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

STEVEN MARTINEZ,

Petitioner,

v. **CIVIL ACTION NO. 1:16CV71**
(Judge Keeley)

BUREAU OF PRISONS,

Respondent.

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [DKT. NO. 9] AND TRANSFERRING CASE

On April 25, 2016, the petitioner, Steven Martinez ("Martinez"), filed the pending Petition for Habeas Corpus Pursuant to 28 U.S.C. § 2241 ("Petition") (Dkt. No. 1). Martinez indicated that the Petition concerns "prison disciplinary proceedings," and requested "that the remainder of [his] property held at Federal Medical Center, Butner" be forwarded to him without cost. Id. at 1, 8. As more fully outlined in the administrative grievances attached to the Petition, Martinez contends that Bureau of Prisons ("BOP") staff at Federal Medical Center, Butner ("FMC Butner") failed to properly convey his property when he was transferred to United States Penitentiary, Coleman ("USP Coleman") (Dkt. No. 1-1 at 11). Pursuant to 28 U.S.C. § 636 and LR PL P 2, the Court referred the Petition to the Honorable Michael J. Aloi, United States Magistrate Judge, for initial review.

Thereafter, on November 19, 2016, Martinez filed a "complaint" in this case, alleging that various BOP employees at FMC Butner had

retaliated against him and deprived him of his constitutional rights (Dkt. No. 7 at 1-2). More particularly, Martinez alleges that his case manager and the case manager coordinator at FMC Butner retaliated against him, in violation of his Fifth Amendment rights, by "placing him on transfer status." He further contends that a correctional officer at FMC Butner violated his Fourth Amendment rights during the transfer of his property to USP Coleman. Id. at 5. Among other things, Martinez seeks declaratory relief and the return of his personal property. Id. at 6.

In his Report and Recommendation ("R&R") dated May 22, 2017, Magistrate Judge Aloi reasoned that Martinez cannot seek relief under § 2241 because "it is clear that his petition is not an attack on, nor are its claims related in any way to, the execution of his sentence." Rather, Martinez is seeking to vindicate the alleged violation of his constitutional rights (Dkt. No. 9 at 4). The magistrate judge reasoned that to pursue the claims he raises, Martinez "must file[] a lawsuit governed by Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 399 (1971),"[1] in the district where the alleged constitutional violations

[1] In Bivens, the Supreme Court permitted suit against federal employees in their individual capacity, creating a counterpart to suit under 42 U.S.C. § 1983.

occurred (Dkt. No. 9 at 4). Noting that a dismissal of the case without prejudice might leave Martinez time-barred from filing his case in the proper court, the R&R recommended that the Court transfer this case as a Bivens action to the Eastern District of North Carolina, where FMC Butner is located. Id. The R&R also informed Martinez of his right to file any objections to the recommendations within fourteen (14) days following his receipt of the R&R. Id. at 4-5; see also 28 U.S.C. § 636(b)(1)(C). Although he received the R&R on May 25, 2017 (Dkt. No. 10), Martinez has not filed any objections.

This Court is required to review de novo only those portions of the magistrate judge's findings to which specific objection is made. Dellarcirprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). "[T]he Court may adopt, without explanation, any of the magistrate judge's recommendations to which the prisoner does not object." Id. at 604 (citing Camby, 718 F.2d at 199). Because Martinez has not filed any objections, the Court's review of the R&R is for clear error.

After reviewing the R&R and the record, the Court adopts the opinion of the Magistrate Judge for the reasons discussed in the R&R (Dkt. No. 9). It therefore:

ORDER ADOPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION [DKT. NO. 9] AND TRANSFERRING CASE

1. **ADOPTS** the R&R (Dkt. No. 9);

2. **CONSTRUES** the Petition (Dkt. No. 1) and complaint (Dkt. No. 7) as a Bivens action; and

3. **TRANSFERS** this case to the Eastern District of North Carolina.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this order to the pro se petitioner, certified mail and return receipt requested.

DATED: June 19, 2017.

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