UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Gilda Ordonez,
Petitioner
-vs-
Eric Rokosky, et al.,
Respondents.

CV-26-2664-PHX-DWL (JFM)

Report & Recommendation on Petition for Writ of Habeas Corpus

I. MATTER UNDER CONSIDERATION

On April 17, 2026 Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (Doc. 1) challenging her detention pending removal. The matter is now ripe for consideration. Accordingly, the undersigned makes the following proposed findings of fact, report, and recommendation pursuant to Rule 8(b), Rules Governing Section 2254 Cases, Rule 72(b), Federal Rules of Civil Procedure, 28 U.S.C. § 636(b) and Rule 72.2(a)(2), Local Rules of Civil Procedure.

II. RELEVANT BACKGROUND

Petitioner filed her Petition for Writ of Habeas Corpus (Doc. 1) while incarcerated at the time in the Eloy Detention Center, Eloy, Arizona. The Petitioner alleges she is a native of Cuba who entered the United States on May 6, 1980 as a legal permanent resident. She challenges her continued detention since August 9, 2025, awaiting a final order of removal. Petitioner's claim relies on the ruling in *Demore v. Kim*, 538 U.S. 510 (2003). (*See* Service Order, Doc. 3 at 2.)

The Court's Notice of Assignment, issued April 17, 2026, warned Petitioner that her case could be dismissed if she did not file a notice of change of address if her address changed. (Doc. 2-1 at 3.) Attached was a blank form of Notice of Change of Address.

(Doc. 2-1 at 8.) Petitioner's copy of that Notice was not returned undeliverable.

The Court's Service Order entered April 22, 2026 (Doc. 3) similarly warned Petitioner that failure to file a Notice of Change of Address immediately upon any such change "may result in the dismissal of this action." (*Id.* at 2.)

On May 4, 2026, mail from the Clerk of the Court to Petitioner was returned undeliverable, reflecting that Petitioner was "Not In Custody." (Doc. 9.) The returned mail was forwarding the Service Order filed April 22, 2026 (Doc. 3). Searches on May 7, 2026 and again on May 28, 2026 on the Immigration and Customs Enforcement Online Detainee Locator System, searching by Petitioner's reported A number and birth country of Cuba, and by her birth country and name, does not reflect a matching detainee record.

On May 7, 2026, the Court issued an Order to Show Cause (Doc. 12) giving Petitioner through May 21, 2026 to either: (1) file a notice of change of address; or (2) show cause why her Petition should not be dismissed for failure to prosecute in light of his failure to file a Notice of Change of Address as previously ordered. A copy of that order was mailed to Petitioner at her address of record but has been returned undeliverable, reflecting Petitioner was "Not in Custody" (Doc. 12). Petitioner has neither responded nor filed a notice of change of address.

III. APPLICATION OF LAW TO FACTS

It is the duty of a party who has filed a pro se action to keep the Court apprised of his or her current address and to comply with the Court's orders in a timely fashion. *See* LRCiv 83.3(d). This Court does not have an affirmative obligation to locate Petitioner. "A party, not the district court, bears the burden of keeping the court apprised of any changes in his mailing address." *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir. 1988). Petitioner's failure to keep the Court informed of her new address constitutes failure to prosecute.

Petitioner has failed to prosecute this action, and dismissal is therefore within the discretion of the Court. *Link v. Wabash R. Co., supra.* Here, Petitioner appears to have

abandoned this action upon her release from original custody.

"The authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Link v. Wabash R. Co.*, 370 U.S. 626, 630-631 (1962). "Accordingly, when circumstances make such action appropriate, a District Court may dismiss a complaint for failure to prosecute even without affording notice of its intention to do so or providing an adversary hearing before acting. Whether such an order can stand on appeal depends not on power but on whether it was within the permissible range of the court's discretion." *Id.* at 633.

In determining whether an abuse of discretion has occurred, a number of factors are relevant, including the litigant's diligence, the trial court's need to manage its docket, the danger of prejudice to the party suffering the delay, the availability of alternate sanctions, and the existence of warning to the party occasioning the delay. *See, e.g., Hamilton v. Neptune Orient Lines, Ltd.*, 811 F.2d 498, 499 (9th Cir.1987).

Despite having been given specific notice (Notice of Assignment, Doc. 2) of her obligation to file a notice of change of address, and the issuance of two orders (Docs. 3, 10) specifically directing her to do so, Petitioner has failed to keep her current address on file with the Court. Further delay to the Court and to Respondents is not warranted and likely, at some point to result in prejudice. Also, Petitioner has received adequate warning of the potential of such action, and in light of Petitioner's refusal to respond to the Court, less onerous sanctions will be ineffective.

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED that Petitioner's Petition for Writ of Habeas Corpus, filed April 17, 2026 (Doc. 1) and this case be **DISMISSED WITHOUT PREJUDICE** for failure to prosecute.

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V. EFFECT OF RECOMMENDATION

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment.

However, pursuant to Rule 72(b), Federal Rules of Civil Procedure, the parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the Court. *See also* Rule 8(b), Rules Governing Section 2254 Proceedings. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any findings or recommendations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the issues, *see United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(en banc), and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the recommendation of the Magistrate Judge, *Robbins v. Carey*, 481 F.3d 1143, 1146-47 (9th Cir. 2007).

In addition, the parties are cautioned Local Civil Rule 7.2(e)(3) provides that "[u]nless otherwise permitted by the Court, an objection to a Report and Recommendation issued by a Magistrate Judge shall not exceed ten (10) pages."

Dated: May 29, 2026

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James F. Metcalf
United States Magistrate Judge