

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

Solome F. Hinojosa,)	
)	
Petitioner,)	Case No. 3:11-cv-70
)	
-vs-)	
)	ORDER ADOPTING REPORT AND
Don Redmann, Warden,)	RECOMMENDATION
)	
Respondent.)	

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that Petitioner Solome F. Hinojosa’s (hereafter “Hinojosa”) petition for habeas relief be dismissed with prejudice, Hinojosa’s motion for a stay and abeyance be denied, and the respondent’s motion to dismiss be granted (Doc. #23). Hinojosa filed objections to the Report and Recommendation, asserting the Court should have first ruled on his motion to stay and then he should have been allowed to file additional briefs in support of his petition and in response to the respondent’s motion to dismiss (Doc. #24). Essentially, Hinojosa objects to the Court ruling on the merits of his petition at the same time it ruled on his request for a stay. Hinojosa has not told the Court what additional information he would have presented to the Court, or how additional information would have affected the magistrate judge’s findings and recommendations.

After considering the magistrate judge’s Report and Recommendation, conducting a *de novo* review of Hinojosa’s objections, and reviewing the entire file, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, **IT IS HEREBY ORDERED** as follows:

1. Hinojosa' petition for habeas relief (Doc. #1) is **DISMISSED WITH PREJUDICE**;
2. Hinojosa's motion for a stay and abeyance (Doc. #10) is **DENIED**; and
3. Respondent's motion to dismiss (Doc. #7) is **GRANTED**.

Based upon the entire record before the Court, dismissal of the petition is not debatable, reasonably subject to a different outcome on appeal, or otherwise deserving of further proceedings. Therefore, a certificate of appealability will not be issued by this Court. See Tiedemann v. Benson, 122 F.3d 518, 252 (8th Cir. 1997) (finding that a district court possesses the authority to issue certificates of appealability under Section 2253(c)). If Hinojosa desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedemann, 122 F.3d at 250-52. The Court further finds any appeal taken by Hinojosa would be frivolous and not be in good faith and, therefore, denies leave to proceed *in forma pauperis* on appeal.

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 15th day of March, 2012.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court