

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-12363-D

JOSE LUIS MAYA,

Plaintiff - Appellant,

versus

DEPARTMENT OF HOMELAND SECURITY,
UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT,
SECRETARY OF HOMELAND SECURITY,

Defendants - Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R.42-1(b), this appeal is DISMISSED for want of prosecution because the Appellant Jose Luis Maya failed to pay the filing and docketing fees (or file a motion in the district court for relief from the obligation to pay in advance the full fee) to the district court within the time fixed by the rules, effective July 10, 2019.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

by: Scott O'Neal, D, Deputy Clerk

FOR THE COURT - BY DIRECTION

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOSE LUIS MAYA,
GDC ID 1001067274,
Plaintiff,

v.

DEPARTMENT OF HOMELAND
SECURITY, et al.,
Defendants.

CIVIL ACTION NO.
1:19-CV-2064-CC-LTW

FINAL REPORT AND RECOMMENDATION

Proceeding *pro se*, state inmate Jose Luis Maya initiated this case by submitting a Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Affidavit in Support of Request to Proceed *In Forma Pauperis* ("IFP") (Doc. 2).

Because Maya is a prisoner, his complaint is subject to screening pursuant to 28 U.S.C. § 1915A. And, because Maya is proceeding *pro se*, the undersigned has construed his complaint liberally. *See, e.g., Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003).

So construed, Maya contends that he is entitled to immediate deportation from the United States *before* he completes a ten-year term of imprisonment for child molestation imposed by a state court. *See* (Doc. 1 at 3); *see also*

<http://www.dcor.state.ga.us/GDC/Offender/Query> (last viewed May 9, 2019; searched for “Maya, Jose”) (indicating that Maya’s term of imprisonment began in 2013 and will end in 2023). In support of this contention, Maya cites “8 U.S.C. [§] 1227 and 237(2)(A)(iii) of ACT, also President Trump’s Executive Orders,” *id.*, but no provision of the United States Constitution.

To proceed under 42 U.S.C. § 1983, each defendant named must be an individual or entity who “may fairly be said to be a state actor.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982). “This may be because he is a state official, because he has acted together with or has obtained significant aid from state officials, or because his conduct is otherwise chargeable to the state.” *Id.* Here, the three defendants named by Maya are the Department of Homeland Security (“DHS”), Immigration Customs Enforcement (“ICE”), and Kevin McAleenan, Secretary of DHS, *see id.* at caption, all of which are federal agencies or officials. Because none of the three named defendants is a “state actor” for the purposes of § 1983, Maya may not sue any of them under that provision of the United States Code.

Ordinarily, a plaintiff seeking to sue a federal agency or official for allegedly violating his constitutional rights must proceed under 28 U.S.C. § 1331 on an

implied cause of action of the sort first recognized in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). So, the undersigned has also considered whether Maya may assert his “immediate deportation” claim under § 1331. *See generally* *Castro v. United States*, 540 U.S. 375, 381 (2003) (“Federal courts sometimes will ignore the legal label that a *pro se* litigant attaches to a motion and recharacterize the motion in order to place it within a different legal category. They may do so in order to avoid an unnecessary dismissal, to avoid inappropriately stringent application of formal labeling requirements, or to create a better correspondence between the substance of a *pro se* motion’s claim and its underlying legal basis.”) (internal citations omitted).

It is noteworthy that since recognizing three instances in which a plaintiff may pursue an implied cause of action for violations of his constitutional rights against a federal defendant in *Bivens* (Fourth Amendment search and seizure claim), *Davis v. Passman*, 442 U.S. 228 (1979) (Fifth Amendment due process clause claim for gender discrimination), and *Carlson v. Green*, 446 U.S. 14 (1980) (Eighth Amendment cruel and unusual punishment clause claim relating to inadequate medical treatment), the Supreme Court has declared that “expanding the *Bivens* remedy is now a disfavored judicial activity, . . . consistently refused to

extend *Bivens* to any new context or new category of defendants, . . . [and] refused to do so for the past thirty years.” *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1854-55, 1857 (2017) (internal quotation marks and citations omitted). Therefore, in the absence of any case recognizing an implied cause of action under the Constitution for the “immediate deportation” claim that Maya advances, the undersigned concludes that the complaint has not stated a claim upon which relief may be granted under § 1331, either. *See also Alvarez v. ICE*, 818 F.3d 1194, 1205-06 (11th Cir. 2016) (holding that no *Bivens* remedy for alleged wrongful detention is available to an immigrant held by ICE after the conclusion of his federal sentence), *cert. denied*, 137 S. Ct. 2321 (2017).

Nor does it appear that Maya has any private cause of action under any other federal statute for “immediate deportation.”

Accordingly, the undersigned **RECOMMENDS** that this case be **DISMISSED** for failure to state any claim upon which relief may be granted. *See* 28 U.S.C. § 1915A.

Maya’s request for permission to proceed IFP is **GRANTED**.

The Clerk of the Court is **DIRECTED** to transmit a copy of this Final Report and Recommendation to the Warden of Washington State Prison, where Maya says he is currently incarcerated. *See* (Doc. 1 at 2).

The Warden, or his designee, is **DIRECTED** to (A) collect "monthly payments of 20 percent of the preceding month's income credited to . . . [Maya's] account . . . each time the amount in the account exceeds \$10," 28 U.S.C. § 1915(b)(2), and (B) remit such payments to the Clerk of the United States District Court for the Northern District of Georgia until the \$350 filing fee is paid in full.

"In no event shall the filing fee collected exceed" \$350, 28 U.S.C. § 1915(b)(3), and the Clerk is **DIRECTED** to notify the Warden once the entire filing fee has been received.

The Clerk is **DIRECTED** to terminate the referral of this case to the undersigned.

SO RECOMMENDED, ORDERED, AND DIRECTED, this 20 day of May, 2019.


LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOSE LUIS MAYA,
GDC ID 1001067274,

Plaintiff,

vs.

DEPARTMENT OF HOMELAND
SECURITY, et al.,

Defendants.

CIVIL ACTION NO.

1:19-CV-2064-CC

ORDER

This matter is before the Court on the Final Report and Recommendation (the "R&R") [Doc. No. 3] issued by Chief Magistrate Judge Linda T. Walker on May 20, 2019. Having screened state inmate Jose Luis Maya's pro se complaint pursuant to 28 U.S.C. § 1915A, Chief Magistrate Judge Walker recommends that the complaint be dismissed for failure to state any claim upon which relief may be granted. The record reflects that no objections to the R&R have been filed and that the time period permitted for filing any such objections has elapsed.

Having reviewed the R&R for plain error in accordance with United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), the Court finds that the R&R is correct both in fact and in law. Accordingly, the Court **ADOPTS** the R&R [Doc. No. 3] as

the opinion of this Court and **ORDERS** that this action is **DISMISSED** for failure to state any claim upon which relief may be granted.

SO ORDERED this 11th day of June, 2019.

s/ CLARENCE COOPER

CLARENCE COOPER

SENIOR UNITED STATES DISTRICT JUDGE