

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

ANTHONY AUSTINE UKOFIA,

Case No. 09-CV-0017 (PJS/JJG)

Plaintiff,

v.

ORDER ADOPTING REPORT AND
RECOMMENDATION

BUREAU OF IMMIGRATION &
CUSTOMS ENFORCEMENT; KENNETH
OLSON and Five Other Unknown
Deportation Officers of the Bureau of
Immigration & Customs Enforcement;
SHERBURNE COUNTY JAIL CLINIC;
CARI NLN, a nurse at the Clinic;
DEPARTMENT OF HOMELAND
SECURITY; AMY ZASKE; TERRY
LOUIE; JARED DRENGSON;
SHERBURNE COUNTY JAIL; RACHEL
CANNINGS; DR. LEONARD; BUREAU OF
IMMIGRATION APPEALS; SCOTT
BANIECKE,

Defendants.

Anthony Austine Ukofia, pro se.

Friedrich A. P. Siekert, UNITED STATES ATTORNEY'S OFFICE, for defendants
Kenneth Olson and Five Other Unknown Deportation Officers of the Bureau of
Immigration & Customs Enforcement.

Plaintiff Anthony Ukofia brings an excessive-force claim under *Bivens v. Six Unknown
Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), against defendants Kenneth
Olson and five unnamed officers of the Bureau of Immigration & Customs Enforcement
("ICE").¹ Ukofia's excessive-force claim arises out of defendants' application of restraints to
Ukofia's legs while he was detained by ICE. This matter is before the Court on Ukofia's

¹All of Ukofia's other claims were previously dismissed. *See* Docket No. 49.

objection to the November 23, 2010 Report and Recommendation (“R&R”) of Magistrate Judge Jeanne J. Graham. Docket No. 93. Judge Graham recommends granting defendants’ motion for summary judgment with respect to Ukofia’s excessive-force claim and denying Ukofia’s motion for leave to file a third amended complaint. The Court has conducted a de novo review. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). Based on that review, the Court overrules Ukofia’s objection and adopts the R&R.

Ukofia’s primary objection to the R&R is that its description of the facts “conflicts” with the description of the facts in an R&R dated January 19, 2010. Docket No. 43. There is, in fact, no conflict. In the earlier R&R, Judge Graham summarized *Ukofia’s allegations*. In the R&R now under review, Judge Graham summarized the *evidence*. It is true that some of the evidence refutes some of Ukofia’s allegations, but that is obviously not a reason to deny defendants’ motion for summary judgment.

Ukofia also complains generally that Judge Graham ignored evidence in the record that supports his excessive-force claim. For example, Ukofia alleges that (1) medical records show that he previously had surgery on his ankle, thus making leg restraints inappropriate; (2) defendants attacked, punched, and slammed him to the floor in order to apply the leg restraints; (3) an ICE agent corroborated Ukofia’s complaint of a “broken spine” and ankle pain after defendants attacked him; and (4) Ukofia in fact suffered damage to his spine as a result of the attack. Ukofia, however, has not submitted any *evidence* supporting these allegations.

Instead, the undisputed evidence in the record demonstrates that (1) a nurse informed defendants that Ukofia had no medical restrictions that would prevent the application of the leg restraints, First Olson Decl. ¶ 13; (2) after Ukofia physically resisted the application of restraints,

defendants used a minimal amount of force to gain compliance, Rodkewich Decl. ¶ 6, Matsch Decl. ¶ 6, Navarro Decl. ¶ 6, Anderson Decl. ¶ 6; (3) Ukofia had freedom of movement in his limbs and back after the incident, Navarro Decl. ¶ 7; and (4) although Ukofia suffered a minor scrape to his left shin and temporary decreased range of motion in his triceps and shoulders, Dr. Leonard never diagnosed him with spinal damage, Bancroft Decl. ¶¶ 7-10.

Having reviewed the evidence in the record, the Court agrees with Judge Graham that defendants are entitled to summary judgment. The Court adopts the R&R and dismisses Ukofia's excessive-force claim with prejudice.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, the Court **OVERRULES** plaintiff's objection [Docket No. 96] and **ADOPTS** the R&R [Docket No. 93]. IT **IS HEREBY ORDERED THAT:**

1. The motion of defendants Kenneth Olson and Five Other Unknown Deportation Officers of the Bureau of Immigration & Customs Enforcement for summary judgment [Docket No. 78] is **GRANTED**.
2. Plaintiff's excessive-force claim is **DISMISSED WITH PREJUDICE**.
3. Plaintiff's motion for leave to file a third amended complaint [Docket No. 91] is **DENIED**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 29, 2011

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge