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

Damien Miguel Zepeda,
Petitioner,
v.
USA,
Respondent.

No. CV-17-01229-PHX-ROS (JFM)
ORDER

Following a jury trial, Petitioner Damien Miguel Zepeda (“Petitioner”) was convicted of nine counts, for which he was sentenced to a combination of concurrent and consecutive sentences totaling 1083 months in prison, followed by 5 years on supervised release. (Docs. 5; 18). Petitioner’s convictions and sentences were affirmed on appeal, (Doc. 5), and on April 25, 2017, Petitioner filed a motion pursuant to § 2255 raising eleven grounds for relief. (Doc. 1).

Petitioner then filed an unopposed motion to stay the remainder of the briefing schedule pending the United States Supreme Court’s decision in *Lynch v. Dimaya*, No. 15-1498 (*Dimaya v. Lynch*, 803 F.3d 1110, 1117-19 (9th Cir. 2015) (cert. granted in *Lynch v. Dimaya*, 137 S.Ct. 31 (Sept. 29, 2016) and the Ninth Circuit’s decision in *United States v. Begay*, No. 14-10080 (9th Cir. Mar. 29, 2017). (Doc. 18). In a Report and Recommendation, Magistrate Judge James F. Metcalf recommended granting Petitioner’s motion for a stay. (Doc. 19).

Subsequently, Petitioner filed an unopposed motion to continue the stay,

1 explaining that the United States Supreme Court did not issue its decision in *Dimaya*
2 during the October 2016 Term, but instead heard re-argument, and that the Ninth’s
3 Circuit was awaiting the Supreme Court’s decision in *Dimaya* to issue its decision in
4 *Begay*. (Doc. 20). In a Report and Recommendation, Magistrate Judge James F. Metcalf
5 recommended granting this motion as well. (Doc.21).

6 Most recently, on August 7, 2018, Petitioner filed another unopposed motion to
7 continue to stay proceedings in this case, explaining that, although the Supreme Court
8 issued a decision in *Dimaya*, the Ninth Circuit has not yet issued its decision in *Begay*.
9 (Doc. 22). In a Report and Recommendation, Magistrate Judge James F. Metcalf
10 recommended granting this motion as well. (Doc. 24).

11 Whether a stay is warranted requires balancing “the competing interests which
12 will be affected by the granting or refusal to grant a stay,” *Lockyer v. Mirant Corp.*, 398
13 F.3d 1098, 1109 (9th Cir. 2005), including “the possible damage which may result from
14 the granting of a stay, the hardship or inequity which a party may suffer in being required
15 to go forward, and the orderly course of justice measured in terms of the simplifying or
16 complicating of issues, proof, and questions of law which could be expected to result
17 from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962). Here, neither party
18 will be prejudiced if the case is stayed. Further, permitting a stay may simplify the issues
19 in this case and promote judicial economy.

20 Accordingly,

21 **IT IS ORDERED** the Report and Recommendation, (Doc. 19), is **ADOPTED IN**
22 **FULL**. Petitioner’s Unopposed Motion to Stay, (Doc. 18), is **GRANTED**.

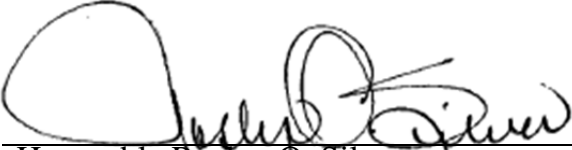
23 **IT IS FURTHER ORDERED** the Report and Recommendation, (Doc. 21), is
24 **ADOPTED IN FULL**. Petitioner’s Unopposed Motion to Stay, (Doc. 20), is
25 **GRANTED**.

26 **IT IS FURTHER ORDERED** the Report and Recommendation, (Doc. 24), is
27 **ADOPTED IN FULL**. Petitioner’s Motion to Continue Stay of Briefing, (Doc. 22), is
28 **GRANTED**.

1 **IT IS FURTHER ORDERED** the parties shall file a status report regarding the
2 continuance of the stay either (1) within 30 days of a decision in *Begay* or (2) on
3 February 8, 2019, whichever occurs sooner.

4 **IT IS FURTHER ORDERED** the parties shall file additional briefing as follows:
5 (1) no later than 30 days after the Ninth Circuit's decision in *Begay*, Petitioner
6 shall file a supplemental brief in support of his Motion to Vacate (Doc. 1) to
7 address the effect of those decisions to Petitioner's claims;
8 (2) no later than 30 days of the service of such supplemental brief, Respondent
9 shall file a response;
10 (3) Petitioner shall file a reply no later than 30 days from the date of service of
11 Respondent's supplemental response. Petitioner's reply shall address the
12 arguments in Respondent's supplemental brief, as well as those in Respondent's
13 Response to Petitioner's Motion to Vacate, (Doc. 13).

14 Dated this 14th day of August, 2018.

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18 Honorable Roslyn O. Silver
19 Senior United States District Judge
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