

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

Brent Thomas Bercier,)	
)	
Plaintiff,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	
Turtle Mountain Tribal Court,)	
)	Case No. 4:08-cv-094
Defendant.)	

Before the Court is the Plaintiff’s petition for habeas corpus relief pursuant to Section 1303 of the Indian Civil Rights Act filed on November 4, 2008. See Docket No. 2. On December 19, 2008, the Defendant filed a Motion to Dismiss for Failure to Exhaust Tribal Court Remedies. See Docket No. 8. Magistrate Judge Charles S. Miller, Jr. reviewed the pending motions and, on December 22, 2008, submitted a Report and Recommendation. See Docket No. 10. Judge Miller found that the Court should require the Plaintiff to exhaust his tribal court remedies by seeking relief from the Turtle Mountain Tribal Court of Appeals. Judge Miller recommended that the Defendant’s motion to dismiss be granted and that the Plaintiff’s habeas corpus petition be denied without prejudice to a later refiling after available tribal remedies have been exhausted or the Plaintiff is able to demonstrate that exhaustion would be futile. The Plaintiff was given ten (10) days to file an objection to the Report and Recommendation. The Plaintiff has not filed an objection.

The Court has reviewed the Report and Recommendation, relevant case law, and the record as a whole and finds the Report and Recommendation to be persuasive. Accordingly, the Court **ADOPTS** the Report and Recommendation (Docket No. 10) in its entirety, **GRANTS** the Defendant’s Motion to Dismiss (Docket No. 8), and **DENIES** the Plaintiff’s habeas corpus petition

(Docket No. 2) without prejudice to a later refiling after available tribal remedies have been exhausted or the Plaintiff is able to demonstrate that exhaustion would be futile.

IT IS SO ORDERED.

Dated this 15th day of January, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge
United States District Court