

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

| | | |
|---------------------------------------|---|----------------------------|
| Dennis Gallipeau, |) | C/A No.: 3:07-3522-JFA-JRM |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| Byron Mitchell, Special Agent for the |) | ORDER |
| FBI, and the Federal Bureau of |) | |
| Investigation Columbia SC Office, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

This matter is before the court for review of the Magistrate Judge’s report and recommendation (“Report”) made in accordance with 28 U.S.C. § 636(b)(1) and Local Rule 73.02(B)(2)(e) (D.S.C.).

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a de novo determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court’s review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge’s findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

Plaintiff is a pretrial detainee awaiting trial on two counts of violating statutes criminalizing the transportation of child pornography and attempting to coerce a minor to engage in sexual activity in violation of 18 U.S.C. §§ 2252A(a)(1), 2253, and 2422(b). United States v. Gallipeau, Cr. No. 3:08-96. On March 3, 2008, plaintiff filed an Amended Complaint against the FBI and Agent Byron Mitchell, claiming that Agent Mitchell violated his constitutional rights in seizing his computer during the investigation that led to the underlying criminal charges. Plaintiff seeks compensatory and punitive damages, together with the return of his computer.

The matter now comes before the court on defendants' motion to dismiss [dkt. #39]. The Magistrate Judge filed a detailed and comprehensive Report on February 4, 2009 [dkt. #47], recommending that defendant's motion to dismiss be granted as to plaintiff's Bivens claim against the FBI and Agent Mitchell in his official capacity, and denied as to the claim against Agent Mitchell in his individual capacity. The Report also recommends that the court stay this action pending resolution of the underlying criminal charges.

Defendants subsequently filed a motion to stay this action pending resolution of the underlying criminal charges [dkt. # 49]. Defendants further request an extension of time to object to the Report in order to use the record from the ongoing criminal case in resolving this civil matter.

In light of the standard set out above, the court has reviewed the record, the applicable law, the Report of the Magistrate Judge, together with defendants' motion to stay. The court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. The court, therefore, adopts the recommendation of the Magistrate Judge in full and incorporates his Report by specific reference. Defendants' motion to dismiss is granted as to plaintiff's Bivens claim against the FBI and Agent Mitchell in his official capacity, and denied as to the claim against Agent Mitchell in his individual capacity. The court reserves the right to reconsider the defendants' arguments after conclusion of the underlying criminal case. The court grants defendants' motion to stay further proceedings in this case until conclusion of the underlying criminal case.

IT IS SO ORDERED.



March 4, 2009
Columbia, South Carolina

s/ Joseph F. Anderson, Jr.
United States District Judge