

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

Bounxou Billamay v. Katrina Kane, et al

THE HONORABLE JOHN W. SEDWICK

2:09-cv-01938 JWS

PROCEEDINGS:

ORDER FROM CHAMBERS

February 28, 2011

Petitioner Bounxou Billamy sought a writ of habeas corpus pursuant to 28 U.S.C. § 2241. The matter was briefed. Thereafter, in a report at docket 39, Magistrate Judge Mark Aspey recommended that the petition be denied as moot. He also recommended that this court deny a certificate of appealability. Petitioner filed objections at docket 41 to which respondents replied at docket 45. Respondents also filed a limited objection at docket 43 to which petitioner did not respond.

This court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). When reviewing a magistrate judge’s recommendations in a case such as this one, this court conducts *de novo* review of all recommended conclusions of law, and any recommended findings of fact to which objections have been taken. Recommended findings of fact as to which no objection has been taken are reviewed for clear error.

Applying the standards of review articulated in the preceding paragraph, this court finds that the recommended findings of fact and conclusions of law are correct in all material respects save one. While it is quite reasonable to expect that other detainees might face the same issue in the future, this court agrees with respondents that the record in this case does not support the magistrate judge’s statement that “other detainees will **undoubtedly** face this same issue in the future.” (Doc. 39 at p. 8, bold emphasis added). However, this correction does not affect the validity of the recommended legal conclusions or disposition. Accordingly, this court adopts Magistrate Judge Aspey’s recommendations at docket 39 with the exception of the finding that others will undoubtedly confront the same issue. Based thereon, the petition is **DENIED** as moot. The Clerk will please enter judgment dismissing the petition as moot.

IT IS FURTHER ORDERED THAT this court will not grant the Certificate of Appealability required by 28 U.S.C. § 2253(c), nor will it grant leave to proceed on

appeal *in forma pauperis*, because petitioner has not made the showing required by 28 U.S.C. § 2253(c). If petitioner desires to take an appeal he must request a Certificate of Appealability from the Court of Appeals. See Fed. R. App. P. 22(b)(1).
