

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-00487-WYD-KMT

DERRICK L. ARANDA,

Plaintiff,

v.

L.T. McCORMAC,
L.T. STRODE,
SGT. P. ADERSON, and
LENORD VIGIL,

Defendants.

**ORDER ADOPTING AND AFFIRMING
MAGISTRATE JUDGE'S RECOMMENDATION**

THIS MATTER is before the Court in connection with Defendants' Motion to Dismiss filed September 22, 2008 [#31]. This motion was referred to Magistrate Judge Tafoya for a recommendation by memorandum dated September 23, 2008 [#32]. A Recommendation of United States Magistrate Judge was issued on May 26, 2009, and is incorporated herein by reference (the "Recommendation"). See 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b).

Magistrate Judge Tafoya recommends therein that Defendants' motion to dismiss be denied. *Recommendation* at 11. Specifically, she found that taking all of Plaintiff's allegations as true, he has alleged enough facts to state a claim for violation of his rights under the Eight Amendment to the United States Constitution. Magistrate Judge Tafoya also rejected Defendants' arguments that they are nonetheless entitled to qualified

immunity. *Recommendation* at 6-11.

Magistrate Judge Tafoya advised the parties that specific written objections were due within ten (10) days after being served with a copy of the Recommendation.

Recommendation at 11-12. Despite this advisement, no objections were filed by any party to the Magistrate Judge'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."¹ See Fed. R. Civ. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on the face of the record. I agree with Magistrate Judge Tafoya that Plaintiff has stated a claim for relief under the Eight Amendment and that Defendants are not entitled to qualified immunity. Accordingly, it is hereby

ORDERED that the Recommendation of United States Magistrate Judge dated May 26, 2009 [#48], is **AFFIRMED and ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Defendants' Motion to Dismiss filed September 22,

¹ 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).

2008 [#31] is **DENIED**. It is

FURTHER ORDERED that Plaintiff's Motion to Clarify, filed May 22, 2009 [#47] is
DENIED AS MOOT.

Dated: June 18, 2009

BY THE COURT:

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