IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

ANTHONY MONEYHAM, : No. 3:16cv1172

Plaintiff :

: (Judge Munley)

v. :

(Magistrate Judge Saporito)

UNITED STATES, :

Defendant :

<u>ORDER</u>

AND NOW, to wit, this 27th day of September 2017, it is **HEREBY**ORDERED as follows:

- 1. Plaintiff's objection to the Report and Recommendation (Doc. 32) is **OVERRULED**;
- The Report and Recommendation of Magistrate Judge Saporito (Doc.
 is **ADOPTED**;
- 3. Defendant's motion to dismiss, or in the alternative, motion for summary judgment (Doc. 17) is **GRANTED in part and DENIED in part.**
- 4. Plaintiff's negligence claim concerning the denial of medical care over a thirteen day period between November 20, 2014, and December 3, 2014, and his assault and battery claims arising out of the intentional conduct of EMT Potter and EMT Barth are **DISMISSED** *sua sponte* for lack of subject matter jurisdiction;

5. The clerk is directed to enter **JUDGMENT** in favor of the United States with respect to plaintiff's negligence claim concerning the denial of immediate medical care for injuries suffered during the incident at his cell door on November 20, 2014;

6. The motion for summary judgment is **DENIED** with regard to plaintiff's assault and battery claims arising from the conduct of correctional officers Lt. Scott, Lt. Seeba, Officer Anderson, Officer Arnold, Officer Missigman, Officer Sullivan, and two unidentified correctional officers on November 20, 2014, and his use of force claim arising from the application of excessively tight restraints; and

7. The Clerk of Court is directed to remand this case to Magistrate Judge Saporito for further proceedings consistent with the accompanying memorandum.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court