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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Olakunle Oshodi,

Petitioner,

vs.

Bruno Stolc, et al.,

Respondents.

) No. CIV 07-1271-PHX-JWS (DKD)

) **REPORT AND RECOMMENDATION**

15 TO THE HONORABLE JOHN W. SEDWICK, UNITED STATES DISTRICT JUDGE:

16 Olakunle Oshodi filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §
17 2241, challenging his continued detention by immigration authorities pending the conclusion
18 of his appeal of the government’s decision to order him removed to Nigeria. He requests an
19 immediate release from the government’s custody under the supervision of his United States
20 citizen wife. The government has filed a motion to dismiss, contending that the petition is
21 moot because Oshodi has been offered a bond hearing and has filed written objections and
22 has declined to participate. The Court agrees that the petition is moot and recommends that
23 the government’s motion to dismiss be granted and Oshodi’s Petition for Writ of Habeas
24 Corpus be denied and dismissed with prejudice.

25 **BACKGROUND**

26 Oshodi is a forty-eight year old native and citizen of Nigeria who entered the United
27 States without being admitted or paroled on January 1, 1982 after inspection by an
28 immigration officer (Doc. #11, Exh 1). He had been deported from the United States in

1 January, 1981 (*Id.*, Exh 2, 3). On February 26, 2001, he was convicted of vehicular
2 manslaughter while intoxicated and sentenced to ten years' imprisonment (*Id.*, Exh 6). On
3 November 22, 2005, the Department of Homeland Security (the government) issued a Notice
4 to Appear, initially charging Oshodi with several allegations of removability: pursuant to §§
5 212(a)(6)(A)(i), 212(a)(9)(C)(i)(II), and 212(A)(2)(A)(i)(I) of the Immigration and
6 Nationality Act (INA), as an alien present in the United States without being admitted or
7 paroled, or who arrived in the United States at any time or place other than as designated by
8 the Attorney General; an alien who has been ordered removed under section 235(b)(1),
9 section 240, or any other provision of law, and who entered or attempted to enter the United
10 States without being admitted; and as an alien who has been convicted of, or who admits
11 having committed, or who admits committing acts which constitute the essential elements
12 of a crime involving moral turpitude (other than a purely political offense) or an attempt or
13 conspiracy to commit such a crime (*Id.*, Exh 1, 2, 3).

14 On December 5, 2005, the government proceeded on the sole allegation of the
15 criminal conviction and the charge of removability for having been convicted of a crime
16 involving moral turpitude (*Id.*, Exh 4). On January 4, 2006, Oshodi requested a continuance
17 to obtain counsel; the case was rescheduled for January 18, 2006 (*Id.*, Exh 5). On January
18 18, 2006, Oshodi, appearing pro se, admitted that he is not a citizen and national of the
19 United States and that he is a citizen and national of Nigeria, but denied entering the United
20 States without being admitted or paroled by an immigration officer. The case was reset for
21 a hearing on the denied allegations (*Id.*, Exh 5). On February 6, 2006, Oshodi failed to
22 present any information regarding the contested allegations, admitted that he arrived at the
23 U.S. at or near an unknown place on or around January 1, 1982, that he arrived at a time or
24 place other than designated by the Attorney General, and admitted the charge of
25 removability, but declined to designate a country of removal (*Id.*). The immigration judge
26 sustained the charge of removability and designated Nigeria as the country of removal.

1 On March 16, 2006, Oshodi filed an application for asylum, and the case was
2 rescheduled for a hearing on the asylum application. On May 26, 2006, the immigration
3 judge denied Oshodi's request for asylum, withholding of removal, and withholding/deferral
4 of removal under article 3 of the Convention Against Torture and ordered him removed to
5 Nigeria; he reserved appeal (*Id.*, Exh 8). On June 29, 2006, Oshodi filed a Notice of Appeal
6 with the Board of Immigration Appeals (BIA); on September 29, 2006, the BIA affirmed the
7 immigration judge's decision and dismissed the appeal (*Id.*, Exh 11). On October 18, 2006,
8 the government served Oshodi with a Notice of Custody Review (*Id.*, Exh 12).

9 On October 19, 2006, Oshodi filed a Petition for Review with the Ninth Circuit Court
10 of Appeals; on November 16, 2006, the Circuit Court stayed his removal (*Id.*, Exh 21). On
11 October 25, 2006, the government requested that the Nigerian Consulate issue emergency
12 travel documents for Oshodi (*Id.*, Exh 13). On December 19, 2006, Oshodi's attorney
13 requested a postponement of his client's custody review from December 29, 2006 until late
14 January of 2007 (*Id.*, Exh 14). On December 29, 2006, the government served Oshodi with
15 a Notice of Custody Review changing the date to January 29, 2007 (*Id.*, Exh 15).

16 On January 22, 2007, counsel filed a letter regarding Oshodi's custody review and
17 informed the government that a stay of removal had been granted in the Ninth Circuit Court
18 (*Id.*, Exh 16). On March 1, 2007, the government informed Oshodi of its decision to
19 continue his detention (*Id.*, Exh 17). On March 19, 2007, counsel filed a Request for
20 Reconsideration of the Decision to Continue Detention (*Id.*, Exh 18). On April 24, 2007, the
21 government reaffirmed its decision to continue his detention (*Id.*, Exh 19).

22 On July 2, 2009, the government filed a Notice of Custody Redetermination Hearing
23 in Immigration Proceedings, scheduled for July 21, 2009, at the Eloy Detention Center (Doc.
24 #16, attachment 1). On July 27, 2009, Oshodi filed with this Court a copy of his written
25 objections to the government's request to schedule a *Casas* hearing, which he had filed
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1 before the immigration judge (Doc. #17).¹ On August 14, 2009, the government filed its
2 motion to dismiss; on September 29, 2009, Oshodi filed a response to the government's
3 motion (Doc. #21).

4 **DISCUSSION**

5 The government contends that the petition should be dismissed as moot because the
6 Court cannot offer Oshodi the ultimate relief he requests: his immediate release from the
7 government's custody. Because Oshodi's appeal of his final order of removal is currently
8 pending before the Ninth Circuit, and the Court of Appeals has issued a stay of removal, his
9 detention is governed by 8 U.S.C. § 1226(a). *Casas-Castrillon v. Department of Homeland*
10 *Sec.*, 535 F.3d 942, 947 (9th Cir. 2008). In addition, the Court has determined that Oshodi's
11 detention under 8 U.S.C. § 1226(a) is lawful. The only relief to which he is entitled under
12 statute or case law is a bond hearing in which the government bears the burden of
13 establishing his risk to the community or flight risk. 8 U.S.C. § 1226(a); *Casas-Castrillon*.
14 In his response to the government's motion to dismiss, he argues that he is not required to
15 participate in a bond hearing requested by the government, only one ordered by the Court.
16 A *Casas* hearing satisfies the latter requirement. His petition is therefore moot as the
17 government has offered the relief to which he is entitled.

18 **IT IS THEREFORE RECOMMENDED** that the government's Motion to Dismiss
19 be **granted** and that Olakunle Oshodi's Petition for Writ of Habeas Corpus be **denied and**
20 **dismissed with prejudice** (Doc. #1, 18).

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23 ¹He objected on the following grounds: (1) he was denied a meaningful opportunity
24 to respond to the government's request prior to the scheduling of the hearing; (2) the *Casas*
25 hearings allow an administrative body the unreviewable authority to make a custody
26 determination involving a fundamental right; (3) submitting to a *Casas* hearing would not
27 decide the constitutional issues contained in his habeas petition; and (4) he would not be
28 granted a full and fair hearing by the immigration judge. His argument that a bond hearing
would not resolve the constitutional issues raised in his habeas petition has been specifically
contradicted by the Ninth Circuit's ruling in *Casas-Castrillon*.

1 This recommendation is not an order that is immediately appealable to the Ninth
2 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
3 Appellate Procedure, should not be filed until entry of the district court's judgment. The
4 parties shall have ten days from the date of service of a copy of this recommendation within
5 which to file specific written objections with the Court. *See*, 28 U.S.C. § 636(b)(1); Rules
6 72, 6(a), 6(e), Federal Rules of Civil Procedure. Thereafter, the parties have ten days within
7 which to file a response to the objections. Failure timely to file objections to the Magistrate
8 Judge's Report and Recommendation may result in the acceptance of the Report and
9 Recommendation by the district court without further review. *See United States v. Reyna-*
10 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure timely to file objections to any factual
11 determinations of the Magistrate Judge will be considered a waiver of a party's right to
12 appellate review of the findings of fact in an order or judgment entered pursuant to the
13 Magistrate Judge's recommendation. *See* Rule 72, Federal Rules of Civil Procedure.

14 DATED this 23rd day of October, 2009.

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18 David K. Duncan
19 United States Magistrate Judge
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