

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Ge Yang,

Case No. 17-cv-3664 (WMW/FLN)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND  
RECOMMENDATION AS MODIFIED**

Secretary, Department of Homeland  
Security; Jefferson Sessions, Attorney  
General; Scott Baniecek, ICE Field Office  
Director; and Kurt Freitag, Freeborn  
County Sherriff,

Defendants.

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This matter is before the Court on the October 6, 2017 Report and Recommendation (R&R) of United States Magistrate Judge Franklin L. Noel. (Dkt. 7.) The R&R recommends dismissing with prejudice Petitioner Ge Yang's petition for a writ of habeas corpus as moot. Because no objections have been filed, this Court reviews the R&R for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Having reviewed the R&R, the Court finds no clear error in the recommendation that Yang's petition be dismissed as moot.

Because a district court lacks subject-matter jurisdiction over a case that is moot, however, the case may not be dismissed with prejudice. *See Charleston Hous. Auth. v. U.S. Dep't of Agric.*, 419 F.3d 729, 739 (8th Cir. 2005) ("Questions of mootness are matters of subject matter jurisdiction . . ."); *Cty. of Mille Lacs v. Benjamin*, 361 F.3d 460, 464 (8th Cir. 2004) ("A district court is generally barred from dismissing a case with

prejudice if it concludes subject matter jurisdiction is absent.”). Accordingly, the Court adopts the R&R as modified so as to dismiss this action *without* prejudice.

Based on the R&R and all the files, records and proceedings herein, **IT IS HEREBY ORDERED:**

1. The October 6, 2017 R&R, (Dkt. 7), is **ADOPTED AS MODIFIED**;
2. Petitioner Ge Yang’s petition under 28 U.S.C. § 2241 for a writ of habeas corpus, (Dkt. 1), is **DENIED AS MOOT**; and
3. This action is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: November 14, 2017

s/Wilhelmina M. Wright  
Wilhelmina M. Wright  
United States District Judge