

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

SANTIAGO GOMEZ, and
MICHAEL GONZALEZ,

Plaintiffs,

v.

9:14-cv-1476
(TJM/DJS)

JEFFREY TEDFORD, et al.,

Defendants.

Thomas J. McAvoy, SR. U.S.D.J.

DECISION and ORDER

The Court referred this civil rights action, brought pursuant to 42 U.S.C. § 1983, to the Hon. Daniel J. Stewart, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. Plaintiffs allege that conditions at the Adirondack Correctional Facility violated their Eighth Amendment Rights, and that the prison staff's conduct violated their First Amendment rights.

The Report-Recommendation, dated September 20, 2016, gave the Amended Complaint, filed *in forma pauperis*, a screening to determine whether that document cured the deficiencies identified in this Court's initial screening pursuant to 28 U.S.C. § 1915(e). After reviewing the Complaint, Magistrate Judge Stewart recommended that the Court dismiss all of the claims raised by Plaintiffs except for Plaintiff Gomez's First Amendment

Retaliation Claims against Defendants Perryman and Woodruff. Magistrate Judge Stewart recommends that Plaintiff Gonzalez be dismissed from the action.

Plaintiffs filed objections to the Report and Recommendation. When objections to a magistrate judge's Report-Recommendation are lodged, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Having reviewed the record *de novo* and having considered the issues raised in the Plaintiff's objections, this Court has determined to accept and adopt the recommendations of Magistrate Judge Stewart for the reasons stated in the Report-Recommendation. The Court notes that Plaintiff Gomez's objections contend that the Magistrate Judge did not properly consider Plaintiffs' claims that their Eighth Amendment rights were violated because electrical wiring was left exposed at the prison, endangering them. Plaintiffs do not allege any injury from this situation, however. As the thorough Report-Recommendation explained, mere exposure to a potential hazard cannot make out an Eighth Amendment claim.

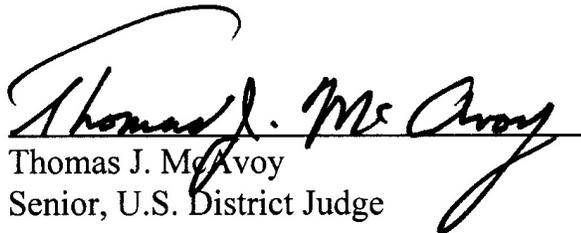
Accordingly:

Plaintiffs' objections to the Amended Report-Recommendation, dkt. #s 46, 48, are hereby **OVERRULED**. The Report-Recommendation, dkt. # 45, is hereby adopted, as follows:

1. The Plaintiffs' Amended Complaint is accepted for filing as to Plaintiff Gomez's First Amendment retaliation claims against Defendants Perryman and Woodruff;
2. All other claims are hereby DISMISSED;
3. Plaintiff Gonzalez is hereby DISMISSED from the action;
4. Defendants Tedford, Cotter, and Payton are hereby DISMISSED from the action; and
5. The stay of Defendants' deadline to answer the Amended Complaint is hereby LIFTED.

IT IS SO ORDERED

Dated: October 17, 2016


Thomas J. McAvoy
Senior, U.S. District Judge