) To the extent Aguilar seeks this
21 information from Respondents, his motion should be denied, for the reasons given
22 below.

23 This Court has dismissed Aguilar’s habeas petition, and the Ninth Circuit
24 has denied his request for a certificate of appealability. (Dkt. # 106.) This Court
25

26 ¹ Ryan Thornell is the new Director of the Arizona Department of Corrections,
27 Rehabilitation, and Reentry, and should be substituted into the caption under Rules
28 1(a)(1) and 12 of the Rules Governing Section 2254 Cases and Federal Rule of
Civil Procedure 25(d).

1 has previously denied Aguilar's request for a copy of his habeas petition but
2 informed him that he could contact the Clerk's Office to order copies and that
3 copies of filings are available online. (Dkt. # 90.)

4 The documents Aguilar requests are not the type of documents that
5 Respondents are obligated to provide under the Federal Rules of Civil Procedure.
6 But even if they were, Aguilar would have to show good cause for discovery,
7 which he has not done. *See* Rule 6(a), Rules Governing § 2254 Cases. Thus, this
8 Court should deny Aguilar's motion.

9 RESPECTFULLY SUBMITTED this 7th day of August, 2023.

10 MARK BRNOVICH
11 ATTORNEY GENERAL

12 J.D. Nielsen
13 Habeas Unit Chief

14 S/AMY M. THORSON
15 ASSISTANT ATTORNEY GENERAL

16 ATTORNEYS FOR RESPONDENTS

17 I hereby certify that on August 7, 2023, I served the attached document by mail on
18 the following, who are not registered participants of the ECF System.

19 Petitioner, Pro Se
20 Michael Edward Aguilar
21 1-G-32
22 #220506002
PIMA COUNTY ADULT DETENTION CENTER
P.O. BOX 951
TUCSON, AZ 85702

23
24 s/I. SCHMIT

25
26
27 Document No. TP7CWWFL0EIRIQ
28

1 no.

2 _____
3 IN THE SUPREME COURT OF THE UNITED STATES

4 _____
5 MICHAEL EDUARDO AGUILAR - PETITIONER - APPLICANT

6 _____
7 vs.

8 _____
9 ARIZONA DEPARTMENT OF CORRECTIONS
10 REHABILITATION AND REENTRY - RESPONDENTS
11 _____

12 MOTION REQUESTING THE COURT TO ASSIST
13 PETITIONER - APPLICANT MICHAEL EDUARDO AGUILAR
14 TO EXECUTE SERVICE IN COMPLIANCE WITH
15 SUPREME COURT RULE 29
16 _____

17 APPEAL FROM THE UNITED STATES COURT OF APPEALS
18 FOR THE NINTH CIRCUIT
19 _____

20 MICHAEL AGUILAR
21 4C08 #220500002
22 P.O. BOX 951
23 TUCSON, ARIZONA
24 85702
25
26
27
28

1 Petition For Assistance With Service

2
3 SENIOR DISTRICT JUDGE HONORABLE RANKER
4 C. COLLINS WILL VERIFY FOR THE COURT, WHERE
5 PETITIONER-APPLICANT MICHAEL EDUARDO AGUILAR
6 IS PRESENTLY DETAINED AT THE PIMA COUNTY A-
7 DULT DETENTION COMPLEX IN TUCSON, ARIZONA,
8 THERE EXISTS NO HARD CORING CAPABILITIES, WHICH
9 MAKES IT IMPOSSIBLE FOR AGUILAR TO COMPLY WITH
10 SUPREME COURT RULE 29.5(C). THE HONORABLE
11 RANKER C. COLLINS MAY BE REACHED AT (520)
12 205-4540.

13
14 ARIZONA ASSISTANT ATTORNEY GENERAL ARLY
15 H. THORSON IS COUNSEL OF RECORD. SEE APPENDIX J.
16 Hs. THORSON WILL SUBSTANTIATE SERVICE BY THOSE
17 HELD IN THE PIMA COUNTY ADULT DETENTION COM-
18 PLEX IS EXECUTED THROUGH THE FILING OF ORIGINAL
19 PLEADINGS IN THE UNITED STATES DISTRICT COURT
20 FOR THE DISTRICT OF ARIZONA, TUCSON, ALONE.

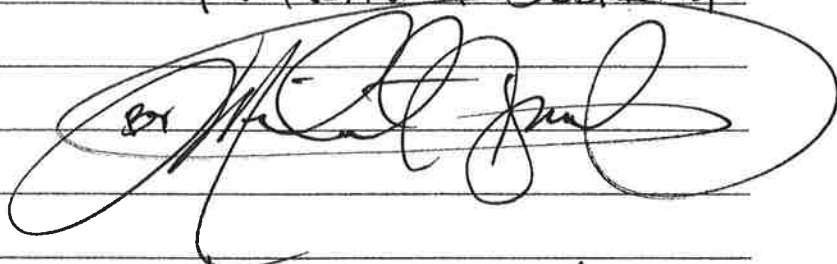
21
22 AGUILAR BEGS FOR THE COURT TO EXECUTE
23 SERVICE ON HIS BEHALF. FURTHERMORE, AGUILAR BEGS
24 FOR THE COURT TO PROVIDE HIM WITH A COPY OF THE
25 SUPRA APPLICATION FOR AN EXTENSION OF TIME TO
26 FILE A PETITION FOR WRIT OF CERTIORARI. ALL
27 DOCUMENTS INCORPORATED AS APPENDICES ARE ONLY-
28 COPIES. Hs. THORSON'S INFORMATION FOR SERVICE IS AT

1 APPENDIX J.

2
3 AGUILAR PRAYS THE COURT NOW REALIZES
4 A DECADE AGO IN TUCSON, ARIZONA, PLANTED EVIDENCE
5 AND DESTROYED EXCULPATORY PHONE EVIDENCE LED
6 TO AN INNOCENT MAN SPENDING ALMOST A DECADE OF
7 HIS LIFE IN PRISON. HOWEVER, AND MOST RECENTLY,
8 THE UNITED STATES DISTRICT COURT FOR THE DIS-
9 TRICT OF ARIZONA, TUCSON, AND THE UNITED STATES
10 COURT OF APPEALS FOR THE NINTH CIRCUIT COVERED-
11 UP THE STATE COURT MANIFEST MISCARRIAGE OF JUSTICE.
12 FOR A FULL OVERVIEW OF THE CASE WITH INSIGHT, SEE
13 IN RE MICHAEL EDWARD AGUILAR, NO. 22-70207 AT
14 DOCKET ENTRY NO. 1 (9TH CIR.).

15
16 DATED: AUGUST 30, 2023.

17
18 RESPECTFULLY SUBMITTED

19
20 BY 

21
22
23 MICHAEL EDWARD AGUILAR