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AT ROANOKE, VA  
FILED

JUN 02 2011

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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

BARRY LYNN VIA,	)	
	)	Civil Action No. 7:11-cv-00138
Plaintiff,	)	
	)	
v.	)	<u>ORDER ADOPTING REPORT AND</u>
	)	<u>RECOMMENDATION</u>
	)	
TRACY RAY, et al.,	)	
	)	By: Samuel G. Wilson
Defendants.	)	United States District Judge

This matter is before the court on plaintiff Barry Lynn Via's motion for interlocutory injunctive relief (Docket No. 5) directing the defendant prison officials to restore the good conduct time he forfeited by refusing a required tuberculosis (TB) test for religious reasons, and directing officials to provide him with an alternative TB test. The court referred the matter to United States Magistrate Judge Michael Urbanski, pursuant to 28 U.S.C. § 636(b)(1)(B), for a Report and Recommendation. The Magistrate Judge subsequently filed a report, finding no basis to grant Via's motion and recommending that the court deny it. Via filed objections within the fourteen days allotted under § 636(b)(1), largely reiterating the arguments made in his pleadings. Having reviewed the Report and Recommendation, the objections thereto, and pertinent portions of the record *de novo* in accordance with § 636(b)(1), the court agrees with the Magistrate's Judge's recommendation. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that Via's objections to the Magistrate Judge's Report and Recommendation are **OVERRULED**, and that Via's motion for a temporary restraining order and preliminary injunctive relief is **DENIED**. The court notes, however, that nothing in the court's opinion should be read to indicate that Via's

complaint has failed to raise a plausible First Amendment claim regarding the TB testing methods employed by the defendants.<sup>1</sup>

The clerk will send a copy of this order to plaintiff and counsel of record for the defendants.

**ENTER:** June 2, 2011



UNITED STATES DISTRICT JUDGE

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<sup>1</sup> See Canada v. Ray, 2011 WL 565611, at \*4 (W.D. Va. Feb. 9, 2011) (finding that while a prisoner may have stated a plausible claim that the TB testing method selected by prison officials violated his rights under RLUIPA and the First Amendment, prison officials were nevertheless entitled to summary judgment because the prisoner had not demonstrated that the TB test actually contained alcohol or any other substances banned by his religion).