IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JEREMY FONTANEZ,

Petitioner,

v.

CIVIL ACTION NO.: 1:15CV182 (Judge Keeley)

WARDEN TERRY O'BRIEN,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [DKT. NO. 6]

On November 25, 2014, the <u>pro</u> <u>se</u> petitioner, Jeremy Fontanez ("Fontanez"), an inmate at FCI Hazelton, filed a petition pursuant to 28 U.S.C. § 2241, alleging that Bureau of Prison ("BOP") officials had confiscated his eagle feathers, which he maintained were a part of his Native American religious practice (dkt. no. 1). For relief, he asked the Court to "decide this case in a way that ensures the B.O.P. cannot deprive Petitioner, or anyone else in his position, of his right to possess integral eagle feather for purposes of religious practices." <u>Id.</u> at 8.

The Court referred this matter to United States Magistrate Judge Robert W. Trumble for initial screening and a Report and Recommendation ("R&R") in accordance with LR PL P 2. On November 12, 2015, Magistrate Judge Trumble issued his R&R, in which he concluded that the Fontanez could not bring his claim through a § 2241 habeas corpus petition, which attacks the validity, manner, or length of a prisoner's confinement (dkt. no. 6 at 1-2). Instead of a habeas petition, Fontanez would need to file a <u>Bivens</u> action in

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order to pursue the relief he requested. <u>Id.</u> at 2. Accordingly, the R&R recommended that the Court dismiss the petition without prejudice. <u>Id.</u> at 2-3.

The R&R also specifically warned Fontanez that his failure to object to the recommendation would result in the waiver of any appellate rights he might otherwise have on this issue. <u>Id.</u> at 3. Fontanez did not file any objections.¹ Consequently, finding no clear error, the Court **ADOPTS** the R&R in its entirety (dkt. no. 6) and **DISMISSES** Fontanez's petition **WITHOUT PREJUDICE**.

It is so **ORDERED.**

Pursuant to Fed. R. Civ. P. 58, the Court directs the Clerk of Court to enter a separate judgment order and to transmit copies of this order to the <u>pro se</u> petitioner, certified mail, return receipt requested.

Dated: December 6, 2016.

/s/ Irene M. Keeley IRENE M. KEELEY UNITED STATES DISTRICT JUDGE

¹ The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a <u>de novo</u> review of the issue presented. <u>See Thomas v. Arn</u>, 474 U.S. 140, 148-53 (1985); <u>Wells v.</u> <u>Shriners Hosp.</u>, 109 F.3d 198, 199-200 (4th Cir. 1997).