

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA FLORENCE DIVISION

Leonel Rivera,)
Petitioner,) Civil Action No. 4:23-cv-02227-TMC
vs.) ORDER
United States Attorney General,)
Respondent.)

Petitioner Leonel Rivera, a federal prisoner proceeding pro se and in forma pauperis, filed this Petition for Writ of Mandamus pursuant to 28 U.S.C. § 1361. (ECF Nos. 1; 8; 13). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On May 26, 2023, the magistrate judge issued an order granting Petitioner twenty-one (21) days in which to bring the case into proper form. (ECF No. 5). The order also advised Petitioner of his duty to keep the court informed as to his current address. Id. at 2. The magistrate judge warned Petitioner that if he failed either to bring the case into proper form within the time permitted or to keep the court informed of his current address, his case may be subject to dismissal. Id. at 1, 2. The proper form order was mailed on May 26, 2023, to Petitioner at the address he provided to the court, (ECF No. 6), and has not been returned to the court has undeliverable. Accordingly, Petitioner is presumed to have received it. Although he has since filed other documents with the court, see (ECF Nos. 8 (motion for leave to proceed in forma puaperis); 9 (motion for leave to file inmate account statement)), Petitioner has failed to file any response to the proper form order.

Consequently, on July 13, 2023, the magistrate judge issued a Report and Recommendation (“Report”), recommending the court deny the Petition and dismiss this action without issuance and

service of process. (ECF No. 14). The Report notified Petitioner of his right to file objections thereto. *Id.* at 5. The Report was mailed to Petitioner on July 13, 2023, (ECF No. 15), and has not been returned as undeliverable. Therefore, Petitioner is presumed to have received it. Nevertheless, Petitioner has failed to file any objections to the Report, and the time in which to do so has now run.

The magistrate judge's recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Brothers Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)).

Thus, having reviewed the Report and the record and, finding no clear error, the court agrees with and wholly **ADOPTS** the magistrate judge’s findings and recommendations in the Report (ECF No. 14), which is incorporated herein by reference. Accordingly, Petitioner’s Petition

for Writ of Mandamus (ECF No. 1) is **DENIED**, and this case is **DISMISSED** without issuance and service of process.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
August 2, 2023

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.