

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.

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

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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."<sup>1</sup> 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,

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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).

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