

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
NORTHEASTERN DIVISION**

**JERRY GIBBS CARTER,** )  
 )  
 Plaintiff, )  
 vs. )  
 **JUDGE MARTH E. WILLIAMS,** )  
 **et al.,** )  
 Defendants. )

Civil Action Number  
**5:13-cv-857-AKK-PWG**

**MEMORANDUM OPINION**

The magistrate judge filed a report and recommendation on November 15, 2013, recommending that this action be dismissed pursuant to 28 U.S.C. § 1915A(b)(1) and/or (2). Doc. 14. On November 22, 2013, Plaintiff filed an objection to the magistrate judge’s report and recommendation. Doc. 15.

Plaintiff’s objection centers around the doctrine of absolute immunity. In order to invoke the exception to absolute immunity premised on the assertion that the judge acted in the absence of subject matter jurisdiction, a plaintiff must show that the judge acted not merely “in excess of jurisdiction,” but instead in the “*clear* absence of *all* jurisdiction.” *Dykes v. Hosemann*, 776 F.2d 942, 947 (11th Cir. 1985) (quoting *Stump v. Sparkman*, 435 U.S. 349 at 356–57 (1978)) (emphasis added). Plaintiff contends that because he challenges jurisdiction in his underlying criminal case, absolute immunity should not apply at this stage of the proceedings. *Id.* This

argument misses the mark, as Plaintiff makes no attempt to demonstrate *why* there is a clear absence of all jurisdiction. Further, Plaintiff's objection to the magistrate judge's failure to address his amended count ten, doc. 12, and count eleven, doc. 13, is not well placed. These counts seek monetary damages from immune defendants and Plaintiff's immediate release from jail, issues the magistrate judge addressed in his report and recommendation. Plaintiff's amended counts also seek injunctive relief against further criminal prosecution, however this form of relief is inappropriate. *See Younger v. Harris*, 401 U.S. 37 (1971) (holding that a federal court should not enjoin a state criminal prosecution begun prior to the institution of the federal suit except in very unusual situations, where necessary to prevent immediate irreparable injury); *Samuels v. Mackell*, 401 U.S. 66 (1971) (holding that the considerations in *Younger* require federal courts to abstain from issuing declaratory as well as injunctive relief).

After careful consideration of the record in this case, the magistrate judge's report and recommendation, and plaintiff's objections, the court hereby **ADOPTS** the report of the magistrate judge. The court further **ACCEPTS** the recommendation of the magistrate judge that this action be **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1) and (2).

A separate order in conformity with this Memorandum Opinion will be entered contemporaneously herewith.

**DONE** this 23rd day of December, 2013.

A handwritten signature in black ink, appearing to read "Abdul Kallon", written in a cursive style.

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ABDUL K. KALLON  
UNITED STATES DISTRICT JUDGE