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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Harry McCabe, Sr.,

10 Petitioner,

11 v.

12 USA,

13 Respondent.
14

No. CV-16-08131-PCT-JAT (ESW)

ORDER

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16 On January 30, 2018, the undersigned issued a Report and Recommendation to the
17 District Judge recommending that the Court dismiss Movant's challenge to his conviction
18 on Count 3. (Doc. 26 at 4-8). The undersigned recommended that the Court stay
19 resolution of Movant's challenge to his conviction on Count 4 pending the Ninth
20 Circuit's decision in *United States v. Begay*, No. 3:13-cr-08073-NVW-1 (D. Ariz. Jan.
21 29, 2014), *appeal docketed*, No. 14-10080 (9th Cir. Feb. 20, 2014) and the Supreme
22 Court's decision in *Sessions v. Dimaya*, 803 F.3d 1110 (9th Cir. 2015), *cert. granted*,
23 2016 WL 3232911 (U.S. Sept. 29, 2016) (No. 15-1498). (Doc. 26 at 8-11).

24 On April 17, 2018, the Supreme Court issued its opinion in *Dimaya*, 138 S.Ct.
25 1204 (2018). On April 23, 2018, the District Judge re-referred this matter to the
26 undersigned, explaining that given that *Dimaya* has now been decided, it would be more
27 efficient to address all of Movant's claims at the same time. (Doc. 31 at 2). In re-
28 referring the matter, the District Judge left it to the undersigned's determination whether,

1 given *Dimaya*, this matter should be stayed pending the decision in *Begay*. (*Id.*). For the
2 reasons explained in the Report and Recommendation (Doc. 26 at 8-10), the undersigned
3 finds that the Ninth Circuit's forthcoming decision in *Begay* may provide guidance in
4 resolving Movant's challenge to his conviction on Count 4. The record reflects that
5 neither party objects to a stay at this juncture.¹

6 Therefore,

7 **IT IS ORDERED** staying this matter pending the Ninth Circuit's decision in
8 *United States v. Begay*, No. 3:13-cr-08073-NVW-1 (D. Ariz. Jan. 29, 2014), *appeal*
9 *docketed*, No. 14-10080 (9th Cir. Feb. 20, 2014). Within fourteen days after the decision
10 in *Begay* is issued, the Government shall file a Supplemental Response. Movant may file
11 a Supplemental Reply within seven days after service of the Supplemental Response.

12 Dated this 27th day of April, 2018.

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Eileen S. Willett
United States Magistrate Judge

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27 ¹ The Government initially requested that the Court stay the case, which the Court
28 denied. (Docs. 4, 12). Although Movant opposed the Government's September 2016
Motion to Stay (Doc. 4), Movant asserted in his Objections to the Report and
Recommendation that this matter should be stayed pending *Dimaya* and *Begay*. (Doc. 29
at 3).