

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-00545-WYD-MEH

TONY E. POWELL,

Plaintiff,

v.

J. WILNER, (S.I.A.),

Defendant.

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**ORDER AFFIRMING AND ADOPTING RECOMMENDATION  
OF UNITED STATES MAGISTRATE JUDGE**

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THIS MATTER is before the Court on Defendant Wilner's Motion for Summary Judgment filed September 30, 2009 [d/e 176]. This matter was referred to Magistrate Judge Michael E. Hegarty by Order of Reference dated November 9, 2007 [d/e 55] and reassigned to Magistrate Judge Kristen L. Mix on November 24, 2008 [d/e 155]. A Recommendation of United States Magistrate Judge was issued on March 1, 2010, regarding Defendant's motion and is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B); FED. R. CIV. P. 72(b).

Magistrate Judge Mix recommends therein that Defendant's motion be denied. Magistrate Judge Mix advised the parties that specific written objections were due within fourteen (14) days after being served with a copy of the Recommendation. (Rec., p. 15 [d/e 182]. Despite this advisement, no objections were filed by any party to Magistrate Judge Mix's Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation "under any standard [I] deem[] appropriate." *Summers v.*

*Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that "[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings"). Nonetheless, though not required to do so, I review the Recommendation to "satisfy [my]self that there is no clear error on the face of the record."<sup>1</sup> See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that genuine issues of fact exist precluding summary judgment at this stage of the proceedings. I also agree with Magistrate Judge Mix that Defendant has not demonstrated an entitlement to qualified immunity warranting summary judgment. Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated March 1, 2010, is **AFFIRMED and ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendant Wilner's Motion for Summary Judgment filed September 30, 2009 [d/e 176] is **DENIED**.

Dated: April 7, 2010

BY THE COURT:

s/ Wiley Y. Daniel  
Wiley Y. Daniel  
Chief United States District Judge

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<sup>1</sup> Note, this standard of review is something less than a "clearly erroneous or contrary to law" standard of review, FED. R. CIV. P. 72(a), which in turn is less than a *de novo* review, FED. R. CIV. P. 72(b).