

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Robert E. Blackburn**

Civil Action No. 15-cv-00408-REB-KLM

MARK A. ESQUIBEL,

Plaintiff,

v.

RICK RAEMISCH, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
ROGER WERHOLTZ, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
TONY CAROCHI, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
TOM CLEMENTS, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
JOE ORTIZ, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
JOHN SUTHERS, individually and in his official capacity as Executive Director of the Colorado Department of Corrections,  
MARY CARLSON, individually and in her official capacity as Time Computation Manager of Colorado Department of Corrections, and  
JOHN DOE, individually and in his/her official capacity as Executive Director of the Colorado Department of Corrections,

Defendants.

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**ORDER ADOPTING RECOMMENDATIONS OF THE  
UNITED STATES MAGISTRATE JUDGE**

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**Blackburn, J.**

This matter is before me on the following: (1) the **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6)** [#21]<sup>1</sup> filed by defendants Rick Raemisch and Mary

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<sup>1</sup> “[#21]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

Carlson on May 21, 2015; and (2) the **Recommendation of United States Magistrate Judge** [#43] filed September 17, 2015; and (3) the **Recommendation of United States Magistrate Judge** [#67] filed February 8, 2016. No objections to the recommendations were filed. Therefore, I review the recommendations for plain error only.<sup>2</sup> **See** *Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10<sup>th</sup> Cir. 2005). Finding no error, much less plain error, in the recommendations, I find and conclude that recommendations should be approved and adopted.

The plaintiff, Mark Esquibel, is a prisoner incarcerated by the Colorado Department of Corrections (DOC). Mr. Esquibel claims in his complaint [#1] that the DOC does not calculate correctly his mandatory release date. As detailed in the first recommendation [#43], Mr. Esquibel never arranged to have several defendants served with a summons and complaint. On this basis, Mr. Esquibel consents to the dismissal of all defendants save Rick Raemisch and Mary Carlson. Appropriately, the magistrate judge recommends that the claims against these defendants be dismissed.

In the motion to dismiss [#21], the remaining two defendants argue that this case must be dismissed as to the claims asserted against them in their official capacities based on Eleventh Amendment immunity. In addition, under the doctrine established in *Heck v. Humphrey*, 512 U.S. 477 (1994), the defendants seek dismissal of the claims asserted against them in their individual capacities. For the reasons stated by the magistrate judge, dismissal on these bases is proper. Finally, the magistrate judge

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<sup>2</sup> This standard pertains even though plaintiff is proceeding *pro se* in this matter. *Morales-Fernandez*, 418 F.3d at 1122. In addition, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See** *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Andrews v. Heaton*, 483 F.3d 1070, 1076 (10<sup>th</sup> Cir. 2007); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10<sup>th</sup> Cir. 1991) (citing *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972)).

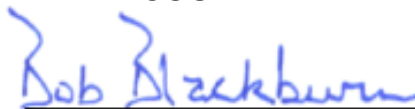
notes that the relief sought by Mr. Esquibel may be sought only in an action for habeas corpus and not by filing a civil rights claim under 28 U.S.C. § 1983. On this basis also, the magistrate judge recommends, correctly, that this case be dismissed. I concur with the analysis and conclusions detailed by the magistrate judge.

**THEREFORE, IT IS ORDERED** as follows:

1. That the **Recommendation of United States Magistrate Judge** [#43] filed February 24, 2016, is approved and adopted as an order of this court;
2. That the **Recommendation of United States Magistrate Judge** [#67] filed February 8, 2016, is approved and adopted as an order of this court;
3. That the **Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1) and (6)** [#21] filed by defendants Rick Raemisch and Mary Carlson on May 21, 2015, is granted;
4. That all claims against all defendants are dismissed;
5. That judgment shall enter in favor of the defendants and against the plaintiff;
6. That defendants are awarded their costs to be taxed by the clerk of the court in the time and manner prescribed in Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1; and
7. That this case is closed.

Dated March 17, 2016, at Denver, Colorado.

**BY THE COURT:**



Robert E. Blackburn  
United States District Judge