

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LARRY McNAIR; ERIC KEATON;  
MALIK RAINEY; ANTOINE GARCIA;  
RAKEEM DOUGLAS; and DAVID  
VAUGHN,

Plaintiffs,

-against-

N.Y.C. D.O.C. COMMISSIONER  
JOSEPH PONTE; G.R.V.C. WARDEN  
MONICA WINDLEY; DEPUTY  
WARDEN SECURITY RENE; DEPUTY  
WARDEN SECURITY CAPUTO;  
DEPUTY WARDEN SECURITY HILL;  
C.O. DECICCO; C.O. STRONG; and C.O.  
JANE DOE,

Defendants.

**ORDER**

16 Civ. 4646 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

On June 21, 2017, Defendants moved to dismiss pro se Plaintiffs' Amended Complaints. (Dkt. No. 53) On September 13, 2017, this Court referred Defendants' motion to Magistrate Judge Barbara Moses for a Report and Recommendation ("R&R"). (Dkt. No. 70) On February 22, 2018, Judge Moses issued a 24-page R&R recommending that Defendants' motion to dismiss be granted. (R&R (Dkt. No. 82) at 23) The R&R states that any objections must be filed within 14 days and that "failure to file timely objections will preclude appellate review." (Id. at 24) No Plaintiff submitted objections to the R&R.

After reviewing the R&R for clear error, this Court issued a March 19, 2018 Order that adopts the R&R and grants Defendants' motion to dismiss. (Dkt. No. 84) The Court

granted the pro se Plaintiffs leave to amend, however, and directed that any amended complaint be filed by April 20, 2018.<sup>1</sup> No Plaintiff filed an amended complaint.

On March 28, 2018, the Court received objections to the R&R from Rainey.<sup>2</sup> (Dkt. No. 85) Because Rainey's objections are untimely, he is not entitled to de novo review of the R&R. See Ramon v. Corp. City of New York, No. 17-CV-2307(KAM), 2019 WL 1306061, at \*2 (E.D.N.Y. Mar. 21, 2019), appeal dismissed, 2019 WL 3406526 (2d Cir. May 21, 2019) ("The court finds that plaintiff's objections were untimely, and as such, may review the R&R for clear error."). The Court has already reviewed the R&R for clear error and found none. (Dkt. No. 84) Moreover, this Court has examined Rainey's objections and concludes that they lack merit. Rainey merely repeats arguments that Judge Moses and this Court have already rejected.

For the reasons set forth above, Rainey's objections to the R&R (Dkt. Nos. 85, 86) are overruled, and the R&R remains adopted in its entirety. Because the deadline to file an amended complaint has long since passed and because no amended complaint has been filed, the Clerk of Court is directed to close this case. A copy of this Order has been mailed to pro se Plaintiff Rainey by Chambers.

Dated: New York, New York  
July 30, 2020

SO ORDERED.



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Paul G. Gardephe  
United States District Judge

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<sup>1</sup> Judge Moses extended plaintiff Malik Rainey's deadline to file an amended complaint to May 21, 2018. (Dkt. No. 88) The deadline for Rainey's co-plaintiffs to file an amended complaint was never extended.

<sup>2</sup> On March 29, 2018, the Court received another copy of the same objections, accompanied by a medical record. (Dkt. No. 86)