

APPENDIX



APPENDIX A



**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-1796

Sheng-Wen Cheng

Petitioner - Appellant

v.

Warden Jared Rardin

Respondent - Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:23-cv-02852-ECT)

JUDGMENT

Before SMITH, GRUENDER, and BENTON, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

May 20, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Stephanie N. O'Banion

APPENDIX B

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-1796

Sheng-Wen Cheng

Appellant

v.

Warden Jared Rardin

Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:23-cv-02852-ECT)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

June 24, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sheng-Wen Cheng,

File No. 23-cv-2852 (ECT/DJF)

Petitioner,

v.

ORDER

Warden Jared Rardin,

Respondent.

Petitioner Sheng-Wen Cheng has applied for *in forma pauperis* ("IFP") status on appeal from the denial of his petition for a writ of habeas corpus. *See* ECF No. 38. I have reviewed the IFP application and conclude both that Cheng qualifies financially for IFP status and that the appeal is taken in good faith. *See* 28 U.S.C. § 1915(a)(3). Accordingly, the IFP application will be granted.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED THAT** the application to proceed *in forma pauperis* on appeal of petitioner Sheng-Wen Cheng [ECF No. 38] is **GRANTED**.

Dated: April 15, 2024

s/ Eric C. Tostrud
Eric C. Tostrud
United States District Court

UNITED STATES DISTRICT COURT
District of Minnesota

Sheng-Wen Cheng,

Petitioner,

v.

Warden Jared Rardin,

Respondent.

JUDGMENT IN A CIVIL CASE

Case Number: 23-cv-2852 ECT/DJF

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Petitioner Sheng-Wen Cheng's Objections to the Report and Recommendation [ECF No. 30] are **OVERRULED**.
2. The Report and Recommendation [ECF No. 19] is **ACCEPTED**.
3. Petitioner's request for habeas corpus relief under 28 U.S.C. § 2241 [ECF No. 1] is **DENIED**.
4. Petitioner's Motion to Order the Respondent to Show Cause [ECF No. 18] is **DENIED**.
5. This matter is **DISMISSED** without prejudice.

Date: 3/26/2024

KATE M. FOGARTY, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Sheng-Wen Cheng,

File No. 23-cv-2852 (ECT/DJF)

Petitioner,

v.

**ORDER ACCEPTING REPORT
AND RECOMMENDATION**

Warden Jared Rardin,

Respondent.

Petitioner Sheng-Wen Cheng commenced this action *pro se* by filing a petition for a writ of habeas corpus. ECF No. 1. After pleading guilty to four counts of fraud, Mr. Cheng was sentenced to seventy-two months of imprisonment, followed by three years of supervised release and removal from the United States. *See United States v. Cheng*, No. 21-cr-261-RA (S.D.N.Y. Aug. 19, 2021) at ECF Nos. 33–34. Mr. Cheng’s habeas petition challenges the Bureau of Prison’s finding that Mr. Cheng is ineligible for placement in a Residential Reentry Center (“RRC”). ECF No. 1 at 3. Mr. Cheng also filed a request for this Court to order the Respondent to show cause why his petition should not be granted. ECF No. 18.

The case is now before the Court on a Report and Recommendation issued by Magistrate Judge Dulce J. Foster. ECF No. 19. Magistrate Judge Foster recommends denying Mr. Cheng’s petition for several reasons. First, the challenge is premature because Mr. Cheng is entitled to *at most* twelve months in RRC, and he has about eighteen months remaining in custody. *Id.* at 4–5; *see also* Fed. Bureau of Prisons, *Find an Inmate*,

<https://www.bop.gov/inmateloc/> (last visited Mar. 22, 2024) (indicating Mr. Cheng's release date is September 27, 2025). Second, courts in this District have repeatedly held that the Bureau of Prisons has exclusive authority to determine placement of prisoners and such decisions are not subject to judicial review. R. & R. at 5; *see also Garcia v. Eischen*, No. CV 22-444 (SRN/BRT), 2022 WL 4084185 (D. Minn. Aug. 16, 2022), *report and recommendation adopted*, No. 22-CV-444 (SRN/BRT), 2022 WL 4080751 (D. Minn. Sept. 6, 2022). Third, a habeas petition is not the appropriate vehicle to challenge a prisoner's conditions or place of confinement. R. & R. at 6–7; *see also Fiorito v. Fikes*, No. 22-cv-0749 (PJS/TNL), 2022 WL 16699472, at *3 (D. Minn. Nov. 3, 2022), *aff'd*, No. 23-1006, 2023 WL 4841966 (8th Cir. July 28, 2023).

Mr. Cheng filed objections to the Report and Recommendation and two exhibits. ECF Nos. 30–31. Respondent filed a very short response to the objections, confirming Respondent's view that the Report and Recommendation "should be adopted in its entirety." ECF No. 32. Because Mr. Cheng has objected, the Court is required to review the Report and Recommendation de novo pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.2(b)(3). The Court has undertaken that de novo review and has concluded that Magistrate Judge Foster's analysis and conclusions are correct.

Therefore, based upon all of the files, records, and proceedings in the above-captioned matter, **IT IS ORDERED THAT:**

1. Petitioner Sheng-Wen Cheng's Objections to the Report and Recommendation [ECF No. 30] are **OVERRULED**.
2. The Report and Recommendation [ECF No. 19] is **ACCEPTED**.

3. Petitioner's request for habeas corpus relief under 28 U.S.C. § 2241 [ECF No. 1] is **DENIED**.

4. Petitioner's Motion to Order the Respondent to Show Cause [ECF No. 18] is **DENIED**.

5. This matter is **DISMISSED** without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 25, 2024

s/ Eric C. Tostrud
Eric C. Tostrud
United States District Court

APPENDIX D

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 24-1796

Sheng-Wen Cheng

Appellant

v.

Warden Jared Rardin

Appellee

Appeal from U.S. District Court for the District of Minnesota
(0:23-cv-02852-ECT)

ORDER

The motion to recall the mandate filed by Appellant Sheng-Wen Cheng is denied.

July 08, 2024

Order Entered at the Direction of the Court:
Acting Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Maureen W. Gornik