

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

NORBERTO DEL RIO,

Plaintiff,

v.

CASE NO. 4:13-cv-548-MW/CAS

**NEIL DESOUSA, U.S. Marshall;
PAMELA JO BONDI, Attorney
General; KATHERINE FERNANDEZ
RUNDLE, Statewide Prosecutor; and
MICHAEL D. CREWS, Secretary,
Department of Corrections,**

Defendants.

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ORDER OF DISMISSAL

This Court has considered, without hearing, the Report and Recommendation of the Magistrate, ECF No. 10, filed November 22, 2013, along with the Plaintiff's "request" to dismiss the complaint, ECF No. 11, filed December 5, 2013. Subsequent to the filing of the Magistrate's Report and Recommendation, the Plaintiff filed his motion to dismiss the complaint. Under Federal Rule of Civil Procedure 41(a)(1)(i), if an adverse party has not filed an answer or motion for summary judgment, a plaintiff is entitled to dismiss an action without order of court. A plaintiff properly effects such a dismissal by filing a "notice of dismissal." Fed. R. Civ. P. 41(a)(1)(i). Although Plaintiff has

designated his filing as a “request” to dismiss, this Court notes that no answer or motion for summary judgment has been filed by the Defendants and Plaintiff is entitled to dismiss his action as a matter of right. This Court construes the “request” to dismiss as a “notice” of dismissal within the meaning of Rule 41.

For these reasons, it is

ORDERED that the Clerk shall enter judgment stating, “This action is **dismissed without prejudice** pursuant to Federal Rule of Civil Procedure 41(a)(1)(i).” The Clerk shall close the file.

SO ORDERED on December 12, 2013.

s/Mark E. Walker
United States District Judge