

IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF OHIO
 WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARGARITO FLORES,

Defendant.

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Case No. 3:97cr074(1)

JUDGE WALTER HERBERT RICE

 MARGARITO FLORES,

Petitioner-Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent-Appellee.

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Case No. 3:06cv013

Court of Appeals No. 06-4521

JUDGE WALTER HERBERT RICE

DECISION AND ENTRY ADOPTING SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. #239) OF UNITED STATES MAGISTRATE JUDGE; DEFENDANT-PETITIONER'S *PRO SE* "OBJECTION TO JUDGMENT, NOTICE OF DUE PROCESS VIOLATION AND REQUEST FOR ORDER TO DELIVER MAGISTRATE'S REPORT AND RECOMMENDATIONS WITH A NEW 10-DAY PERIOD TO RESPOND TO SAME," CONSTRUED AS A TIMELY FILED MOTION TO ALTER OR AMEND THE JUDGMENT, PURSUANT TO FED. R. CIV. P. 59(e) (DOC. #237), SUSTAINED; FINAL JUDGMENT OF FEBRUARY 17, 2006, VACATED; CAPTIONED CAUSE RE-OPENED ON THE DOCKET OF THIS COURT; DIRECTION TO CLERK OF COURTS OFFICE; DEFENDANT-PETITIONER'S MOTION TO APPEAL *IN FORMA PAUPERIS* (DOC. #251) AND OBJECTIONS (DOC. #255) TO MAGISTRATE JUDGE'S REPORT AND RECOMMENDATIONS RECOMMENDING DENIAL OF SAID REQUEST (DOC. #253) OVERRULED AS MOOT AT THIS TIME

Pursuant to the reasoning set forth by the United States Magistrate Judge in her Supplemental Report and Recommendations, filed March 6, 2006 (Doc. #239), as well as upon a thorough review of this Court's file/docket and the applicable law, this Court adopts said Supplemental Report and Recommendations (Doc. #239) in their entirety. The Petitioner-Defendant's *pro se* "Objection to Judgment [of February 17, 2006], Notice of Due Process Violation and Request for Order to Deliver Magistrate's Report and Recommendations With a New 10-day Period to Respond to the Report and Recommendation [recommending that Petitioner's Motion to Vacate, etc. (Doc. #233) be overruled]," (Doc. #237), construed as a timely-filed Motion to Alter or Amend this Court's Judgment, pursuant to Fed. R. Civ. P. 59(e), is sustained.

The Court's final judgment of February 17, 2006, is vacated and the captioned cause is re-opened on the docket of this Court. The Office of the Clerk of Courts is directed to send, certified mail, a copy of the Magistrate Judge's Report and Recommendations of January 20, 2006 (Doc. #234), following receipt of which the Defendant-Petitioner shall have the amount of time allowable by Rule (10 days after being served with said document, which period is, pursuant to Fed. R. Civ. P. 6(e), extended to 13 days, excluding intervening Saturdays, Sundays and legal holidays, given that the Report and Recommendations at issue will be served by certified mail) to object. The captioned cause will then be in a position to be dealt with by the Magistrate Judge, should Objections be filed to her Order of January 20, 2006 (Doc. #234) or by the undersigned, should no Objections be

filed.

The Defendant's *pro se* Objections (Doc. #241) to the Magistrate Judge's Supplemental Report and Recommendations (Doc. #239) are overruled. Defendant-Petitioner's Motion to Appeal *in Forma Pauperis* (Doc. #251) and Objections (Doc. #255) to Magistrate Judge's Report and Recommendations Recommending Denial of Said Request (Doc. #253) are Overruled as Moot at this Time.

/s/ Walter Herbert Rice

March 2, 2007

WALTER HERBERT RICE
UNITED STATES DISTRICT JUDGE

Copies to:

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Docket Clerk, Sixth Circuit Court of Appeals
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