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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Fernando Miguel Garcia,

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No. CV-07-1289-PHX-DGC (JJM)

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Petitioner,

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**ORDER**

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v.

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Katrina Kane, et al.,

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Respondents.

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Petitioner Fernando Garcia is in federal custody pending resolution of a 2005 order of removal against him. Petitioner has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Dkt. #1. United States Magistrate Judge Jacqueline Marshall has filed a Report and Recommendation (“R&R”) recommending that the Court grant the petition and direct Respondents to provide a hearing to Petitioner before an Immigration Judge with the power to grant Petitioner bail unless the Government establishes that Petitioner is a flight risk or a danger to the community. Dkt. #20. Judge Marshall advised the parties that they had ten days to file objections to the R&R and that failure to file timely objections may be considered a waiver of the right to obtain de novo review of the R&R. *Id.* at 9 (citing *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc)).

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The parties have not filed objections to the R&R, and the time for doing so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); Fed. R. Civ. P. 6(a), (e)). The lack of timely objections relieves the Court of its obligation to review the R&R. *See Reyna-Tapia*, 328 F.3d at 1121; *Thomas v. Arn*, 474 U.S. 140, 149 (1985) (“[Section 636(b)(1)]

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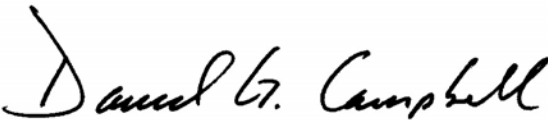
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1 does not . . . require any review at all . . . of any issue that is not the subject of an  
2 objection.”); Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de novo any part  
3 of the magistrate judge’s disposition that has been properly objected to.”). The Court  
4 accordingly will accept the R&R and grant the petition. *See* 28 U.S.C. § 636(b)(1) (the  
5 district court may accept, reject, or modify the recommendation of the magistrate judge); Fed.  
6 R. Civ. P. 72(b)(3) (same).

7 **IT IS ORDERED:**

- 8 1. Magistrate Judge Jacqueline Marshall’s R&R (Dkt. #20) is **accepted**.
- 9 2. Petitioner’s petition for writ of habeas corpus (Dkt. #1) is **granted**.
- 10 3. Respondents shall, within **30 days** from the date of this order, provide a  
11 hearing to Petitioner before an Immigration Judge with the power to grant  
12 Petitioner bail unless the Government establishes that Petitioner is a flight risk  
13 or a danger to the community.
- 14 4. The Clerk is directed to **terminate** this action.

15 DATED this 28<sup>th</sup> day of April, 2009.

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18 David G. Campbell  
19 United States District Judge  
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