

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

ROBERT ANTHONY RUIZ,)	
)	
Petitioner,)	2:04-cv-00918 JWS-DKD
vs.)	
)	ORDER FROM CHAMBERS
DORA B. SCHRIRO, <i>et al.</i> ,)	
)	[Re: Report at docket 44]
Respondents.)	
)	

I. MATTER PRESENTED

Following an appeal, this matter was remanded by the Ninth Circuit to consider whether petitioner might be entitled to equitable tolling. Following supplemental briefing by the parties, Magistrate Judge Duncan found Ruiz’s arguments in support of equitable tolling persuasive. Judge Duncan recommends that respondents be required to respond to the merits of Ruiz’s habeas petition at docket 1. No objections have been filed to the magistrate judge’s report.

II. STANDARD OF REVIEW

The district court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.”¹ When reviewing a magistrate judge’s report and recommendation in a case such as this one, the district court conducts *de*

¹28 U.S.C. § 636(b)(1).

novo review of all conclusions of law,² and any findings of fact to which objections have been made.³ Uncontested findings of fact are reviewed for clear error.⁴

III. DISCUSSION

Having reviewed the file and applied the standard of review articulated above, this court concludes that the magistrate judge has correctly found the facts and applied the law. Under all the circumstances, petitioner's argument that he is entitled to equitable tolling is persuasive. That being so, the matter should go forward on the merits.

IV. CONCLUSION

For the reasons above, this court adopts Magistrate Judge Duncan's recommended findings and conclusions. Based thereon, **IT IS ORDERED:** Respondents shall respond to the petition at docket 1 within 30 days from the date of this order. This matter remains on referral to Magistrate Judge Duncan. The referral includes any motion respondents might make seeking to expand the 30-day time frame set out in this order.

DATED this 14th day of September 2010.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE

²*Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989), *overruled on other grounds by Simpson v. Lear Astronics Corp.*, 77 F.3d 1170, 1174 (9th Cir. 1996).

³28 U.S.C. § 636(b)(1).

⁴*Taberer v. Armstrong World Industries, Inc.*, 954 F.2d 888, 906 (3d Cir. 1992).