

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 09-cv-01925 -PAB-MEH

DOMINGO MARTINEZ, JR.,

Petitioner,

v.

STEVE GREEN, Warden, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondent.

ORDER ACCEPTING MAGISTRATE JUDGE'S RECOMMENDATION

This matter is before the Court on the Recommendation of United States Magistrate Judge Michael E. Hegarty filed on March 1, 2011 [Docket No. 23]. The Recommendation states that objections to the Recommendation must be filed within fourteen days after its service on the parties. *See also* 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on March 1, 2011. No party has objected to the Recommendation.

Court mail addressed to petitioner has been returned as undeliverable since August 2010. The Recommendation was served at petitioner's last known address and was also returned as undeliverable. For the reasons stated in the Recommendation, because petitioner has failed to inform the court of his current mailing address, he therefore bears responsibility for not receiving a copy of the Recommendation.

In the absence of an objection, the district court may review a magistrate judge's recommendation under any standard it deems appropriate. *Summers v. Utah*, 927 F.2d

1165, 1167 (10th Cir. 1991); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings”). In this matter, I have reviewed the Recommendation to satisfy myself that there is “no clear error on the face of the record.”¹ See Fed. R. Civ. P. 72(b), Advisory Committee Notes. Based on this review, I have concluded that the Recommendation is a correct application of the facts and the law. Accordingly, it is

ORDERED as follows:

1. The Recommendation of United States Magistrate Judge [Docket No. 23] is ACCEPTED.
2. Petitioner’s Amended Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254 [Docket No. 3] is dismissed without prejudice for failure to follow court orders and to comply with D.C.COLO.LCivR 10.1M.
3. There is no basis on which to issue a certificate of appealability pursuant to 28 U.S.C. § 2253(c).

DATED March 22, 2011.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge

¹This standard of review is something less than a “clearly erroneous or contrary to law” standard of review, Fed. R. Civ. P. 72(a), which in turn is less than a *de novo* review. Fed. R. Civ. P. 72(b).