

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

KEVIN GERVASIO,

Plaintiff,

vs.

**9:20-CV-346
(TJM/DJS)**

RICARDO DIAZ, and ALEZ ROSA,

Defendants.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Daniel J. Stewart for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendants, parole officers, used excessive force in taking him into custody. Defendants have filed a motion to dismiss. See *dk.* # 20.

Magistrate Judge Stewart's Report-Recommendation, *dk.* # 26, issued on September 28, 2020, recommends that the Court deny the motion to dismiss. Plaintiff has adequately alleged, Magistrate Judge Stewart concludes, that Defendants used excessive force when they they took him into custody by unnecessarily bending his hand back, kicking his leg, and throwing him to the ground.

Neither party objected to the Report-Recommendation, and the time for such

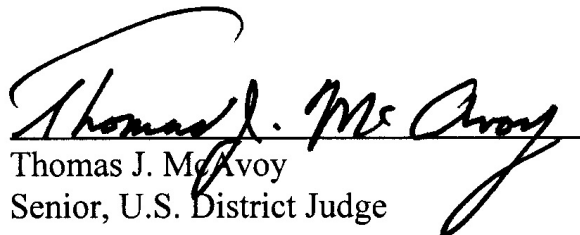
objections has passed. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Magistrate Judge Stewart, dkt. #26, is hereby **ACCEPTED** and **ADOPTED**. Defendants' motion to dismiss, dkt. # 20, is hereby **DENIED**.

IT IS SO ORDERED.

Dated: February 3, 2021


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