

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Dante Shon Gordon,	)	
	)	
Plaintiff,	)	No. CIV 11-8153-PHX-RCB(JFM)
	)	
vs.	)	O R D E R
	)	
Charles L. Ryan, <i>et al.</i>	)	
	)	
Defendants.	)	

---

Presently before the court is a Report and Recommendation ("R & R") filed with this court by the Honorable James F. Metcalf, United States Magistrate Judge), wherein he makes four recommendations with respect to plaintiff's First Amended Complaint ("FAC"). First, pursuant to 28 U.S.C. § 1915(e), he recommends dismissal of the State of Arizona as a defendant, as well as dismissal of plaintiff's claims based upon the Privileges and Immunities Clause of the United States Constitution. R & R (Doc. 16) at 7:13-15. Second, the Magistrate Judge recommends staying service of plaintiff's original complaint. *Id.* at 7:16-17. Third, the Magistrate Judge recommends "that Defendant Director Ryan be

1 ordered to respond to Count I of the [FAC], and that  
2 Defendants Deputy Warden Polland and Complex Administrator  
3 Elliott be ordered to respond to Count II of the [FAC]." Id.  
4 at 7:18-21. Fourth, he recommends "that service on  
5 Defendants Director Ryan, Deputy Warden Polland, and Complex  
6 Administrator Elliott proceed" as detailed in that R & R.  
7 See id. at 7:22-9:3.

8 On May 23, 2012, this R & R was filed and served upon the  
9 parties. The R & R explicitly advised the parties that,  
10 pursuant to Fed.R.Civ.P. 72, they "shall have fourteen (14)  
11 days from the date of service of a copy of this  
12 recommendation within which to file specific written  
13 objections with the Court." Id. at 9:9-11. None of the  
14 parties have filed objections to that R & R, and the fourteen  
15 day time frame for so doing has passed.<sup>1</sup>

16 When reviewing an R & R issued by a Magistrate Judge,  
17 this court "may accept, reject, or modify, in whole or in  
18 part, the findings or recommendations made by the magistrate  
19 judge." 28 U.S.C. § 636(b)(1). "Of course, de novo review of  
20 a R & R is only required when an objection is made to the  
21 R & R[.]" Wang v. Masaitis, 416 F.3d 992, 1000 n. 13 (9<sup>th</sup>  
22 Cir. 2005) (citing United States v. Reyna-Tapia, 328 F.3d  
23 1114, 1121 (9<sup>th</sup> Cir. 2003) (*en banc*)). That is because  
24 "[n]either the Constitution nor the [Federal Magistrates Act]  
25 requires a district judge to review, de novo, findings and


---

26  
27 <sup>1</sup> Calculating the time in accordance with Fed.R.Civ.P. 6, including  
28 allowing three extra days for service in accordance with subsection (d) of  
that Rule, means that the parties had until June 11, 2012 by which to  
timely file any objections.

1 recommendations that the parties themselves accept as  
2 correct." Reyna-Tapia, 328 F.3d at 1121 (citations omitted).  
3 Indeed, construing the Federal Magistrates Act, the Supreme  
4 Court has found that that "statute does not on its face  
5 require any review at all, by either the district court or  
6 the court of appeals, of any issue that is not the subject of  
7 an objection." Thomas v. Arn, 474 U.S. 140, 149, 106 S.Ct.  
8 466, 88 L.Ed.2d 435 (1985) (emphasis added).

9 Consistent with the foregoing authority, and no  
10 objections having been filed by any party thereto, the court  
11 has not engaged in a de novo review; and instead, the court  
12 having "satisf[ied] itself that there is no clear error on  
13 the face of the record[,]" hereby ACCEPTS, ADOPTS AND  
14 INCORPORATES BY REFERENCE in its entirety, as if fully set  
15 forth herein, the Magistrate Judge's Report and  
16 Recommendation (Doc. 16). See FED.R.Civ.P. 72, Advisory  
17 Committee Notes, 1983 Addition.

18 DATED this 2nd day of July, 2012.

19  
20  
21   
22 Robert C. Broomfield  
23 Senior United States District Judge  
24  
25

26 Copies to counsel of record and plaintiff *pro se*  
27  
28