

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,  
Plaintiff/Respondent,  
vs.  
Jeanette B. Wilcher,  
Defendant/Movant.

No. CV-08-2039-PHX-EHC (LOA)

**REPORT AND RECOMMENDATION**

This matter arises on Movant’s Motion for Medical Release on Bond. (docket # 10) Movant requests release pending a ruling on her Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255 for several reasons, including recent deaths in her family, and her deteriorating health. Respondents oppose Movant’s motion. (docket # 11)

“Bail pending a decision in a habeas case is reserved for extraordinary cases involving special circumstances or a high probability of success.” *Land v. Deeds*, 878 F.2d 318 (9<sup>th</sup> Cir. 1989) (finding that petitioner failed to demonstrate that he was entitled to release.) *See also*, *United States v. Mett*, 41 F.3d 1281, 1282 (9<sup>th</sup> Cir. 1994) (holding that petitioners failed to demonstrate that their case involved “extraordinary circumstances” or a “high probability of success.”)

Here, Movant fails to establish that she is likely to prevail on the merits of her case. Indeed, the undersigned has already issued a Report and Recommendation recommending that her § 2255 motion be denied. Additionally, Movant does not establish that “special

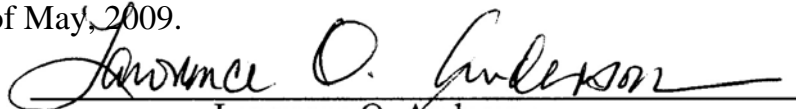
1 circumstances” exist. As Movant states in her motion, the Bureau of Prisons (“BOP”) has  
2 denied her request for release under the Second Chance Act of 2007, 42 U.S.C. § 17541, and  
3 the BOP is currently considering her request for administrative leave. Additionally, Movant has  
4 not provided evidence that she has received inadequate medical care while in BOP custody.<sup>1</sup>  
5 Because Movant has not established the existence of “special circumstances” or a “high  
6 probability of success” on her § 2255 Motion, her motion for release on bond fails.

7 Accordingly,

8 **IT IS HEREBY RECOMMENDED** that Movant’s Motion for Medical Release on  
9 Bond (docket # 10) be **DENIED**.

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

23 DATED this 8<sup>th</sup> day of May, 2009.

24 

25 Lawrence O. Anderson  
26 United States Magistrate Judge

27 <sup>1</sup> A civil action pursuant to Title 42 U.S.C. § 1983 is the proper vehicle for challenging  
28 inadequate medical care that rises to the level of deliberate indifference to serious medical  
needs. *See Estelle v. Gamble*, 429 U.S. 97 (1976).