

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

ISAAC ELI VILLEGAS

PLAINTIFF

V.

CIVIL ACTION NO. 3:16-CV-856-DPJ-FKB

UNITED STATES OF AMERICA

DEFENDANT

ORDER

This case brought under the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680, is before the Court on the Motion to Dismiss or for Summary Judgment [27] filed by Defendant the United States of America, and the Report and Recommendation (“R&R”) [32] of United States Magistrate Judge F. Keith Ball. Judge Ball concluded that the undisputed facts established that the correctional officer’s actions that allegedly injured Plaintiff were discretionary and therefore recommended that summary judgment be granted. Upon review of the record, the Court agrees with Judge Ball’s conclusions.

The Court mailed a copy of the R&R to Plaintiff at the address listed on the docket sheet, and on August 10, 2017, the mail was returned to the Court as undeliverable. Mail Returned [33]. The envelope indicates that Plaintiff is no longer incarcerated at the Federal Correctional Complex in Terre Haute, Indiana. *Id.* On November 3, 2016, the Court notified Plaintiff that “[f]ailure to advise the Court of a change of address . . . will be deemed as a purposeful delay and contumacious act by Plaintiff and may result in the dismissal of this case.” Order [22]. Plaintiff obviously did not notify the Court of a change of address, and this failure alone could justify dismissal of his case. Nevertheless, the Court has considered the merits of Plaintiff’s

lawsuit and concludes that Defendant's Motion for Summary Judgment should be granted for the reasons articulated by Judge Ball in the R&R.¹

For the foregoing reasons, the R&R [32] is adopted as the finding of this Court. Defendant's Motion to Dismiss or for Summary Judgment [27] is granted, and this case is dismissed with prejudice. A separate judgment will be entered in accordance with Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 11th day of August, 2017.

s/ Daniel P. Jordan III

UNITED STATES DISTRICT JUDGE

¹ Should Plaintiff re-emerge and provide the Court with an updated address, he may move to reopen the case. But the deficiencies in his summary-judgment response noted by Judge Ball persist. *See* R&R [32] at 5.