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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Leonardo Tapia, Jr.,

No. CV-12-02393-PHX-FJM

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Petitioner,

**ORDER**

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vs.

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C. DeRosa, Warden,

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Respondent.

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Before the court is petitioner’s petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (doc. 1), respondent’s response (doc. 14), and the Report and Recommendation of the United States Magistrate Judge recommending that the petition be denied for failure to exhaust administrative remedies (doc. 20). Petitioner did not file objections to the Report and Recommendation and the time for doing so has expired.

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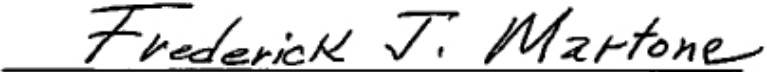
Petitioner claims that he is a United States citizen being unlawfully detained by Immigration and Customs Enforcement. An immigration law judge concluded that the Government had established petitioner’s alienage as a Mexican citizen by “clear, convincing, and unequivocal evidence,” and ordered petitioner subject to removal. The immigration judge denied petitioner’s motion for reconsideration. On October 31, 2013, the Board of Immigration Appeals ordered petitioner’s case remanded for further proceedings, granting petitioner the opportunity to submit additional evidence that is relevant to his claim of United

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1 States citizenship. The Magistrate Judge recommends that, under the doctrine of prudential  
2 exhaustion, petitioner should be required to exhaust his administrative remedies before  
3 seeking habeas relief. Petitioner did not object to this recommendation.

4 We accept the recommended decision of the Magistrate Judge pursuant to 28 U.S.C.  
5 § 636(b)(1). (Doc. 20). Accordingly, **IT IS ORDERED DISMISSING** the petition for writ  
6 of habeas corpus (doc. 1).

7 DATED this 11<sup>th</sup> day of December, 2013.

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10 Frederick J. Martone  
11 Frederick J. Martone  
12 Senior United States District Judge  
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