

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
HELENA DIVISION**

**ALAN R. KING, JR
REG. #08297-028**

PLAINTIFF

V.

CASE NO. 2:09CV00163 JMM

UNITED STATES OF AMERICA, ET AL.

DEFENDANTS

ORDER

The Court has reviewed the Proposed Findings and Partial Recommended Disposition submitted by United States Magistrate Judge H. David Young, and the objections filed by the United States.

In the Proposed Findings and Partial Recommendation, the Magistrate Judge addressed the issue of whether 28 U.S.C. § 2680(h) waived the United States's sovereign immunity finding that the plain reading of § 2680(h) revealed no limitation on the circumstances when assault and battery claims may be brought against a law enforcement office. In its objection, defendant acknowledges that the Magistrate Judge declined to accept its argument regarding § 2680(h), but contends that the recommendation should be remanded back to the Magistrate Judge because he failed to address the issue of whether the federal prison guard was operating within the scope of his employment during the time of the alleged assault against plaintiff.

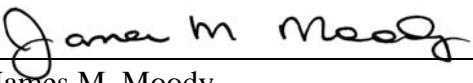
Plaintiff has responded to the government's objections contending that the scope of employment issue was not raised in defendant's Motion to Dismiss and that the parties were not asked to brief that issue in the Court's March 16, 2010 Order which sought briefs on the assault

and battery claims. Plaintiff also contends that the only other issues raised by the defendant's Motion to Dismiss were resolved when he was allowed to amend his complaint to bring his Constitutional claims as Bivens claims.

After carefully considering the objections and making a *de novo* review of the record in this case, the Court concludes that the Proposed Findings and Recommended Disposition should be, and hereby are, approved and adopted in their entirety as this Court's findings in all respects.

Because the specific issue regarding defendants's scope of employment was not raised in defendants's Motion to Dismiss resulting in the Magistrate Judge not addressing that issue, that issue is not before this Court. The adoption of the Proposed Findings and Recommended Disposition is without prejudice to the defendants filing a Motion to Dismiss raising the scope of employment issue.

IT IS SO ORDERED THIS 7 day of July, 2010.



James M. Moody
United States District Judge