

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Kenneth Gragg,

Civil No. 15-2718 (DWF/FLN)

Plaintiff,

v.

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

C. Nickrenz, Warden,

Defendant.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Franklin L. Noel dated July 30, 2015. (Doc. No. 3.) No objections have been filed to that Report and Recommendation in the time period permitted.

The factual background for the above-entitled matter is clearly and precisely set forth in the Report and Recommendation and is incorporated by reference. The Report and Recommendation addresses Petitioner's writ of habeas corpus, brought under 28 U.S.C. § 2241.<sup>1</sup> In the Report and Recommendation, the Magistrate Judge concluded that Petitioner's argument that the Federal Bureau of Prisons ("BOP") abused its

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<sup>1</sup> Section 2241 applies to challenges to the manner in which the sentence is being administered. See *Matheny v. Morrison*, 307 F.3d 709, 711 (8th Cir. 2002) (explaining that "[a] petitioner may attack the execution of his sentence through § 2241 in the district where he is incarcerated"); see also *Swehla v. Wilson*, Civ. No. 13-1919, 2013 WL 6190379, at \*7 (D. Minn. Nov. 27, 2013) (citation omitted). Further, as the Magistrate Judge states: "Although [Petitioner] seeks relief under § 2241, the Rules Governing Section 2254 Cases nevertheless apply here. See Rule 1(b)." (Doc. No. 3 at 1 n.1.)

discretion by denying his request for a reduction of time in custody following his completion of a substance abuse program had no merit because “lawfully promulgated federal regulations prohibit the BOP from reducing the time in custody of federal prisoners incarcerated for illegally possessing firearms, and thus the BOP could not have abused its discretion in denying [Petitioner] relief.” (Doc. No. 3 at 1.)

The undersigned agrees with the Magistrate Judge’s determination that the Petitioner is not entitled to relief because the BOP was acting in accordance with federal regulations when denying Petitioner’s request for early release. Accordingly, based upon the Report and Recommendation of the Magistrate Judge and upon all of the files, records, and proceedings herein, the Court now makes and enters the following:

### **ORDER**

1. Magistrate Judge Franklin L. Noel’s July 30, 2015 Report and Recommendation (Doc. No. [3]) is **ADOPTED**.
2. Petitioner Kenneth Gragg’s petition for a writ of habeas corpus (Doc. No. [1]) is **DENIED**.
3. This action is **DISMISSED WITH PREJUDICE** pursuant to Rule 4 of the Rules Governing Section 2254 cases.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: September 17, 2015

s/Donovan W. Frank  
DONOVAN W. FRANK  
United States District Judge