

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION**

<b>FRANCISCO ZAVALA,</b>	)	
	)	
<b>Petitioner,</b>	)	
<b>v.</b>	)	<b>Case No. 10-3273-CV-S-RED-H</b>
<b>MARTY C. ANDERSON, Warden,</b>	)	
<b>United States Medical Center,</b>	)	
	)	
<b>Respondent.</b>	)	

**ORDER AND JUDGMENT**

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein for a writ of habeas corpus was referred to the United States Magistrate for preliminary review under the provisions of 28 U.S.C. § 636(b).

The United States Magistrate has completed his preliminary review of the petition for a writ of habeas corpus and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis, and that the petition be dismissed without prejudice. Petitioner has filed a response to the report and recommendation, which will be construed as exceptions, in which he agrees that he has received some of the relief he requested regarding his medical care. He submits, however, that he has a sinus procedure scheduled for January 12, 2011, and wants the Court to assure him that the government will ensure that this schedule is adhered to.

Having fully reviewed the record de novo, this Court agrees with the Magistrate that the petition should be dismissed because petitioner has failed to state a constitutional violation.

Regarding the scheduled sinus surgery for January of 2011, respondent has represented to the Court that the procedures have been scheduled for January 12, 2011, although it was noted that there have been scheduling conflicts in the past with the contract ENT physician. The Court believes that respondent has represented in good faith that the surgery will take place on January 12, 2011, and that no further relief is appropriate at this time. It is clear that petitioner has failed to establish that the treatment he has received at the Medical Center demonstrates a deliberate indifference to his serious medical needs.

Based on the file and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed actions of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, considered and overruled. It is further

ORDERED that petitioner be, and he is hereby, denied leave to proceed in forma pauperis. It is further

ADJUDGED that the petition herein for a writ of habeas corpus be, and it is hereby, dismissed without prejudice.

/s/ Richard E. Dorr  
RICHARD E. DORR  
United States District Judge

Date: December 20, 2010