

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

JOSEPH MCCLAIN, JR.,  
Petitioner,

vs.

Case No. 5:09cv248/RS/MD

C. ECHENLAUB,  
Respondent.

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**REPORT AND RECOMMENDATION**

This cause is before the court upon referral from the clerk. Petitioner commenced this action on July 23, 2009 by filing a petition for writ of habeas corpus under 28 U.S.C. § 2241. (Doc. 1). Because the petition was not accompanied by the filing fee or an application to proceed *in forma pauperis*, and because petitioner failed to submit service copies of his petition, this court entered an order on August 14, 2009 directing petitioner to file two service copies and to either pay the \$5.00 filing fee or file a complete application to proceed *in forma pauperis*, within thirty days. (Doc. 3). Petitioner was warned that failure to comply with the order would result in a recommendation of dismissal of this action. Petitioner did not respond to the order.

Accordingly, on September 28, 2009, the court entered an order requiring petitioner to show cause, within twenty days, why his case should not be dismissed for failure to comply with an order of the court. (Doc. 4). Over twenty days has elapsed, and petitioner has not responded, either to comply with the court's August 14, 2009 order or to explain why compliance is not possible.

Accordingly, it respectfully RECOMMENDED:

1. That this case be DISMISSED WITHOUT PREJUDICE for petitioner's failure to comply with an order of the court.
2. That the clerk be directed to close the file.

At Pensacola, Florida, this 29<sup>th</sup> day of October, 2009.

/s/ *Miles Davis*

MILES DAVIS  
UNITED STATES MAGISTRATE JUDGE

**NOTICE TO THE PARTIES**

Any objections to these proposed findings and recommendations must be filed within ten days after being served a copy thereof. *Any different deadline that may appear on the electronic docket is for the court's internal use only, and does not control.* A copy of objections shall be served upon all other parties. Failure to object may limit the scope of appellate review of factual findings. See 28 U.S.C. § 636; *United States v. Roberts*, 858 F.2d 698, 701 (11<sup>th</sup> Cir. 1988).