

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

| | | |
|----------------------------------|---|----------------------------|
| THOMAS McGARITY, | § | |
| | § | |
| Movant, | § | CIVIL ACTION NO. |
| v. | § | SA-09-MC-0531 XR |
| | § | |
| UNITED STATES OF AMERICA, | § | CRIMINAL ACTION NO. |
| | § | SA-08-MJ-128 NSN |
| Respondent. | § | |

REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

TO: Honorable Xavier Rodriguez
United States District Judge

The matter before the Court is the status of this case which was referred to me on July 24, 2009.

This matter was initiated by the motion filed by Thomas McGarity for the return of property seized by the government pursuant to a search warrant executed on February 29, 2009. On August 14, 2009 the government advised the Court that it anticipated the return of the property to movant by the end of August 2009. I directed the movant to notify the court by September 25 if the property was not returned. I further advised movant that if no response was filed I would assume that the property had been returned and that no further court intervention would be necessary. No response was filed.

Accordingly, I RECOMMEND that the motion for return of property be DENIED AS MOOT.

Instructions for Service and Notice of Right to Object/Appeal

The United States District Clerk shall serve a copy of this memorandum and recommendation on all parties by either (1) electronic transmittal to all parties represented by

attorneys registered as a “filing user” with the clerk of court, or (2) by mailing a copy to those not registered by certified mail, return receipt requested. Written objections to this memorandum and recommendation must be filed within 10 days after being served with a copy of same, unless this time period is modified by the district court.¹ **Such party shall file the objections with the clerk of the court, and serve the objections on all other parties and the magistrate judge.**

A party filing objections must specifically identify those findings, conclusions or recommendations to which objections are being made and the basis for such objections; the district court need not consider frivolous, conclusive or general objections. A party’s failure to file written objections to the proposed findings, conclusions and recommendations contained in this report shall bar the party from a *de novo* determination by the district court.² Additionally, failure to file timely written objections to the proposed findings, conclusions and recommendations contained in this memorandum and recommendation shall bar the aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court.³

SIGNED on October 14, 2009.



NANCY STEIN NOWAK
UNITED STATES MAGISTRATE JUDGE

¹28 U.S.C. §636(b)(1); FED. R. CIV. P. 72(b).

²*Thomas v. Arn*, 474 U.S. 140, 149-152 (1985); *Acuña v. Brown & Root, Inc.*, 200 F.3d 335, 340 (5th Cir. 2000).

³*Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).