

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

DANIEL O'NEILL,

Petitioner,

v.

Civ. No. 15-1050 MV/GJF

JOE GARCIA, Warden,

Respondent.

**ORDER OVERRULING OBJECTIONS AND ADOPTING MAGISTRATE
JUDGE'S PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Petitioner Daniel O'Neill's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Doc. No. 1 ("Petition"). On September 29, 2016, Magistrate Judge Gregory J. Fouratt filed his Proposed Findings and Recommended Disposition ("PFRD") advising that the Court dismiss Petitioner's claims. Doc. No. 32. Specifically, he found that Petitioner had set forth the following putative ground for relief:

Petitioner's complaint is that he was unlawfully denied a state parole hearing in 2003 and 2004 and that the parole he ultimately received in 2006 should have been granted to him back in 2003. Had that happened, he implicitly contends, he would have started serving his current 33-year sentence sooner and been that much closer to its expiration than he is now. Petitioner claims that this turn of events has subjected him to "cruel and unusual punishment and illegal process and every violation of the Constitution."

PFRD at 1 (quotation marks in original). According to Judge Fouratt's analysis, Petitioner's claim fails at the threshold level because it is time-barred and because Petitioner failed to exhaust his available state remedies. *Id.* at 3-6. Even if this Court were to disregard these procedural bars, Judge Fouratt recommended that this Court deny Petitioner's claim on the merits, as "the record is manifestly and unmistakably clear that the Parole Board complied with the order and granted Petitioner the parole hearings the law accorded him." *Id.* at 5.

On October 20, 2016, Petitioner filed Objections to Judge Fouratt's PFRD. Doc. No. 33. Unfortunately, these Objections are hardly challenges to any findings or recommendations made by Judge Fouratt. Rather, they consist of unsupported statements like “[Petitioner] was wronged and his case is strong and can prevail because he has a bona-fide [sic] grounds,” *id.* at 1, and “[Petitioner] was unjustly treated in the New Mexico judicial system.” *Id.* at 3. Even when Petitioner makes what appears to possibly represent a cognizable objection by claiming Judge Fouratt’s PFRD “is based on bias,” a closer inspection reveals that he is really attacking the government itself – rather than the PFRD – as he explains (albeit unclearly) that this bias is based “on [a] basic longstanding panel and rotating system that perfects [sic] the guilty of some . . . under this government administration.” *Id.* at 2.

Thus, despite being given notice of his opportunity to do so, Plaintiff has failed to file any objection to the PFRD itself. Because he was given proper notice, which he obviously received, his failure to propound competent objections now constitutes an absolute waiver of the right to do so. Upon this Court’s review of the record, and having seen no proper objections, the Court concurs with the Magistrate Judge’s finding and recommendations.

IT IS THEREFORE ORDERED THAT:

1. The Magistrate Judge’s Proposed Findings and Recommended Disposition (Doc. No. 32) is **ADOPTED**.
2. Petitioner’s claims are dismissed **WITH PREJUDICE**.
3. All of Petitioner’s pending Motions are hereby **DENIED AS MOOT**.



THE HONORABLE MARTHA VAZQUEZ
UNITED STATES DISTRICT JUDGE