

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HECTOR MADERA,

Petitioner,

v.

DIRECTOR OF DEPT. OF HOMELAND
SECURITY / ICE,

Respondents.

)
)
) Civil Action No. 3: 19-cv-0192

)
) Judge Kim R. Gibson

MEMORANDUM OPINION

Pending before the Court is the Motion to Order Bond Hearing / Petition Under 28 U.S.C. § 2241 For a Writ of Habeas Corpus by a Person In Federal Custody filed by Petitioner, Hector Madera. (ECF No. 4). The matter was referred to Chief United States Magistrate Judge Cynthia Reed Eddy for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

The magistrate judge filed a Report and Recommendation (ECF No. 15) on April 15, 2020, recommending that the Petition for Writ of Habeas Corpus be denied without prejudice to the filing of another petitioner should the length of Petitioner's detention become unreasonable. Petitioner filed timely objections to the Report and Recommendation (ECF No. 16). The matter is now ripe for disposition. For the reasons set forth below, the Report and Recommendation will be adopted and the petition will be dismissed.

Where, as here, objections have been filed, the court is required to make a *de novo* determination about those portions of the R&R to which objections were made. *See* 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b). The district court may accept, reject, or modify the recommended

disposition, as well as receive further evidence or return the matter to the magistrate judge with instructions.

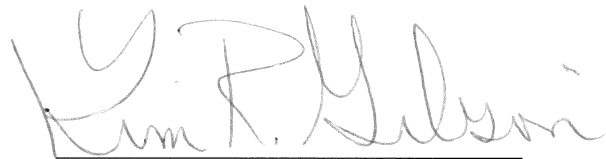
The Court finds that Petitioner's objections to not undermine the recommendation of the Magistrate Judge. As the Report and Recommendation correctly points out, the current length of Petitioner's detention under § 1226(c) is not an unconstitutional application of the statute and, therefore, he remains subject to mandatory detention.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the Petition for Writ of Habeas Corpus will be denied without prejudice to the filing of another petition should the length of Petitioner's detention become unreasonable.

Federal prisoner appeals from the denial of a Section 2241 habeas proceeding are not governed by the certificate of appealability requirement. *See United States v. Cepero*, 224 F.3d 256, 264-65 (3d Cir. 2000) (en banc), *abrogated on other grounds by Gonzalez v. Thaler*, 132 S.Ct. 641 (2012). Therefore, Petitioner need not apply for one with this Court or with the Court of Appeals for the Third Circuit before filing an appeal from the denial of his habeas petition.

Pursuant to Federal Rule of Appellate Procedure 4(a)(1)(B), Petitioner has sixty (60) days after judgment is entered to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

DATED: May 6, 2020



Kim R. Gibson
United States District Judge

cc: **HECTOR MADERA**
19-02044
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425 Manor Drive
Ebensburg, PA 15931
(via U.S. First Class Mail)

Karen Gal-Or
U.S. Attorney's Office
(via ECF electronic notification)