

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

EDWARD R. MILLER,

Plaintiff,

vs.

CASE NO. 1:10-cv-38-SPM/GRJ

UNITED STATES OF AMERICA, et al.,

Defendants.

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**ORDER ADOPTING REPORT AND RECOMMENDATION**

THIS CAUSE comes before the Court for consideration of the Magistrate Judge's Report and Recommendation (doc. 30), which recommends that the Defendants' Motion for Summary Judgment (doc. 12) and Motion to Dismiss (doc. 17) be granted. Plaintiff has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Plaintiff, who is pro se, filed an objection (doc. 31). Pursuant to Title 28, United States Code, Section 636(b)(1), I have conducted a de novo review of the sections of the report to which objections have been made. I find that the Report and Recommendation is correct and should be adopted.

Plaintiff raised several objections to the Report and Recommendation, all of which should be denied. First, Plaintiff's claim against an unidentified United

States Marshal must be dismissed as barred by the Statute of Limitations, regardless of whether her identity could somehow be determined. Plaintiff was not prevented from bringing his claim within the statutory period. Additionally, the breadth of New York's long arm statute is immaterial, as it is Florida's long arm statute, which was properly considered by the Magistrate Judge, that is applicable. Moreover, Plaintiff's asserted health problems do not excuse his failure to serve process on the defendant jails within the 120 days provided in the Federal Rules of Civil Procedure, and Plaintiff did not request an extension of time to do so until after the Report and Recommendation was issued. Justice does not require that the Plaintiff be allowed to amend the complaint or that an extension of time for service of process be granted.

Accordingly, it is hereby ORDERED AND ADJUDGED as follows:

1. The Magistrate Judge's Report and Recommendation (doc. 30) is *adopted* and incorporated by reference into this order.
2. All claims in this matter are *dismissed*.
3. The clerk is directed to enter final judgment against Plaintiff on all claims and close the file.

DONE AND ORDERED this fourth day of May, 2011.

*s/ Stephan P. Mickle*  
Stephan P. Mickle  
Chief United States District Judge