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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Narinder Singh,

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No. CV-06-2194-PHX-MHM

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Petitioner,

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**ORDER**

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vs.

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Phillip Crawford, ICE Field Office  
Director, et al.,

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Respondents.

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Petitioner *pro se*, Narinder Singh ("Petitioner"), filed a Motion for Injunctive and Declaratory Relief on April 1, 2009. (Dkt. #32). Phillip Crawford ("Respondent") filed a Response on June 25, 2009 (Dkt. #35) and Petitioner filed a Reply on July 22, 2009 (Dkt. #39). Magistrate Judge Glenda E. Edmonds issued a Report and Recommendation on August 3, 2009 (Dkt. #40), which recommended that the Court deny the Motion for Injunctive and Declaratory Relief. Petitioner filed a written objection to the Report and Recommendation on September 2, 2009. (Dkt. #41).

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**BACKGROUND**

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The relevant facts, as stated in Magistrate Judge Edmonds' Report and Recommendation, are as follows.

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Petitioner is a native and citizen of India who entered the United States using a false passport on an unknown date. (Dkt. #35, p. 2). On August 7, 2003, he was convicted of

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1 spousal battery in violation of California Penal Code Section 242/243(e). Id. On November  
2 10, 2004, the Department of Homeland Security issued Petitioner a Notice to Appear,  
3 charging him with removability because he (1) was convicted of a crime of moral turpitude  
4 and (2) was an alien present without inspection. Id. at pp. 2-3. At a hearing before an  
5 Immigration Judge, petitioner admitted to entering the country using a false Swedish passport  
6 and to convictions for petty theft in 1992 and theft of personal property in 1990. Id. at p. 3.  
7 The Immigration Judge ordered petitioner removed to India. Id.

8 Petitioner appealed to the Board of Immigration Appeals and the Board dismissed the  
9 appeal on June 30, 2005. (Dkt. #35, p. 3). Petitioner then filed a petition for review with the  
10 Ninth Circuit Court of Appeals, which ordered a stay of removal. Id. The government  
11 conducted custody reviews in September 2005 and October 2006. Each time, the  
12 government decided to continue Petitioner's detention. Id. at pp. 3-4.

13 Petitioner filed a Petition for Writ of Habeas Corpus on September 14, 2006. (Dkt.  
14 #1). This Court denied the Petition with leave to amend. (Dkt. #8). Petitioner then filed an  
15 Amended Petition for Writ of Habeas Corpus on December 19, 2006, arguing that he was  
16 being denied meaningful custody review and that his detention under 8 U.S.C. § 1226(c) was  
17 unlawful. (Dkt. #10). On August 7, 2007, this Court granted Petitioner's Habeas Petition  
18 and ordered Respondent to

19 release Petitioner from custody under an order of supervision, or in the  
20 alternative, that the government, within 60 days of the date this order is filed,  
21 provide a hearing to Petitioner before an immigration judge with the power to  
grant him bail unless the government establishes that he is a flight risk or will  
be a danger to the community.

22 (Dkt. # 24).

23 On August 13, 2007, an Immigration Judge granted Petitioner bond in the amount of  
24 \$10,000. (Dkt. #35, p. 5). Petitioner posted bond and was released on August 15, 2007. Id.  
25 The Board of Immigration Appeals dismissed Petitioner's appeal for a second time on  
26 December 21, 2007. Id. Petitioner filed his second petition for review with the Ninth Circuit  
27 Court of Appeals on January 7, 2008. Id. The Court of Appeals once again ordered a stay  
28 of removal. Id. On August 13, 2008, the Ninth Circuit Court of Appeals denied the petition

1 and remanded the case to the Board of Immigration Appeals. Id. The Court of Appeals  
2 issued its mandate on October 8, 2008. (Dkt. #35, p. 6).

3 The government took Petitioner into custody on December 11, 2008. (Dkt. #35, p.  
4 6). A Motion to Reopen and Reconsider was filed by Petitioner, but it was denied by the  
5 Board of Immigration Appeals. Id. On January 21, 2009, Petitioner filed a third petition for  
6 review with the Ninth Circuit Court of Appeals. Id. Once again, the Court of Appeals  
7 ordered a stay of removal. Id. The stay of removal was ordered in place until the Mandate  
8 issued.

9 The government issued a letter on March 17, 2009, notifying Petitioner of its decision  
10 to continue detention pending removal. (Dkt. #35, p. 6). On April 9, 2009, an Immigration  
11 Judge held a custody redetermination hearing and found that the Immigration Court lacked  
12 jurisdiction to set a bond. (Dkt. #35, p. 6). The Ninth Circuit issued its Mandate on January  
13 14, 2010, denying the petition for review which challenged the Board of Immigration  
14 Appeal's decision to deny Petitioner's Motion to Reopen.

15 Petitioner's instant Motion for Injunctive and Declaratory Relief was filed on April  
16 1, 2009. (Dkt. #32).

### 17 **STANDARD OF REVIEW**

18 A district court must review the legal analysis in a Magistrate Judge's Report and  
19 Recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C). In addition, a district court must  
20 review the factual analysis in the Report and Recommendation *de novo* for those facts to  
21 which objections are filed. See United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.  
22 2003) (en banc); see also 28 U.S.C. § 636(b)(1)(C) ("A judge of the court shall make a *de*  
23 *novo* determination of those portions of the report or specified proposed findings or  
24 recommendations to which objection is made."). "Failure to object to a magistrate judge's  
25 recommendation waives all objections to the judge's findings of fact." Jones v. Wood, 207  
26 F.3d 557, 562 n. 2 (9th Cir. 2000).

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1 **DISCUSSION**

2 Petitioner contends that this Court’s prior judgment is enforceable against the  
3 government for his current detention and moves that this Court issue an order instructing  
4 Respondent to release Petitioner from custody while his current appeal is pending before the  
5 Ninth Circuit. The Court construes Petitioner’s Motion for Injunctive and Declaratory Relief  
6 as though it were a motion to enforce judgment. See, e.g., Gilbert v. Johnson, 490 F.2d 827,  
7 829 (5th Cir. 1974); Zuniga v. Wrigley, 2007 WL 3340841, \*1 (E.D. Cal. 2007).

8 First, the Court notes that Petitioner’s appeal is no longer pending because the Ninth  
9 Circuit issued its mandate on January 14, 2010. Accordingly, Petitioner’s request is moot.  
10 Nonetheless, the Court will address the Magistrate Judge’s Report and Recommendation, as  
11 well as Petitioner’s objections.

12 **A. Report and Recommendation**

13 When this Court granted Petitioner’s habeas petition in 2007, he was being held  
14 pursuant to 8 U.S.C. § 1226. Section 1226 governs the initial apprehension and detention  
15 of aliens to determine whether they should be removed from the United States. Once an alien  
16 has been ordered removed, he is detained under 8 U.S.C. § 1231. Section 1231 governs the  
17 detention of aliens who have been ordered removed. The removal period begins on either  
18 “[t]he date the order of removal becomes final” or “[i]f the removal order is judicially  
19 reviewed and if the court orders a stay of removal of the alien, the date of the court’s final  
20 order.” 8 U.S.C. § 1231(a)(1)(B)(i)&(ii).

21 Singh is now in the removal period and being held pursuant to section 1231 because  
22 his order of removal became administratively final on October 8, 2008, when the Ninth  
23 Circuit issued its mandate. Singh is no longer being held unlawfully pursuant to section  
24 1226. He is in the removal period and is being detained pursuant to section 1231. This  
25 Court’s previous order granting habeas relief to Petitioner no longer applies. Accordingly,  
26 this court must deny and dismiss Petitioner’s Motion for Injunctive and Declaratory Relief.

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1 **B. Petitioner’s Objections**

2 In his objections to the Magistrate Judge’s Report and Recommendation, Petitioner  
3 requests that this Court order the government to return Petitioner’s \$10,000 surety bond.  
4 This issue was not raised in Petitioner’s Motion for Injunctive Relief. “[A] district court has  
5 discretion, but is not required, to consider evidence presented for the first time in a party’s  
6 objection to a magistrate judge’s recommendation.” United States v. Howell, 279 F.3d 615,  
7 621 (9th Cir. 2000). However, “the district court must actually exercise its discretion, rather  
8 than summarily accepting or denying the motion.” Id. at 622.

9 Petitioner argues that because he posted a \$10,000 bond and complied with all of the  
10 terms and conditions of release, his bond should not have been revoked and he should not  
11 have been taken into custody. Although this Court will not address Petitioner’s bond  
12 revocation claim, it will address whether he properly was taken into custody. Petitioner  
13 concedes that the statutory authority for his detainment shifted from section 1226 to section  
14 1231, but he asserts that “the status quo should remain.” Petitioner is mistaken. Unlike  
15 section 1226, which states that “an alien *may* be arrested and detained pending a decision on  
16 whether the alien is to be removed,” section 1231 states that “[d]uring the removal period,  
17 the Attorney General *shall* detain the alien.” 8 U.S.C. § 1226(a) (emphasis added); 8 U.S.C.  
18 §1231(a)(2) (emphasis added). Accordingly, per the statute, the status quo must change.

19 However, in regards to Petitioner’s \$10,000 surety bond revocation, it would be  
20 inappropriate for the Court to address his claim. First, as stated in Howell, “[t]o require a  
21 district court to consider evidence not previously presented to the magistrate judge would  
22 effectively nullify the magistrate judge’s consideration of the matter and would not help to  
23 relieve the workload of the district court.” 279 F.3d at 622. Additionally, “[i]t would be  
24 fundamentally unfair to permit a litigant to set its case in motion before the magistrate, wait  
25 to see which way the wind was blowing, and--having received an unfavorable  
26 recommendation--shift gears before the district judge.” Id. (quoting Paterson-Leitch Co., Inc.  
27 v. Mass. Mun. Wholesale Elec. Co., 840 F.2d 985, 991 (1st Cir. 1988)). There is no evidence  
28 to suggest that Petitioner was unable to assert this claim in his original Motion for

1 Declaratory and Injunctive Relief. Finally, and perhaps most importantly in the present case,  
2 the lack of information and briefing by the parties on this specific topic prevents the Court  
3 from addressing the issue. Thus, based on the unique circumstances present in this case, the  
4 Court chooses to exercise its discretion in refusing to allow Petitioner to present this claim  
5 for the first time in his objections.

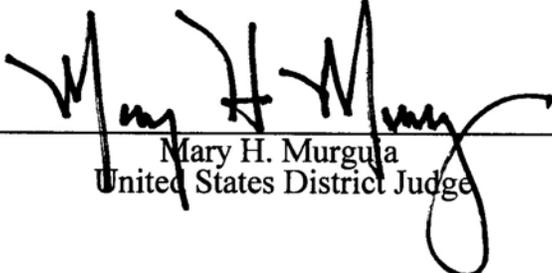
6 **Accordingly,**

7 **IT IS HEREBY ORDERED** adopting the Report and Recommendation of the  
8 Magistrate Judge (Dkt. #40).

9 **IT IS FURTHER ORDERED** that the Motion for Injunctive and Declaratory Relief  
10 (Dkt. #32) be **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

11 DATED this 24<sup>th</sup> day of March, 2010.

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Mary H. Murgula  
United States District Judge