

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

CORNELIUS ROBINSON

§

VS.

§

CIVIL ACTION NO. 1:13-CV-82

JODY R. UPTON

§

ORDER OVERRULING PETITIONER’S OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Petitioner Cornelius Robinson, a federal prisoner confined in Beaumont, Texas, proceeding through counsel, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241.

The Court ordered that this matter be referred to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends dismissing the petition.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and the pleadings. Petitioner filed objections to the Magistrate Judge’s Report and Recommendation.

The Court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the Court concludes the objections are without merit. Citing *United States v. Cotton*, 535 U.S. 625, 630 (2002), petitioner contends that he may challenge subject matter jurisdiction at any time. The Supreme Court held in *Cotton* that a defective indictment does not deprive a court of jurisdiction. *Cotton*, 535 U.S. at 631. The Supreme Court did not hold that a challenge to the court’s subject matter jurisdiction can be raised for the first time in a § 2241 petition.

Petitioner may not challenge his conviction or sentence under § 2241, because his claims do not meet the requirements set forth in *Reyes-Requena v. United States*, 243 F.3d 893, 904 (5th Cir. 2001); *see also Wesson v. U.S. Penitentiary*, 305 F.3d 343, 347 (5th Cir. 2002) (“This court must apply the *Reyes-Requena* actual innocence test as the binding precedent in this circuit. . . .”).

ORDER

Accordingly, petitioner’s objections are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge’s recommendation.

So **ORDERED** and **SIGNED** this **10** day of **April, 2013**.



Ron Clark, United States District Judge