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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Alfonso Araiza,

Petitioner,

vs.

Katrina Kane,

Respondent.

) No. CIV 08-0644-PHX-ROS (DKD)

) **REPORT AND RECOMMENDATION**

15 TO THE HONORABLE ROSLYN O. SILVER, UNITED STATES DISTRICT JUDGE:

16 Alfonso Araiza filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241
17 on April 2, 2008, alleging that Respondent Katrina Kane is holding him unlawfully following
18 a final determination by immigration officials that he is to be removed to Mexico. Araiza
19 requests that the Court order the Department of Homeland Security (the Department) to
20 immediately grant him supervised release, or in the alternative, that he be afforded a bond
21 hearing. Araiza was provided a bond hearing on September 19, 2008. Kane argues that
22 because he has received the relief he sought in his petition, that his petition is now moot. The
23 Court agrees and recommends that the petition be denied.

24 Araiza is a native and citizen of Mexico who adjusted his status to that of a lawful
25 permanent resident in 1989 (Doc. #8, Exh 1, 2). On June 2, 1997, he was convicted in
26 California Superior Court of Annoying or Molesting a Child under 18 in violation of section
27 647.6 of the California Penal Code, and sentenced to one year in jail (*Id.*, Exh 3). On March
28 29, 2006, he was convicted of Unlawful Sexual Intercourse with a Minor, in violation of
section 261.5 of the California Penal Code, and sentenced to six months in jail (*Id.*, Exh 4).

1 On April 10, 2006, the Department of Homeland Security issued a Notice to Appear,
2 charging Araiza with removability for having been convicted of two crimes involving moral
3 turpitude not arising out of a single scheme of criminal misconduct (*Id.*, Exh 5). On August
4 10, 2006, an additional charge of removability was added for the conviction of an aggravated
5 felony (*Id.*, Exh 6). On September 19, 2006, following an initial bond hearing, the
6 immigration judge found Araiza subject to mandatory detention and denied his request for
7 a bond redetermination, citing a lack of jurisdiction (*Id.*, Exh 7).

8 On October 12, 2006, Araiza denied both charges of removability and the immigration
9 judge set the matter for a contested hearing. On October 24, 2006, Araiza submitted an
10 exhibit; on November 13, the Department filed conviction documents and a criminal history,
11 with a motion to accept late filing (*Id.*, Exh 8). On November 16, 2006, the immigration
12 judge denied the motion for late filing, and terminated proceedings with prejudice (*Id.*, Exh
13 9). The Department appealed, and the Bureau of Immigration Appeals sustained its appeal
14 and remanded the case to the immigration judge for further removal proceedings (*Id.*, Exh
15 13). On April 16, 2007, Araiza, through counsel, moved for a subsequent bond
16 determination, and included in his motion information that he was appealing one of his
17 underlying convictions, and moved to terminate the proceedings (*Id.*, Exh 14, 15). The
18 immigration judge denied Araiza's motion, again citing a lack of jurisdiction (*Id.*, Exh 16-
19 18). On May 18, 2007, the immigration judge sustained the charges of removability and
20 ordered Araiza removed to Mexico; the BIA dismissed his appeal (*Id.*, Exh 19, 20, 24).

21 On October 12, 2007, Araiza petitioned for review and requested a stay of removal
22 with the Ninth Circuit Court of Appeals; on January 4, 2008, the government sought
23 summary affirmance and opposed the stay request (*Id.*, Exh 25). On October 25, 2007, the
24 Department served Araiza with a Notice of Custody Review (*Id.*, Exh 27). On January 10,
25 2008, the Department notified Araiza of its decision to continue his detention (*Id.*, Exh 28).
26 On May 13, 2008, the Ninth Circuit granted Araiza a stay of removal (Doc. #14, Exh 29).
27 Respondent Kane, through counsel, notified Araiza of the recent decisions in *Prieto-Romero*
28 *v. Clark*, 534 F.3d 1053 (9th Cir. 2008) and *Casas-Castrillon v. Dept. of Homeland Security*,

1 535 F.3d 942 (9th Cir. 2008), and of Araiza's right to request a bond hearing, with
2 information on how to make such a request. *See* Doc. #13. Araiza requested a bond hearing
3 before an immigration judge; on September 19, 2008, the immigration judge conducted the
4 hearing and ordered Araiza held in custody without bond, finding him to be a danger based
5 on "the severity of his criminal history and a flight risk "(Doc. #15, Exh 30, 31).

6 **IT IS THEREFORE RECOMMENDED** that Alfonso Araiza's Petition for Writ of
7 Habeas Corpus be **denied as moot** (Doc. #1).

8 **IT IS FURTHER ORDERED** denying Respondent Kane's Motion for Extension of
9 Time to Hold Proceedings in Abeyance (Doc. #13).

10 This recommendation is not an order that is immediately appealable to the Ninth
11 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
12 Appellate Procedure, should not be filed until entry of the district court's judgment. The
13 parties shall have ten days from the date of service of a copy of this recommendation within
14 which to file specific written objections with the Court. *See*, 28 U.S.C. § 636(b)(1); Rules 72,
15 6(a), 6(e), Federal Rules of Civil Procedure. Thereafter, the parties have ten days within
16 which to file a response to the objections. Failure timely to file objections to the Magistrate
17 Judge's Report and Recommendation may result in the acceptance of the Report and
18 Recommendation by the district court without further review. *See United States v. Reyna-*
19 *Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure timely to file objections to any factual
20 determinations of the Magistrate Judge will be considered a waiver of a party's right to
21 appellate review of the findings of fact in an order or judgment entered pursuant to the
22 Magistrate Judge's recommendation. *See* Rule 72, Federal Rules of Civil Procedure.

23 DATED this 27th day of January, 2009.

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28 David K. Duncan
United States Magistrate Judge