

United States District Court
Southern District of Texas

ENTERED

June 10, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

RUBEN ARCE,	§	
	§	
Petitioner,	§	
VS.	§	CIVIL ACTION NO. 5:18-CV-9
	§	
BRYAN COLLIER, <i>et al.</i> ,	§	
	§	
Respondents.	§	

ORDER

On February 22, 2019, U.S. Magistrate Judge Sam Sheldon issued a Report and Recommendation in accordance with 28 U.S.C. § 636(b)(1) recommending that the Court grant Respondents’ Motion for Summary Judgment and deny Petitioner’s Motion for Leave for Discovery. (Dkt. No. 34). Ordinarily, parties are afforded fourteen days after being served with a copy of proposed findings and recommendations to file timely objections. 28 U.S.C. § 636(b)(1). The Court nevertheless waited three weeks from the date of Magistrate Judge Sheldon’s filing to take any formal action. Because neither party had filed objections, the Court applied a plain-error standard of review and adopted the Report and Recommendation, granting Respondents’ Motion for Summary Judgment (Dkt. No. 23) and denying Petitioner’s Motion for Leave for Discovery (Dkt. No. 30).

The Court subsequently received Petitioner’s Motion for Enlargement of Time to File Objections (Dkt. No. 36), which requested an additional 45 days to respond to Judge Sheldon’s Report and Recommendation. Petitioner was given until May 2, 2019, to file a motion that did two things: (1) explained his inability to file timely

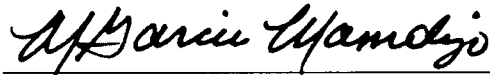
objections, and (2) detailed any objections he had to the Report and Recommendation. (Dkt. No. 38).

Petitioner has since filed his Explanation of Inability to File Timely and Objections (Dkt. No. 40), explaining that he was not served with the Report and Recommendation until March 6, 2019, and that his ability to access the law library became limited the following day due to a unit lockdown. (Dkt. No. 40 at 2). Based on those representations, the Court finds good cause to grant Petitioner's requested extension and will consider his objections as timely filed.

The Court conducts a de novo review of Petitioner's objections and applies a plain-error standard of review for the rest of the proposed findings and recommendations. Having considered the entire record, as well as arguments advanced by the parties, the Court **OVERRULES** Petitioner's objections and **ADOPTS** the Report and Recommendation (Dkt. No. 34) as the findings and opinion of the Court. Accordingly, Respondents' Motion for Summary Judgment (Dkt. No. 23) is **GRANTED**, Petitioner's Motion for Leave for Discovery (Dkt. No. 30) is **DENIED**, and this civil action is **DISMISSED WITH PREJUDICE**. Should Petitioner seek a certificate of appealability, it is **DENIED**, and the Court certifies that any appeal should not be taken *in forma pauperis*.

It is so **ORDERED**.

SIGNED June 10, 2019.



Marina Garcia Marmolejo
United States District Judge