

FILED

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

APR 06 2018

Clerk, U.S. District Court
District Of Montana
Great Falls

NATHANAEL GREENE,
BRADLEY KEITH,
ZACHARY CHRISTOPHER HILLIS,
MORONI NUTTALL,
RANDALL STONE,
JOHN DAVID TROTTER,
MICHAEL G. BEAUCHMAN,
RORY DAVIS,
ALLEN EDWARD FOUTS,

Petitioners,

v.

MICHAEL FLETCHER,

Respondent.

CV-18-08-H-BMM-JTJ
CV-18-09-H-BMM-JTJ
CV-18-11-H-BMM-JTJ
CV-18-12-H-BMM-JTJ
CV-18-13-H-BMM-JTJ
CV-18-14-H-BMM-JTJ
CV-18-15-H-BMM-JTJ
CV-18-16-H-BMM-JTJ
CV-18-17-H-BMM-JTJ

ORDER

Eleven pro se prisoners have filed an action styled an “en masse petition for a writ of habeas corpus” seeking to challenge the constitutionality of the criminal charging process utilized by the State of Montana. (Doc. 1 at 18-32.)¹ Petitioner Turnquist voluntarily dismissed his petition on February 26, 2018. Doc. 12, *Turnquist v. Fletcher*, CV-18-10-H-BMM-JTJ (D. Mont. Feb. 26, 2018). The

¹ Due to the filing of identical documents by petitioners in an attempt to consolidate this action, Judge Johnston filed identical orders in all of the cause numbers listed in the caption to this Order. Two other petitioners’ claims are no longer before this Court, as discussed above. Citations to the docket refer to documents by number as they appear in the docket for CV-18-08-H-BMM-JTJ. Citations to individual dockets appear, when necessary, with the name of the case, cause number, and date.

Court dismissed Petitioner Lout's petition on April 5, 2018. Doc. 16, *Lout v. Fletcher*, CV-18-07-H-BMM-JTJ (D. Mont. April 5, 2018).

United States Magistrate Judge John Johnston issued an Order in this matter on January 25, 2018. (Doc. 6.) Judge Johnston ordered the petitioners to individually brief the issue of exhaustion and inform the Court of their intent to proceed by February 20, 2018. (Doc. 6 at 4-5.)

The petitioners filed a document captioned "Objection to Order of Findings and Recommendations of Montana Magistrate Judge" on February 5, 2018. (Doc. 11.)

I. LEGAL STANDARD

The Court reviews for clear error when a party objects to the order of a magistrate judge. *Grimes v. City and County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991). This Court must defer to the magistrate's order unless it is clearly erroneous or contrary to law. *Id.*

The petitioners broadly object to an "Order of Findings and Recommendations" entered January 25, 2018. (Doc. 11 at 4.) The Court notes that this may refer to two different documents entered by Judge Johnston. Judge Johnston issued an Order and Findings and Recommendations in Petitioner Lout's case on January 25, 2018. Doc. 6, *Lout v. Fletcher*, CV-18-07-H-BMM-JTJ (D. Mont. Jan. 25, 2018.) The Court construed the document as objections to Judge

Johnston's Findings and Recommendations and conducted *de novo* review of Judge Johnston's jurisdiction to issue the Order and Findings and Recommendations in Lout's case. Doc. 16, *Lout v. Fletcher*, CV-18-07-H-BMM-JTJ (D. Mont. April 3, 2018).

Judge Johnston also issued an Order in the ten remaining cases on that date. (See Doc. 6.) The Court notes the petitioners' *pro se* status. The Court must "liberally construe" *pro se* filings. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). The Court will thus construe this filing as an objection to the Order that Judge Johnston issued in the remaining ten cases.

II. DISCUSSION

Judge Johnston's Order informed the petitioners that they generally possess one opportunity to challenge a state court judgment or conviction under 28 U.S.C. § 2254. (Doc. 6 at 2-3.) Judge Johnston advised the petitioners that each individual likely would be barred from filing a subsequent individual habeas petition absent leave from the Ninth Circuit. *Id.* at 3. Judge Johnston thus ordered petitioners to advise the Court regarding their intent to proceed by February 20, 2018. *Id.* at 3-5.

Judge Johnston further informed the petitioners that Section 2254 requires a state prisoner to exhaust his state remedies before petitioning for a federal writ of habeas corpus. *Id.* Judge Johnston observed that the record does not currently reflect that each individual petitioner has exhausted their state court remedies. *Id.*

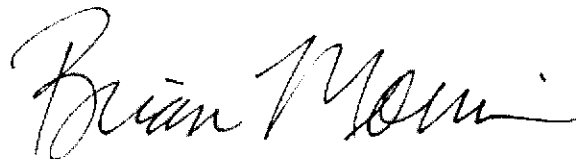
at 4. Judge Johnston thus ordered the petitioners to submit a brief on the issue of exhaustion by February 20, 2018. *Id.*

The Court has reviewed Judge Johnston's Order for clear error. The Court finds no error.

III. ORDER

Accordingly, **IT IS ORDERED** that Petitioners' objection to Magistrate Judge Johnston's Order (Doc. 11) is **OVERRULED**.

DATED this 6th day of April, 2018.

A handwritten signature in cursive script that reads "Brian Morris". The signature is written in black ink and is positioned above a horizontal line.

Brian Morris
United States District Court Judge