

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

JACINTO L. BRACMORT,

Petitioner,

v.

**Civil Action No. 2:14-CV-51
(BAILEY)**

RUSSELL A. PERDUE, Warden; MR. WEAVER; DR. ANDERSON; MS. LEHMANN; MS. BRANNAN; MR. NOLTE; FCI GILMORE MEDICAL STAFF; CHARLES E. SAMUELS, JR., Director, Federal Bureau of Prisons; NEWTON E. KENDIG, Medical Director, Federal Bureau of Prisons; CHRISTINA GHERKE; and ANDREA POSSE,

Respondents.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day, the above-styled matter came before this Court for consideration of the Report and Recommendation of United States Magistrate Judge James E. Seibert [Doc. 40]. Pursuant to this Court's Local Rules, this action was referred to Magistrate Judge Seibert for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Seibert filed his R&R on February 11, 2015 [Doc. 40]. In that filing, the magistrate judge recommended that this Court deny and dismiss the petition for Writ of Mandamus [Doc. 1] without prejudice to the petitioner's right to file a *Bivens* action.

Pursuant to 28 U.S.C. § 636(b)(1)(c), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made.

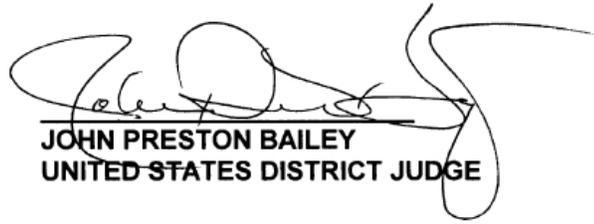
However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. **Thomas v. Arn**, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Originally, objections to Magistrate Judge Seibert's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b). However, this Court granted the petitioner an extension of time to file objections by March 25, 2015. No objections have been filed. Accordingly, this Court will review the R&R for clear error.

Upon careful review of the above, it is the opinion of this Court that the **Report and Recommendation [Doc. 40]** should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, the petition for Writ of Mandamus **[Doc. 1]** is **DENIED** and **DISMISSED WITHOUT PREJUDICE** to the petitioner's right to file a **Bivens** action. Additionally, the petitioner's Motion to Issue Subpoenas **[Doc. 33]** is **DENIED AS MOOT**. Finally, the Clerk is directed to enter separate judgment in favor of the respondents.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

DATED: March 26, 2015.



JOHN PRESTON BAILEY
UNITED STATES DISTRICT JUDGE