

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

CALVIN SCOTT WEDINGTON,

Civil No. 12-2474 (JRT/FLN)

Petitioner,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION OF
MAGISTRATE JUDGE**

ERIC HOLDER, Attorney General, and
JANET RENO,

Respondents.

Calvin Scott Wedington, #18915-037, Federal Medical Center, PMB 4000,
Rochester, MN 55904, plaintiff *pro se*.

Ann M. Bildsten, Assistant United States Attorney, **OFFICE OF THE
UNITED STATES ATTORNEY**, 600 United States Courthouse, 300
South Fourth Street, Minneapolis, MN, 55415, for respondents.

This matter is before the Court on petitioner's objections to a Report and Recommendation issued by United States Magistrate Judge Franklin L Noel on October 10, 2012. The Court has reviewed *de novo* the portions of the Report and Recommendation to which the petitioner objects. 28 U.S.C. § 636(b)(1) and D. Minn. Local Rule 72.2(b). For the reasons outlined below, the Court will overrule the objections and adopt the Report and Recommendation.¹

¹ The full factual background of this matter is set forth in the Report and Recommendation of the Magistrate Judge.

Petitioner is an inmate at the Federal Medical Center in Rochester, Minnesota. Petitioner seeks a writ of habeas corpus that would cause him to be released from custody. (Habeas Corpus Petition, Sept. 26, 2012, Docket No. 1.)

Petitioner's objections to the Report and Recommendation take issue with the application of Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts to his habeas petition, which was brought under 28 U.S.C. § 2241. Rule 4 provides, in relevant part, "If it plainly appears from the [habeas] petition...that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition..." As the Magistrate Judge explained, the Rules Governing Section 2254 Cases may be applied to habeas petitions brought under 28 U.S. § 2241 in addition to cases brought under 28 U.S.C. § 2254. Rule 1(b); *Mickelson v. United States*, Civ. No. 01-1750, 2002 WL 31045849 at *2 (D. Minn. Sept. 10, 2002); *Bostic v. Carlson*, 884 F.2d 1267, 1270, n.1, (9th Cir. 1989). The Court therefore finds no error in the Magistrate Judge's application of the Rules Governing Section 2254 Cases.²

ORDER

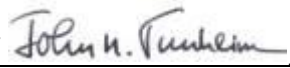
Based upon all of the files, records, and proceedings herein, the Court **OVERRULES** petitioner's objections [Docket No. 7] and **ADOPTS** the Report and Recommendation of the Magistrate Judge [Docket No. 6]. **IT IS HEREBY ORDERED** that:

² While the Court interprets petitioner's objections to take issue only with the application of the Rules Governing Section 2254 Cases, the Court has carefully reviewed the entirety of the Magistrate Judge's Report and Recommendation and finds, as the Magistrate Judge did, that petitioner failed to present a colorable claim for relief.

1. Petitioner's application for leave to proceed *in forma pauperis* [Docket No. 2] is **DENIED**.
2. Petitioner's motion for appointment of counsel [Docket No. 3] is **DENIED**.
3. This action is summarily **DISMISSED without prejudice**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: November 9, 2012
at Minneapolis, Minnesota.

s/ 

JOHN R. TUNHEIM
United States District Judge