

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT BECKLEY**

VICTOR AUSTIN,

Plaintiff,

v.

CIVIL ACTION NO. 5:21-cv-00348

WARDEN,

Defendant.

ORDER

Pending is Victor Austin’s Petition Under 28 U.S.C. § 2241 for Writ of Habeas Corpus by a Person in Federal Custody with Motion for Preliminary Injunction or Temporary Restraining Order [Doc. 1], filed on June 21, 2021. This action was previously referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission of proposed findings and a recommendation (“PF&R”). [Doc. 4]. On June 23, 2021, Magistrate Judge Aboulhosn ordered that Plaintiff’s 28 U.S.C. § 2241 for Writ of Habeas Corpus be construed as a civil action filed pursuant to *Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics*. [Doc. 5]. The Complaint was re-docketed. [Doc. 6]. Magistrate Judge Aboulhosn filed his PF&R on March 11, 2024. [Doc. 7]. Magistrate Judge Aboulhosn recommended the Court dismiss the Complaint [Docs. 1, 6] without prejudice and remove it from the docket. [*Id.*].

The Court need not review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140 (1985); *see also* 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations *to which objection is made.*” (emphasis


added)). Failure to file timely objections constitutes a waiver of de novo review and the Plaintiff's right to appeal the Court's order. *See* 28 U.S.C. § 636(b)(1); *see also United States v. De Leon-Ramirez*, 925 F.3d 177, 181 (4th Cir. 2019) (Parties may not typically "appeal a magistrate judge's findings that were not objected to below, as § 636(b) doesn't require de novo review absent objection."); *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989). Further, the Court need not conduct de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections in this case were due on March 28, 2024. [Doc. 7]. No objections were filed.¹

Accordingly, the Court **ADOPTS** the PF&R [Doc. 7], **DENIES** the Plaintiff's Complaint [Docs. 1, 6], and **DISMISSES** the matter without prejudice.

The Court directs the Clerk to transmit a copy of this Order to any counsel of record and any unrepresented party.

ENTERED: April 10, 2024




Frank W. Volk
United States District Judge

¹ On March 25, 2024, the Proposed Findings and Recommendations sent to Mr. Austin at FCI Beckley was returned. [Doc. 8]. Mr. Austin was released on July 16, 2021, and no current address was available. [*Id.*]. He is obliged to keep his contact information current.