

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

IVORY R. MITCHELL §
v. § CIVIL ACTION NO. 6:09cv348
MICHAEL SIZEMORE, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

The Plaintiff Ivory Mitchell, proceeding *pro se*, filed this civil action under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. validity of his conviction. The lawsuit was originally referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On December 18, 2009, the undersigned Magistrate Judge issued a Report recommending that Mitchell's motion for placement into protective status be denied. The parties subsequently consented to allow the undersigned United States Magistrate Judge to enter final judgment in the proceeding pursuant to 28 U.S.C. §636(c), and the lawsuit has been transferred to the docket of the undersigned Magistrate Judge for entry of final judgment in accordance with the consent of the parties.

Mitchell has filed objections to the Report recommending denial of his motion for placement into protective status. In his objections, Mitchell says that he is seeking placement in protective status under "the Ruiz v. Estelle stipulation," saying that prison officials have "intentionally placed him in a life threatening environment." He says that an officer named Conner intentionally slammed a sliding door into his head, and when he complained, Lt. Allen said "don't worry about it, she'll be

gone in another two and a half hours.” Mitchell says that there was no incident report, no medical examination, and when he filed a grievance, it “came up missing.”

Mitchell also says that other inmates have stolen his property, and nothing was done about it, and that he has complained about gang members threatening him. He says that there is a substantial risk of irreparable injury if the relief sought is not granted; he states that he is 50 years old and not a member of any gang, but that the Telford Unit is made up of “95 percent gang members.” He requests that he be placed into federal custody.

Mitchell’s objections do not show that he is entitled to the injunctive relief which he seeks. He offers nothing to show that he has a substantial likelihood of prevailing on the merits, and his allegations are insufficient to show a substantial threat of irreparable harm. Although Mitchell invokes the Ruiz v. Estelle stipulations, he fails to note that this case has been terminated. *See Ruiz v. Estelle et al.*, civil action no. 4:78cv1987 (S.D.Tex.), docket entry no. 9015; Ruiz v. Collins, 3 F.3d 437 (5th Cir., August 13, 1993) (not selected for publication in the Federal Reporter) (noting that “a final judgment by the district court has since terminated the Ruiz class action). His objections are without merit.

The Court has conducted a careful *de novo* review of the Plaintiff’s motion for injunctive relief, the Report originally issued, and Mitchell’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report is correct and that Mitchell’s objections are without merit. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED for all purposes as the opinion of the Court. It is further

ORDERED that the Plaintiff’s motion for injunctive relief (docket no. 14) is hereby DENIED.

So **ORDERED** and **SIGNED** this **5** day of **February, 2010**.



JUDITH K. GUTHRIE
UNITED STATES MAGISTRATE JUDGE