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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DANTE LIZALDE,)	Case No. EDCV 19-2480-MCS (JPR)
)	
Petitioner,)	
)	
v.)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF U.S.
U.S. ATTORNEY GENERAL)	MAGISTRATE JUDGE
WILLIAM BARR,)	
)	
Respondent.)	

The Court has reviewed the Petition and Supplemental Petition, records on file, and Report and Recommendation of U.S. Magistrate Judge, which recommends that Respondent’s motion to dismiss be granted and judgment be entered dismissing this action. On September 9, 2020, Petitioner filed Objections to the R. & R., in which he mostly simply repeats arguments from his opposition to Respondent’s motion and his other filings. On September 23, Respondent filed a reply.¹

¹ That same day, Respondent filed notice that Petitioner was removed from the United States on August 27, 2020, arguing that the Petition and Supplemental Petition are therefore moot. But Petitioner doesn’t just “request release[] from immigration custody based on the length of his detention” (Notice at 2); as the Magistrate Judge noted, he also challenges the aggravated-felony convictions underlying his removal order (see R. & R. at 4-5). Moreover, the Court is unclear how Petitioner could have mailed his objections from a business center in San Diego on September 8 given his August 27 removal. (See Objs. at 88.) In
(continued...)

1 Petitioner claims that the Magistrate Judge didn't have
2 jurisdiction to issue the R. & R. because pending in the Ninth
3 Circuit is his appeal of her characterization of his March 24,
4 2020 habeas petition as a supplement to his initial December 26,
5 2019 Petition. (See Objs. 2-7.) That argument is unavailing.

6 After Petitioner filed the Petition, he purported to file a
7 second habeas petition, claiming that his original Petition
8 concerned only his "actual innocence" and alleging that his new
9 petition related to his "immigration case." Because he
10 acknowledged that the new filing relied on essentially the same
11 factual allegations as the initial Petition and both petitions
12 attacked the validity of the convictions underlying his removal
13 order, the Magistrate Judge properly exercised her discretion to
14 construe the second filing as a Supplemental Petition. (See R. &
15 R. at 1-2.)

16 On April 14, 2020, Petitioner moved for a temporary
17 restraining order, seeking release from detention based on the
18 COVID-19 pandemic. In that motion, he also objected to the
19 Magistrate Judge's characterization of his March 24, 2020 habeas
20 petition as a Supplemental Petition. (See Emergency Inj. for TRO
21 at 2-6.) On April 17, 2020, the Court referred that motion to
22 the Honorable Terry J. Hatter Jr., to whom Petitioner's separate
23 habeas petition challenging his continued detention during the
24 pandemic was assigned. Judge Hatter denied the TRO request that
25 same day without expressly considering Petitioner's objections to
26 the Magistrate Judge's characterization of the Supplemental

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28 ¹(...continued)
any event, the petitions are not moot.

1 Petition. (See Order Denying TRO, ECF No. 34.) On May 8, 2020,
2 Petitioner appealed Judge Hatter's April 17 denial of his TRO as
3 well as his denial of another TRO earlier that month. (See
4 Notice of Appeal, ECF No. 38.) But the appeal necessarily
5 pertains only to Judge Hatter's denials of the TROs. The Ninth
6 Circuit lacks jurisdiction to consider an interlocutory appeal
7 from a simple case-management decision, which is what the
8 Magistrate Judge's characterization of Petitioner's second
9 petition as "supplemental" was. See Van Dusen v. Swift Transp.
10 Co., 830 F.3d 893, 896-97 (9th Cir. 2016) (holding that it did
11 not have jurisdiction over interlocutory appeal from scheduling
12 and case-management order because it wasn't "a full adjudication
13 of the issues" and didn't "resolve important questions separate
14 from the merits" (citations omitted)).

15 Thus, Petitioner's appeal didn't deprive the Magistrate
16 Judge of jurisdiction to issue the R. & R. To the extent he
17 contends the Magistrate Judge shouldn't have characterized his
18 second habeas petition as a Supplemental Petition, he doesn't
19 identify how he was prejudiced by her doing so. The Magistrate
20 Judge correctly recognized that the two petitions were based on
21 similar facts and arguments and prudently considered them
22 together to preserve judicial resources. Moreover, in doing so,
23 she considered his claim of actual innocence (see R. & R. at 5-7)
24 as well as his immigration-related arguments (see id. at 7-15),
25 covering all the issues raised in both petitions.

26 Petitioner also asserts that the Magistrate Judge didn't
27 have jurisdiction to issue the R. & R. because his removal
28 proceedings were based on a "fundamentally defective verdict."

1 (Objs. at 7; see id. at 7-9.) But as the Magistrate Judge
2 correctly found, Petitioner's challenges to his underlying
3 convictions are impermissibly second or successive and can't be
4 considered here. (See R. & R. at 5-7.)

5 IT THEREFORE IS ORDERED that Respondent's motion to dismiss
6 is GRANTED and judgment be entered dismissing this action.

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9 DATED: October 6, 2020



10 MARK C. SCARSI
11 U.S. DISTRICT JUDGE
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