

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

Jose Lopez-Lara,)	C/A No. 0:08-02005-RBH
)	
Petitioner,)	
)	ORDER
vs.)	
)	
John R. Owens, Warden,)	
)	
Respondent.)	
_____)	

The Plaintiff, *pro se*, instituted this action pursuant to 28 U.S.C. § 2241 on May 30, 2008.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02 D.S.C., this matter was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. The matter is before this Court on the Report and Recommendation of Magistrate Judge Marchant, which was issued on June 18, 2008. After analyzing the issues presented in this case, the Magistrate Judge recommended that this Court dismiss the petition without prejudice and without service of process. The petitioner filed objections to the Report on July 7, 2008.

The Magistrate Judge makes only a recommendation to the Court, to which any party may file written objections. The Court is not bound by the recommendation of the Magistrate Judge but, instead, retains responsibility for the final determination. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is required to make a *de novo* determination of those portions of the Report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the Magistrate Judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of

scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the Magistrate Judge's findings or recommendations. 28 U.S.C. § 636(b)(1).

Petitioner was convicted of illegal entry under 8 U.S.C. § 1326 and sentenced to seventy-seven months in prison. His direct appeal from the conviction was affirmed by the Ninth Circuit in an unpublished decision. *See United States v. Lopez-Lara*, 2006 WL 679894(9th Cir. 2006). In his appeal, Petitioner attempted to collaterally attack his original deportation order. The Ninth Circuit found that his attempted collateral attack on the deportation proceedings lacked merit. It first found that he failed to appeal the deportation order although the record indicated that he was aware of his right to appeal and no one induced him to waive his appeal rights. In addition, the Court found that, even if the petitioner could show a violation of due process at the deportation hearing, he could not show prejudice. "His extensive criminal behavior, unsuccessful rehabilitation, failure to maintain family ties, and lack of any meaningful employment history militate against any relief from deportation, and it is extremely unlikely that it would have been granted." *Id.*

Petitioner has now filed a petition under 28 U.S.C. § 2241, "challenging the validity of the July 30, 1996 deportation hearing." (Objections, p. 1). Petitioner has apparently not filed a petition pursuant to 28 U.S.C. § 2255. Nor has he shown that his remedy through a § 2255 motion is inadequate or ineffective. Therefore, this Court cannot entertain an action challenging the validity of the sentence. In addition, Petitioner made the same arguments regarding the deportation hearing that he makes here before the Ninth Circuit Court of Appeals, and the Court ruled against him.

The Court has reviewed the Petition, Report and Recommendation by the Magistrate Judge, the applicable law, and the petitioner's objections. On the basis of the authorities cited by the

Magistrate Judge and this Court's review of the record, the Court adopts the Report of the Magistrate Judge and incorporates it into this Order by reference.

The petition for writ of habeas corpus is dismissed without prejudice and without service of process.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

December 10, 2008
Florence, South Carolina