UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Henry Alexander Berrios,
Petitioner
-vs-
Eric Rokosky,
Respondent.

CV-26-2786-PHX-SHR (JFM)

Report & Recommendation on Petition for Writ of Habeas Corpus

I. MATTER UNDER CONSIDERATION

Petitioner has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Doc. 1). The Petitioner's Petition 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 FACTUAL & PROCEDURAL BACKGROUND

Petitioner is a citizen and native of El Salvador who entered the United States without inspection at an unknown date and location. In 2008 he was convicted in the Eastern District of Virginia of various non-immigration federal criminal offenses committed in 2005, and was sentenced to 243 months in federal prison.

On release, on April 16, 2025, Petitioner was taken into immigration custody, and eventually, on December 2, 2025, was charged with being removable. On March 11, 2206, Petitioner's various asylum and other requests for relief were denied and he was ordered removed to El Salvador. Petitioner appealed his removal order to the Board of Immigration Appeals (BIA), which appeal remains pending.

On April 22, 2026, Petitioner filed the instant habeas petition.

> Petitioner alleges he has been in Immigration and Customs Enforcement custody for nearly six months and, because he has appealed the Immigration Judge's denial of his asylum application, will not be removed in the reasonably foreseeable future. Petitioner contends his detention is prolonged and seeks release on bond "or with an ankle monitor, or any other form of relief allowed by the Court and ICE."

(Service Order 4/24/26, Doc. 4 at 2.)

Respondents filed a response on June 22, 2026 (Doc. 15) arguing that Petitioner is mandatorily detained as a multiple serious offender and thus mandatorily detained pursuant to 8 U.S.C. § 1226(c) and 8 U.S.C. § 1182(a)(2)(B). Respondents further argue that Petitioner's prolonged detention does not justify release because it is not indefinite, simply prolonged by Petitioner's ongoing immigration appeal.

Petitioner has not replied.

III. APPLICATION OF LAW TO FACTS

Petitioner proffers nothing to show that his current detention is not mandatory under the statutes.

Petitioner implicitly relies on the standard under *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The *Zadvydas* Court held that for deportable aliens, who had effected an entry, post-removal order detention without a bond hearing was limited, and created a six month window in which continued detention was presumptively constitution. In *Xi v. U.S. I.N.S.*, 298 F.3d 832, 837 (9th Cir. 2002), the Ninth Circuit recognized *Mezei* describes the limits of due process rights of arriving aliens regarding detention, but found *Zadvydas*'s constitutional construction of § 1231(a)(6) to apply to all post-removal order aliens, including arriving aliens.

Of course, here, Petitioner is not being detained post-removal order pursuant to § 1231(a)(6). Rather, his removal is still being adjudicated administratively before the BIA. *See* 8 U.S.C. § 1231(a)(1)(B) (removal period does not begin until "removal becomes administratively final"); *Johnson v. Guzman Chavez*, 594 U.S. 523, 534 (2021) (removal order not administratively final until BIA completes review or time for seeking such review expires). Accordingly, the statutory provision construed by *Zadvydas*, and applied

in *Xi*, has no application to Petitioner, and the Petition is without merit.

IV. RECOMMENDATION

IT IS THEREFORE RECOMMENDED Petitioner's Petition for Writ of Habeas Corpus (Doc. 1) be **DENIED**

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: July 16, 2026

James F. Metcalf
United States Magistrate Judge

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