

APPENDIX

APPENDIX TABLE OF CONTENTS

Tab Title	File Date	Document Description	DE Number	Page Count
A-1 (Magistrate R&R to Dismiss)	07/22/2024	Report and Recommendation by Magistrate recommending dismissal	DE 53	12 pages
A-1a (Objection to Magistrate R&R to Dismiss)	08/05/2024	Objection to Recommendation by Magistrate recommending dismissal	DE 57	18 pages
A-1b (District Judge Order)	03/17/2025	Order Adopting the Report and Granting Recommendation to Dismiss	DE 63	6 pages
A-2a (Appellant Default Judgment Denial Motion for Judgment)	07/29/2025	Appellant's Denial for Default Judgment on the Briefs	DE 12	2 pages
A-3 (En Banc Denial)	09/29/2025	Fourth Circuit Order Denying Rehearing and Rehearing En Banc	DE 16	1 page
A-4 (E-Consent Motion)	03/22/2024	Motion for Leave to File Electronically (E-Consent)	DE 27	3 pages
A-4a (Objection to Denial)	04/15/2024	Objection and Appeal to Denial of E-Consent	DE 43	3 pages

A-4b (Order Denying E-Consent)	05/02/2024	District Judge's Order Confirming Denial of E-Consent	DE 44	2 pages
A-5 (Postmarked Envelope)	12/01/2023	Copy of Postmarked Envelope Showing Timely Mailing	DE 1-3	1 page of 2

Tab 1: Recommendation Of the Fourth Circuit

APPENDIX A-1

REPORT AND RECOMMENDATION BY MAGISTRATE JUDGE

Document Entry: DE 53

Filed: July 22, 2024

Pages: 12

Recommendation for dismissal of complaint.

APPENDIX A-1a

OBJECTION TO REPORT AND RECOMMENDATION TO DISMISS

Document Entry: DE 57

Filed: August 5, 2024

Pages: 18

**Petitioner's Objection to the Magistrate Judge's Report and
Recommendation recommending dismissal of the complaint.**

APPENDIX A-1b

ORDER AFFIRMING THE REPORT AND RECOMMENDATION TO DISMISS

Document Entry: DE 63

Filed: March 25, 2025

Pages: 6

District Judge's final adoption of magistrate's recommendation.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

George Baldwin Hutchinson, Jr.,	)	C/A No.: 3:23-6178-MGL-SVH
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
81st Readiness Division Ft.	)	REPORT AND
Jackson SC and United States,	)	RECOMMENDATION
	)	
Defendants.	)	
	)	

George Baldwin Hutchinson, Jr. ("Plaintiff"), proceeding pro se, alleges in his second amended complaint that he was "met with unprofessional and discriminatory conduct" and "subjected to constructive arrest and detention" on September 9, 2021, when he visited the 81st Readiness Division at Fort Jackson, South Carolina, to seek assistance concerning his retirement benefits. [See ECF No. 31 at 3]. He sues the 81st Readiness Division and the United States (collectively "Defendants"), alleging violations of his constitutional rights pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971), as well as violations of the Federal Tort Claims Act, 18 U.S.C. § 1346(b) ("FTCA"). Defendants seek dismissal.

This matter comes before the court on Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6). [ECF No. 47]. Pursuant to

Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), the court advised Plaintiff of the motion to dismiss procedures and the possible consequences if he failed to respond adequately to Defendants' motion. [ECF No. 48]. Defendants' motion having been fully briefed [see ECF Nos. 51, 52], the matter is ripe for disposition.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), this matter has been referred to the undersigned for all pretrial proceedings. Having carefully considered the parties' submissions and the record in this case, the undersigned recommends the district judge grant Defendants' motion to dismiss.

I. Factual and Procedural Background

In his second amended complaint, Plaintiff alleges in full as follows:

On or about September 09, 2021, Plaintiff visited the 81st Readiness Division at Fort Jackson, South Carolina, to seek assistance from the Retirement Section due to unresponsiveness to his prior communications.

Upon arrival, Plaintiff was met with unprofessional and discriminatory conduct from the staff. Despite his peaceful demeanor and legitimate purpose for the visit, Military Police were called to the scene without Plaintiff's knowledge

Plaintiff was subjected to a constructive arrest and detention by Military Police. He was detained without cause and questioned in an effort to find a pretext to justify his detention

During this detention, Plaintiff was not charged with any crime, and there are currently no pending charges against him

The defendant(s) had an opportunity to hand[le] this matter in house at the government division IG level not local which they had direct opportunity to fix and resolve this matter due to distrust and the knowledge of the Claimant [Plaintiff/n] background whom knows how this process works it was ignored .

...

[ECF No. 31 at 3 (errors in original)].

In support of the above allegations, Plaintiff has submitted documentation that on November 16, 2022, he presented an administrative claim to the United States Army. [See ECF No. 31-2 at 1-18 (acknowledging receipt of Plaintiff's administrative claim and attaching a copy of the date-stamped claim)]. By certified mail dated May 26, 2023, the Army denied Plaintiff's administrative claim. *Id.* at 19. The letter included the following statement: "If you are dissatisfied with the action taken on your claim, you may file suit in an appropriate United States District Court no later than six months from the date of mailing of this letter. . . . By law, failure to comply with that time limit forever bars your claim." *Id.* at 21 (citing 28 C.F.R. § 14.9(a); 28 U.S.C. § 2401(b)). On December 1, 2023, Plaintiff filed his original complaint in this civil action. [ECF No. 1, *see also* ECF No. 1-1 at 1 (showing a postmark of November 24, 2023, and the court's received stamp of December 1, 2023, at 11:30 a.m.)].¹

¹ Plaintiff, in briefing, agrees with the above timeline summarized above. [See ECF No. 51 at 3 (stating Plaintiff "received notice from the tort branch on May 26, 2023, and mailed his complaint on November 24, 2023 . . .")].

II. Discussion

A. Standard on Motion to Dismiss

Dismissal is appropriate under Fed. R. Civ. P. 12(b)(1) where the court lacks subject-matter jurisdiction and under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. A motion to dismiss under Rule 12(b)(1) examines whether a complaint fails to state facts upon which jurisdiction can be based. It is the plaintiff's burden to prove jurisdiction, and the court is to "regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991).

A motion to dismiss under Rule 12(b)(6) examines the legal sufficiency of the facts alleged on the face of the plaintiff's complaint. *Edwards v. City of Goldsboro*, 178 F.3d 231, 243–44 (4th Cir. 1999). To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The court is "not required to accept as true the legal conclusions set forth in a plaintiff's complaint." *Edwards*, 178 F.3d at 244. Indeed, "[t]he presence of a few conclusory legal terms does not insulate a complaint from dismissal under Rule 12(b)(6) when the facts alleged in the complaint cannot

support the legal conclusion.” *Young v. City of Mount Ranier*, 238 F.3d 567, 577 (4th Cir. 2001).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). When a federal court is evaluating a pro se complaint, the plaintiff’s allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390–91 (4th Cir. 1990).

B. Analysis

1. *Bivens* Claim

As to Plaintiff’s *Bivens* claim for damages, sovereign immunity deprives this court of subject matter jurisdiction over Defendants. The purpose of *Bivens* in allowing suit against federal officers in their individual capacity is to deter the individual officer from committing constitutional

violations, not to deter the agency. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 69–70 (2001). Indeed, both parties agree that Plaintiff's *Bivens* claim for damages, as currently asserted, is barred by sovereign immunity. [See ECF No. 47 at 3, ECF No. 51 at 2].

However, Plaintiff argues that he should be given leave to amend to assert his *Bivens* claim against the individual officers involved in the alleged constitutional violations. [ECF No. 51 at 2]. Plaintiff further argues that to do so he “would need access to the officers fully furnished names.” *See id.*²

Plaintiff has taken advantage of multiple opportunities to amend his complaint, but, in this instance, he has not filed a motion to amend nor attached a proposed amended complaint for the court to assess. Although, generally, a court should freely grant leave to amend a complaint when justice so requires, at this time the court has no such motion before it to grant. *See, e.g., Mena v. Lack's Beach Serv., Inc.*, C/A No. 4:06-2536-TLW-TER, 2007 WL 9753156, at *5–7 n.7 (D.S.C. June 11, 2007) (“Plaintiff failed to submit with its motion a copy of the proposed amended complaint. This alone is grounds for denial of the motion.”) (citing *Spadafore v. Gardner*, 330 F.3d 849, 853 (6th Cir. 2003) (“Without viewing the proposed amendment, it

² Defendants respond that “Plaintiff cites no legal authority for the proposition that the United States must furnish him with the employees’ information before he has pled a cognizable *Bivens* claim. Defendants certainly object to doing so at this stage of the litigation.” [ECF No. 52 at 4].

was impossible for the district court to determine whether leave to amend should have been granted.”)); *see also, e.g., Langford v. Joyner*, 62 F. 4th 122, 125 (4th Cir. 2023) (“[T]o state a plausible *Bivens* claim, ‘a plaintiff must plead that *each* Government-official defendant, through the official’s own individual actions, has violated the Constitution.”) (quoting *Iqbal*, 556 U.S. at 676)).

As to Plaintiff’s *Bivens* claim and his request for declaratory or injunctive relief, Defendants argue Plaintiff lacks standing to assert any such claim where he has alleged only an isolated incident occurring on September 9, 2021, and has not asserted a “real and immediate threat of repeated injury.” [ECF No. 47 at 5]. Plaintiff disagrees, arguing his claims are “based on a pattern of discriminatory behavior and unprofessional conduct,” also noting he “has a reasonable expectation that such conduct could recur, especially given his ongoing need to interact with the 81st Readiness Division for retirement benefits.” [ECF No. 51 at 3].

The court is not convinced. Although Plaintiff alludes to a “pattern” in briefing, he has not alleged any incident occurred other than the one incident that occurred on September 9, 2021. Although he may return to the place where the alleged constitutional violations occurred roughly three years ago, this is insufficient to confer standing. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 95–96 (1983) (“Past exposure to illegal conduct does not in itself

show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects.”) (citation omitted)).³

Accordingly, the undersigned recommends the district judge grant Defendants’ motion to dismiss as to Plaintiff’s *Bivens* claim. To the extent that Plaintiff seeks to amend his complaint concerning this claim, that issue is not properly before the court at this time.

2. FTCA Claim

Defendants argue that Plaintiff’s FTCA claim is barred by the applicable statute of limitations. Plaintiff disagrees, arguing his claim is timely pursuant to the mailbox rule or, in the alternative, that he is entitled to equitable tolling because he is “a pro se litigant and a veteran” and mailed his complaint within the applicable six-month limitations period. [ECF No. 51 at 3–4].

Title 28 U.S.C. § 2401(b) contains the statute of limitations under the FTCA and states in relevant part as follows:

³ Defendants note that Plaintiff has failed to offer any “reason to believe the individuals with whom he interacted in 2021 are still in their respective roles, such that he would be likely to encounter the same alleged ‘unprofessional and discriminatory conduct.’” [ECF No. 47 at 6]. Although it is Plaintiff’s burden to establish standing, *Lujan v. Defenders of Wildlife*, 504 U.S. 55, 560–61 (1992), Plaintiff responds only with the rhetorical question, asking if Defendant can “clarify[] and confirm[] all parties involved still do and or do not work at this location?” [ECF No 51 at 2].

A tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues or unless action is begun within six months after the date of mailing, by certified or registered mail, of notice of final denial of the claim by the agency to which it was presented.

28 U.S.C. § 2401(b).

Here it is undisputed that Plaintiff filed his original complaint in this court more than six months after the date the Army mailed notice of the denial of his claim. *See, e.g., Raplee v. United States*, 842 F.3d 328, 333 (4th Cir. 2016) (“In sum, § 2401(b) requires a plaintiff to bring a federal civil action within six months after a federal agency mails its notice of final denial of his claim. Of course, the only way to begin a federal civil action is by filing a complaint with a federal district court. Fed. R. Civ. P. 3.”).

Plaintiff argues, however, that because he placed his complaint in the mail within the six-month period, his claim is timely, invoking the mailbox rule. This rule is based on *Houston v. Lack*, 487 U.S. 266 (1988), where the Supreme Court found that, in prisoner cases, a filing is deemed “filed” when that the prisoner places the document in the prison mail system. However, Plaintiff has not cited, nor is the court aware, of the extension of the mailbox rule in a non-prisoner case. *See, e.g., Buono v. Colvin*, C/A No. 3:13-851 DJN, 2014 WL 3735542, at *3 (E.D. Va. July 28, 2014) (“Both this Court and the Fourth Circuit have recognized that this rule does not apply to individuals

who are not prisoners.”); *In re Seizure of 2007 GMC Sierra SLE Truck*, VIN: £2GTEK13C1715, 32 F. Supp. 3d 710, 717 (D.S.C. 2014) (“However, the undersigned is unaware of, and Petitioner has not cited, any cases applying the mailbox rule to the filings of claims of individuals who are not incarcerated.”); *Bullock v. United States*, 176 F. Supp. 3d 517, 526 n. 16 (M.D.N.C. 2016) (same).

Plaintiff also argues he is entitled to equitable tolling in that he is proceeding pro se, is a veteran, and timely mailed his complaint, even though the court did not receive his complaint until after the relevant statute of limitations had expired.

Equitable tolling is only appropriate where plaintiffs “show that they have pursued their rights diligently *and* extraordinary circumstances prevented them from filing on time.” *Raplee*, 842 F.3d at 333 (citing *Holland v. Florida*, 560 U.S. 631, 649, (2010)) (emphasis in original). “[E]quitable tolling is reserved for “those rare instances where—due to circumstances external to the party’s own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result.” *Id.* (quoting *Harris v. Hutchinson*, 209 F.3d 325, 330 (4th Cir. 2000)).

Here, Plaintiff has not identified extraordinary circumstances warranting the applicable of equitable tolling. Accordingly, the undersigned

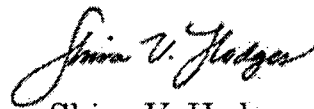
recommends the district judge grant Defendants' motion to dismiss, dismissing Plaintiff's FTCA claim with prejudice.⁴

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district judge grant Defendants' motion to dismiss. [ECF No. 47].

IT IS SO RECOMMENDED.

July 22, 2024
Columbia, South Carolina



Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
"Notice of Right to File Objections to Report and Recommendation."**

⁴ Dismissal of this claim with prejudice is warranted where "amendment would be futile in light of the [complaint's] fundamental deficiencies." *Cozzarelli v. Inspire Pharms., Inc.*, 549 F.3d 618, 630 (4th Cir. 2008). Here, because Plaintiff cannot cure the deficiency of his claim being untimely, the undersigned recommends dismissal of his FTCA claim with prejudice.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. "[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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

GEORGE BALDWIN HUTCHINSON JR. (π)	)	
G. Baldwin: (House of Hutchinson): man	)	
<u>Claimant</u>	)	
	)	
	)	Objection To Recommendation
	)	Case No.: 3:23-6178-MGL-SVH
THE UNITED STATES [defendant / Δ]	)	
81st Readiness Division Ft Jackson SC	)	
(Wrongdoers)[Defendant]	)	

**OBJECTION TO MAGISTRATE JUDGE SHIVA V. HODGES'S JUDGE'S
RECOMMENDATION TO DISMISS, FURTHER 2ND REQUEST FOR ORAL
ARUGUMENTS APPEALED TO U.S. DISTRICT COURT JUDGE MARY GEIGER
LEWIS**

Pursuant to 28 U.S.C. § 636(b)(1)(A) Claimant [Plaintiff/ π], hereby moves this objection to the Magistrate Judge's Report and Recommendation (ECF No. 53) recommending dismissal of the Claimant [Plaintiff/ π] case. This objection is respectfully submitted to the Honorable U.S.

District Court Judge Mary Geiger Lewis for consideration and reversal based on the following grounds: This objection addresses key issues related to both the Bivens and Federal Tort Claims Act (FTCA) claims, which are foundational to the Claimant [Plaintiff/ π]'s case. Due to the back-and-forth interactions with the court, the Claimant [Plaintiff/ π] has diligently sought to comply with the court's procedural requirements, resulting in this dual-action claim, which includes a further sub-action under Bivens. On the surface, the claim is nothing more than an De-facto appearance to name the United States government and a federal agency as the defendants.

However, the more critical observation is that the substantive claim clearly identifies the wrongdoers—the individual defendants—as the primary parties to the case. This is explicitly

stated in the Amended Complaint (ECF No. 26, Section III: Parties), which identifies the individual defendants directly involved in the alleged actions. Notably, the United States government and the federal agencies are not named as direct parties to the lawsuit; they are mentioned solely due to their potential indemnification and defense roles regarding the individual defendants.

While these entities are involved de facto and the federal government did choose to indemnify and defend the federal employees, it is not beyond reasonable thought and researched case law that a claimant without legal training, such as the Claimant [Plaintiff/ π], would come to this conclusion. The Claimant [Plaintiff/ π] has made these clear separated distinctions despite the short turnaround time provided by this court, which effectively reduces the response time due to USPS delays. For instance, if the court provides a 14-day response period, the Claimant [Plaintiff/ π] effectively has only 3 days to respond, with 7 to 12 days potentially lost due to postal delays.

This issue although not new was further highlighted during a recent visit to the Lithia Springs Post Office on July 31, 2024, between 4:15 PM and 4:30 PM, where the Claimant [Plaintiff/ π] learned that the expected delivery date for the original complaint mailing, which the defendants are disputing, was November 27, 2023. The actual delivery date was December 1, 2023, indicating a delay of approximately four days from the expected delivery date and seven days from the postmark date (November 24, 2023). This further illustrates the impact of USPS delays on the Claimant [Plaintiff/ π]'s ability to meet court-imposed deadlines, particularly given the court's requirement for all filings to be sent via USPS and or Mail carriers.

Furthermore, the Defendant's response to the Claimant [Plaintiff/ π] was filed on July 16, 2024, and the Claimant [Plaintiff/ π] became aware of this filing by July 23, 2024. In response, the Claimant [Plaintiff/ π] submitted a sur reply on July 25, 2024, at 6:11 PM, demonstrating a severe burdened of rapid turnaround of approximately 2.5 to 3 days that has been a common narrative

in this case. The sur reply was delivered to the court by July 29, 2024, at 2:16 PM. This timeline underscores the Claimant [Plaintiff/ π]'s diligent efforts to respond within the court's-imposed deadlines, despite significant challenges with USPS delivery times.

Additionally, the Magistrate Judge's Report and Recommendation to dismiss the case, dated July 22, 2024, was noted as mailed on the same day but has not been properly served to the Claimant [Plaintiff/ π]. The Claimant [Plaintiff/ π] only became aware of the recommendation through a PACER notice accessed on July 31, 2024. This delay highlights the ongoing issues with USPS mail delivery and its impact on the Claimant [Plaintiff/ π]'s ability to meet court-imposed deadlines and respond adequately to the court's decisions. The Claimant [Plaintiff/ π]'s response to the Report and Recommendation is due by August 5, 2024, leaving only five days from the discovery of the delay until the response deadline, assuming the recommendation is received immediately.

This position has been consistently stated in earlier filings and the original complaint, explicitly naming the direct defendants and unknowns as the primary parties involved. The Claimant [Plaintiff/ π] has never deviated from this position, and it is expressed throughout all submissions and original and earlier filings in this matter and action.

Additionally, this recommendation was made without addressing the Claimant [Plaintiff/ π]'s motion for leave, the sur reply, or the request for oral arguments. This may be due to the well-known USPS mailing delays and issues that this court should have taken judicial notice of, particularly given that the court has consistently restricted the Claimant [Plaintiff/ π] to using this mailing process. This restriction was imposed despite the known severe delays and processing issues at the federal government levels, which have been extensively documented and publicly acknowledged.

The Claimant [Plaintiff/ π]'s claims arise from an incident on September 9, 2021, involving interactions with personnel at the 81st Readiness Division at Fort Jackson, South Carolina, where

Claimant [Plaintiff/ π] experienced discriminatory conduct and was unlawfully detained. This treatment exacerbated his PTSD, a condition previously documented and known to the military. The core of the Claimant [Plaintiff/ π]'s argument revolves around the misapplication of procedural rules, not only particularly the Mailbox Rule, and the sub-action of dual action in the Bivens claim that was intentionally ignored and or overlooked to get the case of the books further the clear necessity for equitable tolling given documented USPS delays, which were exacerbated during the COVID-19 pandemic and persist due to ongoing systemic issues almost 4 years of this ongoing issue.

As a matter of law, under **Federal Rule of Civil Procedure 60(b)(4)**, a judgment is void if the court that rendered it lacked jurisdiction or acted in a manner inconsistent with due process. The U.S. Supreme Court in **United Student Aid Funds, Inc. v. Espinosa**, 559 U.S. 260 (2010), clarified that a judgment can be considered void if it was issued without proper notice or an opportunity for the affected party to be heard, thereby violating the party's due process rights. In this case, the lack of proper service and the resulting inability to respond effectively due to USPS delays constitute significant procedural deficiencies. These deficiencies undermine the fairness of the proceedings and may render any judgment based on these processes void. Moreover, there is a concern that the Magistrate Judge may have relied heavily on the Defendants' arguments without conducting a thorough de novo review of the facts and legal claims. Such reliance potentially overlooks critical aspects of the Claimant [Plaintiff/ π]'s claims and defenses, leading to an imbalanced consideration of the issues at hand. A de novo review requires the court to independently assess all the arguments and evidence, ensuring that the decision is based on a comprehensive understanding of the case, rather than an undue reliance on one party's perspective. Detailed below is how this Objection was derived.

II. Grounds for Objection

1. Bivens Claim and Individual Officers:

The Magistrate Judge's recommendation incorrectly characterizes the scope of the Bivens claims further overlooked critical details regarding the Bivens claims. While it correctly noted that sovereign immunity bars Bivens claims against United States and federal agencies, it failed to acknowledge that the Amended Complaint (ECF No. 26, filed March 22, 2024 Section III: Parties) specifically names individual federal officers as defendants. These individuals, including LTC Oustz, Ms. Ashanti Dickerson, MSG Anika Floore, and others, are explicitly identified as "bad actors" and members of the Army, responsible for the alleged constitutional violations. This distinction is crucial as it differentiates between claims against the United States and its agencies, and claims against individual officers under Bivens, who can be held personally liable for constitutional violations.

- Carlson v. Green, 446 U.S. 14 (1980): Established that federal employees can be held personally liable under Bivens for constitutional violations.
- Egbert v. Boule, 142 S. Ct. 1793 (2022): Clarified limitations on expanding Bivens but underscored individual accountability under existing frameworks.

The Amended Complaint outlines incidents where these individuals were directly involved in the alleged constitutional violations, including unlawful detention and discriminatory actions on September 9, 2021, when i Claimant [Plaintiff/ π] sought assistance at the 81st Readiness Division at Fort Jackson, SC. These actions

exacerbated i Claimant [Plaintiff/π]'s PTSD, a condition well documented in his military records.

i Claimant [Plaintiff/π] requests limited discovery to fully identify all involved officers, as prior court orders have not provided sufficient means for i the Claimant [Plaintiff/π] to gather this information, thus constraining the ability to move the case fully. The Claimant [Plaintiff/π] requests that the Court allow an amendment of the complaint or permit discovery to ascertain these individuals' identities accurately.

2. FTCA Claim and Timeliness:

- The recommendation to dismiss the FTCA claim based on timeliness fails to account for critical procedural details and constraints imposed by the court itself. Claimant [Plaintiff/π] received a final denial letter from the Army on May 26, 2023. The standard six-month filing deadline was therefore November 26, 2023. However, this date fell on a Sunday, extending the deadline to Monday, November 27, 2023. Under Federal Rule of Civil Procedure 6(d), an additional three days are allowed for filing if the service is made by mail, extending the deadline to November 29, 2023.
- Claimant [Plaintiff/π]'s complaint was postmarked on November 24, 2023, and received by the court on December 1, 2023. Importantly, i Claimant [Plaintiff/π] was subject to a local court mandate 3.3 requiring all filings to be submitted by mail. This mandate, as reflected in the denial of electronic filing and electronic

notification as specified in the order dated March 29, 2024 (ECF No. 34), was put in place with full knowledge of the potential for mail delays. i the Claimant [Plaintiff/π] appealed the denial of electronic notification to the District Judge on April 15, 2024 (ECF No. 43), and the Magistrate Judge's decision was affirmed by the District Judge on May 2, 2024 (ECF No. 44). These decisions underscore the significant constraints placed on i the Claimant [Plaintiff/π]'s ability to manage court communications and deadlines. Therefore, the court's imposition of this constraint must be considered in evaluating the timeliness of the filing.

- o Additionally, i the Claimant [Plaintiff/π] filed a Motion for Leave for E-Notification Consent (ECF No. 27), highlighting challenges including slow mail service and frequent travel. The motion explicitly requested email notifications to mitigate these issues, emphasizing the adverse impact of delayed notifications on i the Claimant [Plaintiff/π]'s ability to participate timely and effectively in the case. The court's awareness of these issues, yet requirement to continue using mail, underscores the procedural difficulties Claimant [Plaintiff/π] faced, including a typical 7-10 day or longer delay for receiving court mail.
- o Recent reports and Congressional hearings have highlighted significant delays in USPS mail delivery, with on-time delivery rates dropping to around 70-80% nationally, including severe impacts in specific regions such as Georgia, where only 36% of inbound first-class mail was delivered on time (Postal Times) (Save the Post Office) (U.S. Senator for Georgia Jon Ossoff). These delays, exacerbated by staffing shortages and operational changes, have significant implications for timely mail delivery, impacting essential services and court filings (Save the Post

Office) (Save the Post Office).

- The August 24, 2020 testimony by Postmaster General Louis DeJoy before the House highlighted critical concerns regarding operational changes within USPS and their adverse impact on mail delivery times. This concern was reaffirmed in the recent Congressional hearing on April 16, 2024, where ongoing systemic issues were discussed, including delays affecting crucial mail services. The time frame between these hearings—approximately 3 years and 8 months—demonstrates the prolonged nature of these issues, underscoring the need for judicial leniency regarding filing deadlines due to systemic USPS delays.
- Further, YouTube videos such as "Postal Service delays continue amid staffing shortages" and "USPS mail delays impact: How it's affecting the public" provide additional insight into the challenges faced by USPS in maintaining timely deliveries, which can directly impact court-related deadlines.
- The application of the Mailbox Rule in **Houston v. Lack, 487 U.S. 266 (1988)**, though primarily associated with incarcerated individuals, is rooted in equitable principles designed to prevent undue prejudice from circumstances beyond the filer's control. Moreover, equitable tolling is justified in this case due to these procedural constraints. The Supreme Court in **Holland v. Florida, 560 U.S. 631, 649 (2010)** emphasized that equitable tolling is appropriate where a party has diligently pursued their rights but was prevented from filing on time due to extraordinary circumstances. Here, the court's own directives requiring mail submissions, coupled with the inherent delays in mail processing, constitute such

extraordinary circumstances. Claimant [Plaintiff/ π]'s pro se status, coupled with the stringent filing requirements, further supports the application of equitable tolling.

3. Clarification on Scope of Amended Complaint and De Facto Defendant Role:

- The Defendants, along with the Magistrate and DOJ, have mischaracterized the scope of the Amended Complaint further failed to acknowledge the specific naming of individuals in the Bivens action as detailed in Section III (Parties) of the Amended Complaint (ECF No. 26, filed March 22, 2024 Section III: Parties). This section clearly names individuals such as LTC Oustz, Ms. Ashanti Dickerson, MSG Anika Floore, and others as "bad actors" and members of the Army, explicitly delineating their roles in the alleged constitutional violations. The United States and Federal Agencies are not named as direct parties in the Bivens action for they are De-facto as it should be understood
- Despite the individual nature of the Bivens claims, the United States often assumes a **de facto** defendant role by providing legal defense and potential indemnification for these employees. The DOJ frequently represents or funds the legal defense of federal employees in Bivens actions, particularly when the actions were performed within the scope of their duties, aligning the defense strategy with federal interests. This practice is supported by precedents such as **Carlson v. Green**, 446 U.S. 14 (1980), and **Egbert v. Boule**, 142 S. Ct. 1793 (2022), where the DOJ's involvement underscores the government's practical, though not official, role in these cases. **Harlow v. Fitzgerald**, 457 U.S. 800

(1982), and *Ziglar v. Abbasi*, 137 S. Ct. 1843 (2017), further clarify the conditions under which federal employees may be defended or indemnified, particularly in cases involving their official duties.

4. Procedural Due Process Concerns and Judicial Inconsistency:

- If the court imposes a requirement that Claimant [Plaintiff/ π], as a pro se litigant, must adhere to the local mailbox rule by mailing all filings and then dismisses the case based on a perceived technicality or failure to comply with the mailbox rule, this should raise significant due process concerns. **Procedural due process** mandates that individuals have a fair opportunity to present their case, which includes adequate notice and the opportunity to be heard in a meaningful manner.
- Such actions could be viewed as judicial inconsistency or arbitrariness, particularly if the court's local rules and decisions contradicts its own rules or the procedural expectations set for the Claimant [Plaintiff/ π]. This inconsistency may lead to a situation where the Claimant [Plaintiff/ π] is unfairly disadvantaged, potentially constituting a violation of due process principles as discussed in cases like *Mathews v. Eldridge*, 424 U.S. 319 (1976), which established the framework for assessing procedural protections based on the interests at stake.
- This court's action could be seen as unfairness and arbitrary application of rules, especially where the Claimant [Plaintiff/ π] has complied with the court's requirements within the designated timeframe, could be grounds for reconsideration or appeal. The Supreme Court has noted that **procedural**

irregularities and judicial actions that seem arbitrary or capricious can be grounds for relief under Rule 60(b)(4), which addresses relief from a judgment or order due to voidness.

5. Clarification on Alleged Concession to Dismissal

- The Defendants assert that the Claimant [Plaintiff/π] conceded to the dismissal of the action, a claim that is unequivocally denied. At no point has the Claimant [Plaintiff/π] conceded to the dismissal of the Bivens or FTCA claims. The Claimant [Plaintiff/π] has consistently contested the Defendants' motions and sought to clarify and pursue his legal rights. The assertion of a concession is a misinterpretation or misrepresentation of the Claimant [Plaintiff/π]'s filings. Acknowledging that the United States government and federal agencies cannot be sued under Bivens does not equate to conceding dismissal; it clarifies the distinction between sovereign immunity and the liability of individual federal officers.
- The Magistrate's Report and Recommendation seems to misunderstand the parties named in the suit. The Amended Complaint (ECF No. 26, Section III: Parties) explicitly names specific individuals, labeled as "Wrongdoers," involved in the alleged constitutional violations. The focus on the United States and federal agencies overlooks these individually named defendants, whose actions are central to the Bivens claim. Thus, even if the court dismisses the claims against the United States and federal agencies, the claims against the individual defendants remain valid and must be addressed.

- o The Claimant [Plaintiff/π]'s responses, including all motions and objections, have consistently argued against dismissal and sought appropriate relief, including partial summary judgment on uncontested issues and the opportunity for discovery to identify all relevant parties. The Defendants have not met their burden to dismiss the entire claim, particularly given the dual nature of the action encompassing both FTCA and Bivens claims.

III. Conclusion

For the foregoing reasons, stated above Claimant [Plaintiff/π], respectfully objects to the Magistrate Judge's Recommendation to dismiss the case. i the Claimant [Plaintiff/π] requests the Court to:

1. **Consider the Motion for Partial Summary Judgment:** The Claimant [Plaintiff/π] seeks summary judgment on uncontested issues of harm and injury, as the Defendants have not disputed the occurrence of these events, focusing instead on procedural defenses.
2. **Grant Limited Discovery:** To identify all involved officers and individuals responsible for the alleged constitutional violations, as limited discovery is crucial for a comprehensive understanding and full pleading of the case.
3. **Reconsider the Application of the Mailbox Rule and Equitable Tolling:** Particularly in light of the court's requirement for all filings to be mailed, the denial of electronic filing and notification, and the recognized mail restrictions. The Claimant [Plaintiff/π] faced extraordinary delays due to systemic USPS issues, beyond his control, which should be accounted for in assessing timeliness.
4. **Address Procedural Due Process Concerns and Judicial Inconsistency:** The dismissal recommendation appears to selectively focus on aspects favorable to the Defendants

while neglecting substantial claims against individually named defendants. The Claimant [Plaintiff/ π] emphasizes the need for consistent application of legal standards and consideration of all claims presented, including those under Bivens against individual federal officers.

5. **Ensure a De Novo Review of All Claims and Defenses:** The Claimant [Plaintiff/ π] is concerned that the Magistrate Judge's Report and Recommendation may have unduly relied on the Defendants' arguments without conducting a thorough de novo review of the facts and legal claims. Such a review is essential to ensure a fair and impartial consideration of all aspects of the case. The Court should independently assess all evidence and arguments, ensuring that the decision is based on a comprehensive understanding of the case rather than an undue reliance on one party's perspective.
6. **Reconsider Previous Rulings and Requests:** The Claimant [Plaintiff/ π] also requests the Court to reconsider previous rulings, such as the denial of an injunction against the Defendants' claims, which was based on issues that remain unresolved. The Defendants' ongoing arguments may have been previously challenged and found lacking, further supporting the need for thorough judicial review.
7. **Consider the Pending Sur Reply and Motion for Leave:** The Claimant [Plaintiff/ π] notes that the court has not yet addressed the pending sur reply and motion for leave. These filings are critical for ensuring that all arguments and responses are fully considered, particularly in light of the detailed issues raised concerning the timeliness and substantive nature of the claims.
8. **Request for Oral Arguments:** The Claimant [Plaintiff/ π] respectfully requests the opportunity for oral arguments to further elucidate the complexities of this case. Given the detailed procedural and substantive issues involved, oral arguments would provide an

invaluable platform for clarifying any misunderstandings and responding directly to any queries the court may have.

9. **Potential Rule 59 Motion:** Should the court proceed to issue a final judgment or order that does not fully consider the arguments and evidence presented, the Claimant [Plaintiff/ π] reserves the right to file a motion under Rule 59(e) to alter or amend the judgment. This would address any perceived errors of law or fact, or any newly discovered evidence that may have been overlooked, ensuring a fair and just resolution to the case.

As a matter of law, the Claimant [Plaintiff/ π] asserts that the judgment may be void under **Federal Rule of Civil Procedure 60(b)(4)** if it is found that the court acted in a manner inconsistent with due process, as highlighted in **United Student Aid Funds, Inc. v. Espinosa**, 559 U.S. 260 (2010). The procedural deficiencies, including the lack of proper service and the potential over-reliance on the Defendants' arguments, underscore the need for a comprehensive and fair review of the case.

The court's fair and thorough consideration of these points is crucial for ensuring justice and upholding the integrity of the legal process. The Claimant [Plaintiff/ π] seeks equitable relief and a just resolution, including acknowledgment of all claims and proper procedural treatment.

Date: August 1st, 2024 Respectfully submitted,

For GEORGE BALDWIN HUTCHINSON JR
Baldwin:man:beneficiary – House of Hutchinson
Date in time for this effort August 1st, 2024
commonlawarbitration@gmail.com
Main 678 653 0237
Main2 404 721 2276

CERTIFICATE OF SERVICE

"I" hereby certify that Submission August 1st, 2024, using the CM/ECF system via "i" caused to be served on all parties via electronic means the foregoing Objection To Magistrate Judge Shiva V. Hodges's Judge's Recommendation To Dismiss, on the Administrative Record

For GEORGE BALDWIN HUTCHINSON JR
Baldwin:man:beneficiary – House of Hutchinson
Date in time for this effort August 1st, 2024



From the Desk Of

The House of Hutchinson
G. Baldwin Hutchinson (ibri Priest)
Wounded Warrior & Combat Veteran (10x).
C/o Po Box 1337 Lithia Springs Ga 30122
commonlawarbitration@gmail.com
678-653-0237

RECEIVED
USDC CLERK, COLUMBIA, SC

2024 AUG -5 PM 1:11

August 1st, 2024

For Record:

Matter at Hand: Objection to Recommendation

Greetings: To the Offices of:

Clerk of Court:

Robin L. Blume

Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, South Carolina 29201

Greetings: (BLUF) Bottom Line Up Front

- I. Please take notification of this Objection To Recommendation (15 pgs), at this time please file.
Cover (2) pgs and (15) pgs (17) in all

v/r

or GEORGE BALDWIN HUTCHINSON JR
Baldwin:man:beneficiary – House of Hutchinson
Date in time for this effort August 1st, 2024
commonlawarbitration@gmail.com
Main 678 653 0237
Alt 404 721 2276



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PAP 21

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

GEORGE BALDWIN HUTCHINSON
JR.,

Plaintiff,

vs.

81ST READINESS DIVISION FT. JACKSON
SC and UNITED STATES,
Defendants.

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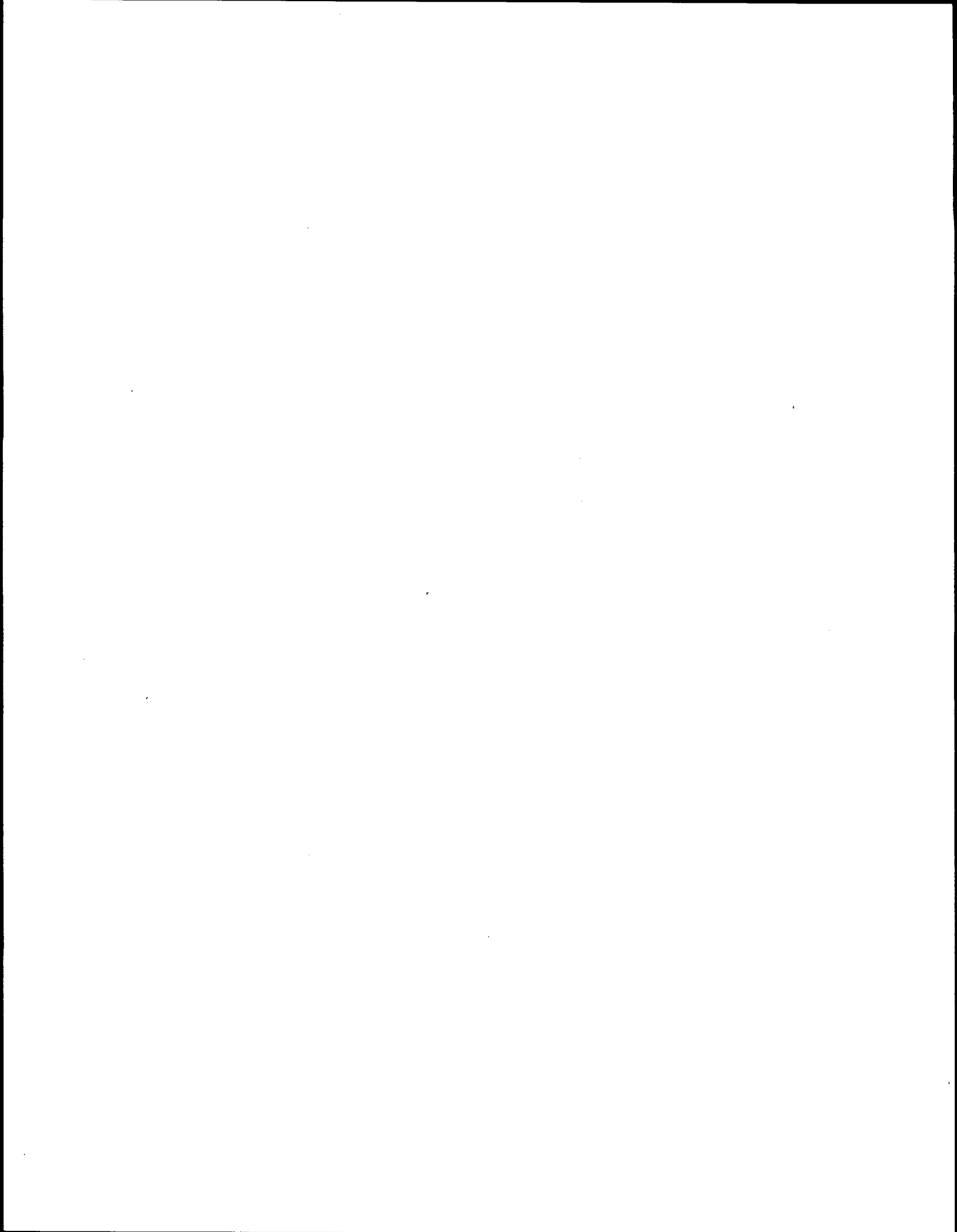
Civil Action No. 3:23-6178-MGL

ORDER ADOPTING THE REPORT AND RECOMMENDATION,
GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY,
GRANTING DEFENDANTS' MOTION TO DISMISS,
AND DEEMING AS MOOT PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

Plaintiff George Baldwin Hutchinson (Hutchinson), who is representing himself, filed this civil action against Defendants 81st Readiness Division Ft. Jackson SC and United States (collectively, Defendants), alleging violations of his constitutional rights under *Bivens v. Six Unknown Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), as well as violations of the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2671 et seq.

This matter is before the Court for review of the Report and Recommendation (Report) of the Magistrate Judge recommending the Court grant Defendants' motion to dismiss. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.



II. FACTUAL AND PROCEDURAL HISTORY

In 2021, Hutchinson, a retired veteran of the United States Army (Army), visited Fort Jackson's Retirement Services Office to obtain information about his retirement benefits. While at Fort Jackson, Hutchinson alleges he was subjected to "unprofessional and discriminatory conduct from the staff." Second Amended Complaint ¶ IV.II. He avers this resulted in Military Police constructively arresting and detaining him in violation of his constitutional rights.

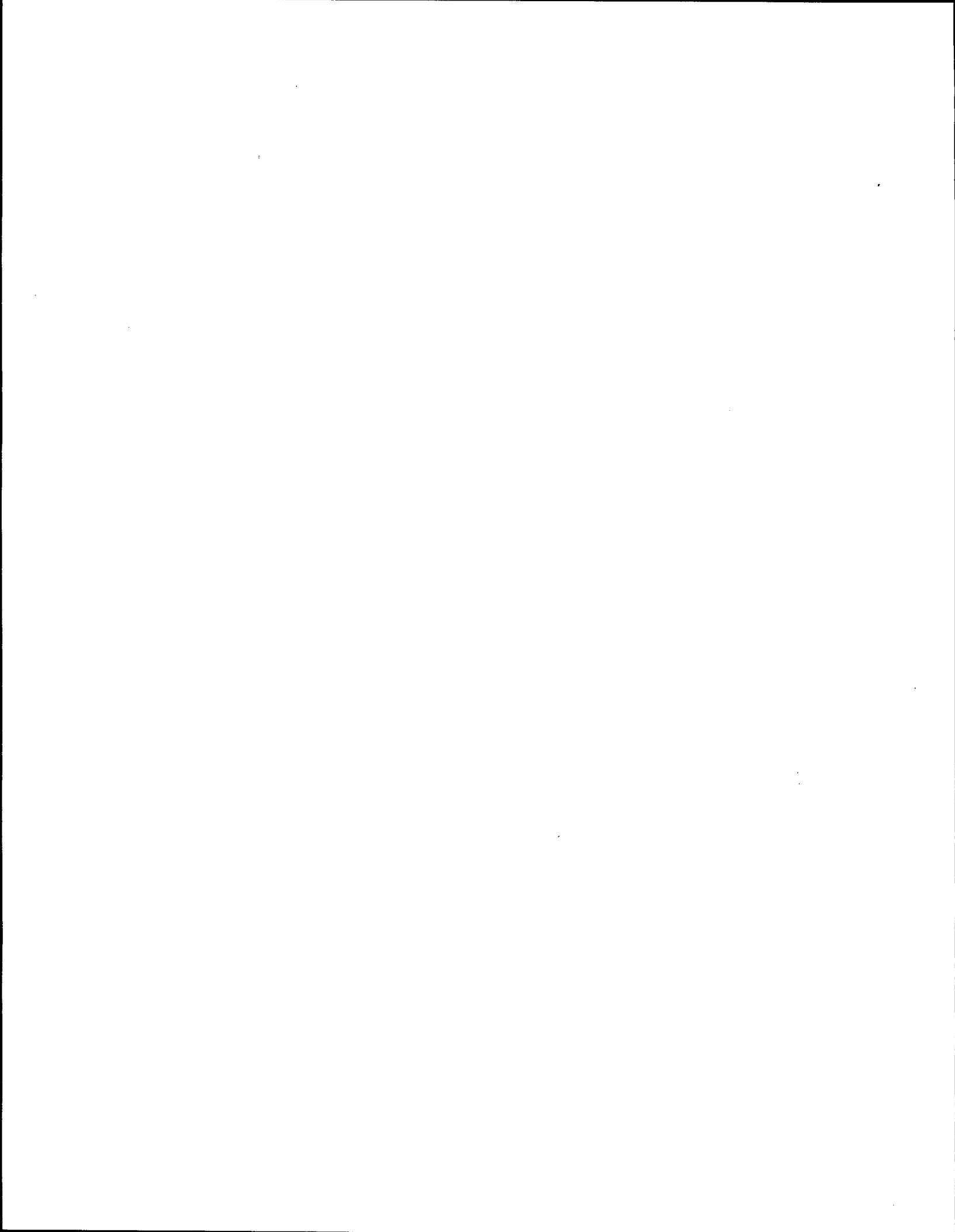
The Army thereafter received an administrative claim from Hutchinson, in which he sought \$2.5 million for intentional infliction of emotional distress, false arrest, false imprisonment, and detainment of a civilian. The Army notified Hutchinson it was denying his claim through a letter dated May 26, 2023. Notably, the Army advised Hutchinson:

If you are dissatisfied with the action taken on your [FTCA] claim, you may file suit in an appropriate United States District Court no later than six months from the date of [the] mailing of this letter. *See* 28 Code of Federal Regulations § 14.9(a). By law, failure to comply with that time limit forever bars your [FTCA] claim. *See* 28 United States Code § 2401(b).

Letter at 3.

On December 1, 2023—six months and six days after the Army sent its denial letter—Hutchinson filed this action against Defendants. He seeks declaratory, injunctive, and monetary relief under *Bivens* and the FTCA. Defendants subsequently filed a motion to dismiss.

The Magistrate Judge filed the Report on July 22, 2024. Hutchinson filed a sur-reply to Defendants' motion to dismiss on July 29, 2024, and objections to the Report on August 5, 2024. Defendants filed their reply on August 19, 2024, and Hutchinson filed a sur-reply on August 28, 2024.



III. STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Court, however, need not conduct a de novo review of the record “when a party makes general and conclusory objections that do not direct the court to a specific error in the [Magistrate Judge’s] proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). The Court reviews the Report only for clear error in the absence of specific objections. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record to accept the recommendation’”).

IV. DISCUSSION AND ANALYSIS

Initially, the Court will grant Hutchinson’s motion to file a sur-reply to Defendants’ motion to dismiss. Even still, Hutchinson has failed to present any specific objections to the Report. His objections merely repeat claims the Magistrate Judge properly considered, addressed, and rejected. Inasmuch as the Court agrees with the Magistrate Judge’s detailed treatment of Hutchinson’s claims in her well-written and comprehensive Report, it is unnecessary to repeat the discussion

here. Nonetheless, in an abundance of caution, the Court has teased out two objections, which it will briefly address below.

First, Hutchinson challenges the Magistrate Judge's conclusion Defendants are entitled to sovereign immunity on his *Bivens* claim for declaratory and injunctive relief. Although Hutchinson concedes sovereign immunity bars this claim against Defendants, he posits the Magistrate Judge failed to acknowledge his second amended complaint lists individual federal officers as "bad actors" responsible for his constitutional violations. Objections at 5.

Even if Hutchinson sufficiently identified the individual officers, the second amended complaint neglects to allege Hutchinson suffers "any continuing, present adverse effects" from his exposure to the officers' purportedly illegal conduct. *Davison v. Randall*, 912 F.3d 666, 677–78 (4th Cir. 2019) ("Because [p]ast exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects, a plaintiff seeking declaratory or injunctive relief . . . must establish an ongoing or future injury in fact." (internal quotation marks omitted) (quoting *O'Shea v. Littleton*, 414 U.S. 488, 495–96 (1974))). Accordingly, Hutchinson lacks standing to bring a *Bivens* claim for declaratory and injunctive relief.

Inasmuch as Hutchinson relies on the "ongoing nature" of his post-traumatic stress disorder (PTSD), Hutchinson's Sur-Reply at 4, absent from the second amended complaint is any allegation Hutchinson suffers from personal injury due to the officers' alleged constitutional violations. And, in considering a motion to dismiss under Rule 12(b)(6), the Court "may consider only the facts alleged in the complaint[.]" *Equal Emp. Opportunity Comm'n v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624–25 (D.C. Cir. 1997).

Therefore, the Court will overrule Hutchinson's first objection.

Hutchinson next objects to the Magistrate Judge's conclusion his FTCA claim is barred by the applicable statute of limitations. Hutchinson maintains his complaint was postmarked within the six-month limitations period and was thus timely filed. But, as the Magistrate Judge explained, Hutchinson "has not cited, nor is the [C]ourt aware, of the extension of the mailbox rule in a non-prisoner case." Report at 9; *see Thompson v. E.I. DuPont de Nemours & Co.*, 76 F.3d 530, 534 (4th Cir. 1996) ("[The plaintiff's] only explanation for her delay is that the post office took over three days to deliver the letter enclosing her notice of appeal. However, in contrast to the incarcerated, pro se litigant, the unincarcerated litigant who decides to rely on the vagaries of the mail must suffer the consequences if the notice of appeal fails to arrive within the applicable time period." (emphasis omitted)). And, here, even with the three-day grace period for filings accomplished by mail, Fed. R. Civ. P. 6(d), Hutchinson filed his complaint too late.

Hutchinson maintains "[t]he severe and ongoing impact of PTSD" and "significant delays caused by the [United States Postal Service] during the COVID-19 pandemic" constitute extraordinary circumstances warranting the application of equitable tolling.

The Fourth Circuit has made clear "[p]rinciples of equitable tolling do not extend to garden variety claims of excusable neglect." *Rouse v. Lee*, 339 F.3d 238, 246 (4th Cir. 2003) (citing *Irwin v. Dep't of Veteran Affs.*, 498 U.S. 89, 96 (1990)). Indeed, "any resort to equity must be reserved for those rare instances where—due to circumstances external to the party's own conduct—it would be unconscionable to enforce the limitation period against the party and gross injustice would result." *Harris v. Hutchinson*, 209 F.3d 235, 330 (4th Cir. 2000).

Here, the limitations period lapsed more than three years into the COVID-19 pandemic. And, like the petitioner in *Rouse*, Hutchinson "provides no reason why his medical condition barred him from filing his [complaint] at least one day earlier." *Id.* at 248.

Therefore, the Court will overrule Hutchinson's second objection, as well.

V. CONCLUSION

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Hutchinson's objections, adopts the Report, and incorporates it herein. Therefore, it is the judgment of the Court Hutchinson's motion for leave to file a sur-reply is **GRANTED**, Defendants' motion to dismiss is **GRANTED**, and this case is **DISMISSED WITH PREJUDICE**.

Because this case is being dismissed, Hutchinson's motion for partial summary judgment is necessarily **DEEMED AS MOOT**.

IT IS SO ORDERED.

Signed this 17th day of March 2025, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

Tab 2: FOURTH CIRCUIT JUDGMENT AFFIRMING DISMISSAL

APPENDIX A-2a

UNPUBLISHED ORDER DENYING DEFAULT JUDGMENT

Document Entry: DE 12

Filed: July 29, 2025

Pages: 2

Fourth Circuit denies relief despite procedural default by appellee.

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-1339

GEORGE BALDWIN HUTCHINSON, JR., G. Baldwin:(House of
Hutchinson):man,

Plaintiff - Appellant,

v.

81ST READINESS DIVISION FT JACKSON SC, (Wrongdoers); UNITED
STATES OF AMERICA, et al,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at
Columbia. Mary G. Lewis, District Judge. (3:23-cv-06178-MGL)

Submitted: July 24, 2025

Decided: July 29, 2025

Before NIEMEYER, AGEE, and HEYTENS, Circuit Judges.

Affirmed as modified by unpublished per curiam opinion.

George Baldwin Hutchinson, Jr., Appellant Pro Se. Todd Stuart Timmons, Assistant
United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Columbia,
South Carolina, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

George Baldwin Hutchinson, Jr., appeals the district court's order accepting the recommendation of the magistrate judge and dismissing with prejudice Hutchinson's civil action filed pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act. Although our review of the record has revealed no reversible error, we conclude that the *Bivens* claims should have been dismissed without prejudice because, as the district court found, each *Bivens* claim either was barred by federal sovereign immunity or failed for lack of standing. See *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) ("A dismissal for lack of standing—or any other defect in subject matter jurisdiction—must be one without prejudice, because a court that lacks jurisdiction has no power to adjudicate and dispose of a claim on the merits."); accord *Lancaster v. Sec'y of Navy*, 109 F.4th 283, 295 (4th Cir. 2024) (explaining that, where federal sovereign immunity bars claim, dismissal without prejudice is warranted).

Accordingly, we deny Hutchinson's motion for a default judgment and affirm the district court's order as modified to reflect that the *Bivens* claims are dismissed without prejudice. *Hutchinson v. United States*, No. 3:23-cv-06178-MGL (D.S.C. Mar. 17, 2025). We deny as moot Hutchinson's motions to expedite, to remand, and to schedule oral argument. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED AS MODIFIED

Tab 3: Final Order Rehearing En Banc Denial

APPENDIX A-3

ORDER DENYING REHEARING AND REHEARING EN BANC

Document Entry: DE 16

Filed: September 29, 2025

Pages: 1

Fourth Circuit denial without panel poll or reasoning

FILED: September 29, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-1339
(3:23-cv-06178-MGL)

GEORGE BALDWIN HUTCHINSON, JR., G. Baldwin:(House of
Hutchinson);man

Plaintiff - Appellant

v.

81ST READINESS DIVISION FT JACKSON SC, (Wrongdoers); UNITED
STATES OF AMERICA, et al

Defendants - Appellees

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge
requested a poll under Fed. R. App. P. 40 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Niemeyer, Judge Agee, and
Judge Heytens.

For the Court

/s/ Nwamaka Anowi, Clerk

Tab 4: Final Order Prohibiting Electronic Filing

APPENDIX A-4

MOTION FOR LEAVE TO FILE ELECTRONICALLY (E-CONSENT)

Document Entry: DE 27

Filed: March 22, 2024

Pages: 3

Initial request for permission to use electronic filing.

APPENDIX A-4a

OBJECTION TO DENIAL OF E-CONSENT

Document Entry: DE 43

Filed: April 15, 2024

Pages: 3

Challenging the denial of electronic filing access.

APPENDIX A-4b

ORDER DENYING ELECTRONIC FILING ACCESS

Document Entry: DE 44

Filed: May 2, 2024

Pages: 2

District Judge upholds the denial of ECF privileges.

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

GEORGE BALDWIN HUTCHINSON JR. (π))
G. Baldwin: (House of Hutchinson): man)
Claimant)

) **Motion For Leave E- Consent**
) **Case No.: 3:23-6178-MGL-SVH**

THE UNITED STATES [defendant / Δ])
81st Readiness Division Ft Jackson SC)
(Wrongdoers)[Defendant])

MOTION FOR LEAVE E-Notification Consent

Pursuant to rule 3.3 Claimant [Plaintiff/ π], after further review hereby moves to be notice and consents to be notified by email for all electronic filings and in addition to traditional postal mail service in the above identified case in this District Court via this courts electronic filing System due to traveling and scheduling:

Argument and Justification

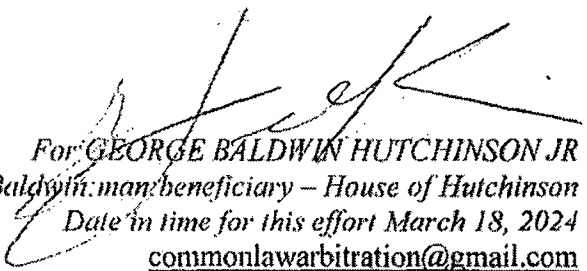
1. **E-Notification Request:** Due to my circumstances, including frequent travel and scheduling constraints, receiving notifications via email is essential for my timely and informed participation in this case. This not being notified in a timely manner creates undue burden that is not necessary on the Claimant [Plaintiff/ π], the mail receiving of my living area is slow and sometimes lost there i am time reacting in stead of properly responding due this courts time constraints further my schedule

2. **Distinction Between E-Filing and E-Notifications:** While Rule 3.3 prohibits pro se litigants from registering as electronic filing users within the ECF system, it does not expressly forbid receiving electronic notifications. This motion seeks to clarify and leverage this distinction, advocating for the Court's approval of e-notifications as a means to ensure efficient communication without violating the rule's intent.
3. **Precedent in Federal Courts:** The practices of the Court of Federal Claims and the Federal Circuit Appellate Court, which do allow said e filings do not prohibit e-notifications for pro se litigants, serve as a relevant precedent. This motion suggests that a similar approach can be adopted by this Court to facilitate effective judicial participation for self-represented litigants.
4. Claimant [Plaintiff/ π], Further states the following
 - Forgoing waives Service my postal mail and first-class mail including orders and Judgments
 - Claimant [Plaintiff/ π] is registered with PACER to view filings in the above identified case.
 - Is responsible for the immediately notifying the court in writing of any email change or changes
1. Take further notice the claimant is not an attorney but a **10-time deployed Combatant Veteran** with severe PTSD whom protected our liberties and these rules whom he now seeks to be made whole by these very same rules of process that failed to protect him.
2. Courts are supposed to be **"Friendly"** towards military members even more so Combat ones. Boone v. Lightner, 319 U.S. 561, 575, 63 S.Ct. 1223, 1231, 87 L.Ed. 1587. 9 "the Act must be read with an eye friendly to those who dropped their affairs to answer their

country's call".

For the foregoing reasons, Claimant [Plaintiff/π], respectfully requests that the Court grant Claimant [Plaintiff/π], Motion for Leave for E-Notification Consent, enabling me to receive all case-related notifications via email. This measure will significantly contribute to my ability to engage effectively in this legal process. The court clerk may add the email on this document the courts electronic filing system.

Date: March 18, 2024 Respectfully submitted,


For GEORGE BALDWIN HUTCHINSON JR
Baldwin: man/beneficiary – House of Hutchinson
Date in time for this effort March 18, 2024
commonlawarbitration@gmail.com
Main 678 653 0237
Main2 404 721 2276

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

GEORGE BALDWIN HUTCHINSON JR. (π)	)	
G. Baldwin: (House of Hutchinson): man	)	
<u>Claimant</u>	)	
	)	
	)	Objection and Appeal E- Consent
	)	Case No.: 3:23-6178-MGL-SVH
THE UNITED STATES [defendant /Δ]	)	
81st Readiness Division Ft Jackson SC	)	
(Wrongdoers)[Defendant]	)	

**OBJECTION TO MAGISTRATE JUDGE SHIVA V. HODGES'S ORDER DENYING
MOTION FOR ELECTRONIC NOTIFICATION OF CASE FILINGS, APPEALED TO
U.S. DISTRICT COURT JUDGE MARY GEIGER LEWIS**

Pursuant to 28 U.S.C. § 636(b)(1)(A) Claimant [Plaintiff/π], hereby moves this objection to the Order by Magistrate Judge Shiva V. Hodges, [ECF No. 34] filed March 29, 2024, denying the Claimant [Plaintiff/π] Motion for Leave for E-Notification Consent [ECF No. 27]. This objection is respectfully submitted to the Honorable U.S. District Court Judge Mary Geiger Lewis for consideration and reversal based on the following grounds:

I. Necessity of E-Notification for Effective Judicial Participation

The Plaintiff faces significant challenges in accessing timely postal mail due to frequent travel and unreliable postal services in his area, compounded by the physical and psychological impacts of his military service, including severe PTSD. These factors necessitate e-notification to ensure his informed and timely participation in the proceedings of this case.

II. Minimal Burden on the Clerk of Court

The assertion in the Order that e-notifications impose an undue administrative burden is countered by the Plaintiff's experience and knowledge of electronic communication systems, such as PACER. Incorporating an email address for automated notifications is a routine procedure within the court's existing infrastructure, posing minimal burden and promoting judicial efficiency.

III. Precedent and Policy Supporting E-Notifications

Judicial practices in higher courts, including the U.S. Federal Circuit Court of Appeals in D.C. and the Fourth Circuit Court of Appeals, support electronic notifications for pro se litigants (Filing and Service Procedures for Pro Se Litigants <https://www.ca4.uscourts.gov/rules-and-procedures/resources/pro-se-procedures#filingservice>). Moreover, the US Supreme Court's facilitation of pro se participation through Rule 40 exemplifies a judiciary-wide commitment to electronic access, establishing a clear precedent favoring the Plaintiff's request and underscoring the deviation of the Order from broader judicial practices.

IV. Trust, Bias, and Accessibility Concerns

This second denial of e-notification exacerbates biases against pro se litigants and undermines trust in the judicial process, particularly affecting veterans and service members. The local rule's interpretation, as applied in the first denial Order created a false narrative that a prose could not be e-notified as in not filing the Second order made a reference from the Prose point of view of an undue burden upon the prose the court uses this same language against the prose in order 34 claim it was an unnecessary burden upon the court clerk *"the court declines to impose the additional burden on the Clerk of Court associated with notifying Plaintiff of filings both electronically and through postal mail."* when in fact this aligns with the court clerks everyday duties furthermore, reflects on edging of outdated and restrictive view that fails to accommodate the reasonable needs and rights of self-represented parties that the higher courts have already

adopted. Cf 4th Circuit Pro Se Procedures Filing and Service: Website:

<https://www.ca4.uscourts.gov/rules-and-procedures/resources/pro-se-procedures#filingservice>

This approach not only impacts procedural convenience but also the perceived integrity and fairness of the legal system.

The specific bias introduced by the magistrate formulating the local rule against electronic notifications for pro se litigants ignores the realities of modern communication and the judiciary's own trend towards digital inclusivity. By not accommodating the Claimant [Plaintiff/ π] reasonable request the higher courts have already adopted, the court system indirectly communicates a reluctance to adapt to practices that could benefit all parties involved, especially those with compelling personal circumstances.

V. Conclusion and Desired Relief

Given the outlined reasons, the minimal administrative burden of implementing e-notifications, the established judicial precedent, and the significant concerns regarding trust, bias, and accessibility, the Plaintiff respectfully requests that the Honorable U.S. District Court Judge Mary Geiger Lewis grant this objection. The Plaintiff seeks a reversal of Magistrate Judge Hodges's Order and approval of the motion for e-notification consent, thereby ensuring his right to fair and effective participation in his case is upheld.

Date: April 11, 2024 Respectfully submitted,

For GEORGE BALDWIN HUTCHINSON JR
Baldwin:man:beneficiary – House of Hutchinson
Date in time for this effort April 11, 2024
commonlawarbitration@gmail.com
Main 678 653 0237
Main2 404 721 2276



From the Desk Of

The House of Hutchinson
G. Baldwin Hutchinson (ibri Priest)
Wounded Warrior & Combat Veteran (10x).
C/o Po Box 1337 Lithia Springs Ga 30122
commonlawarbitration@gmail.com
678-653-0237

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April 11, 2024

For Record:

Matter at Hand: Objection and Appeal E- Consent

Greetings: To the Offices of:

Clerk of Court:

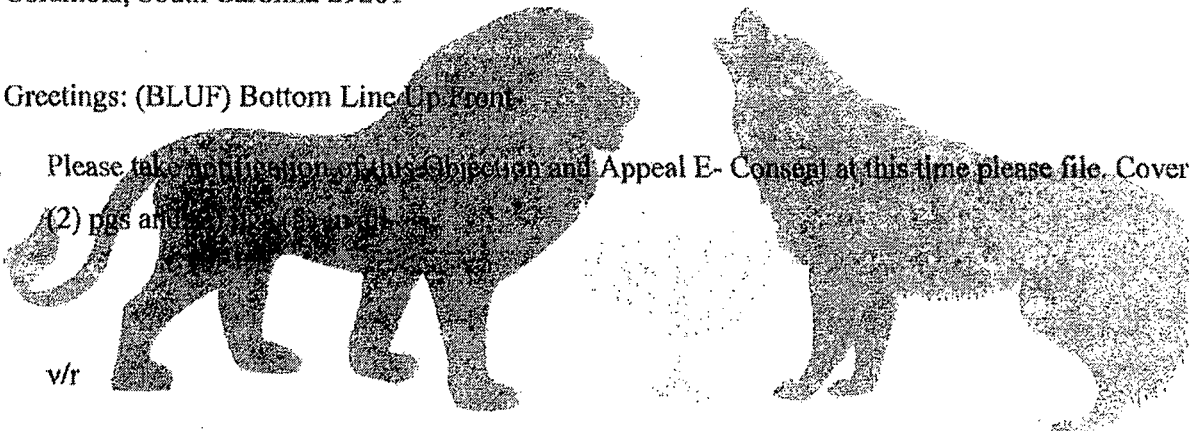
Robin L. Blume

Matthew J. Perry, Jr. Courthouse
901 Richland Street
Columbia, South Carolina 29201

Greetings: (BLUF) Bottom Line Up Front

- I. Please take notification of this Objection and Appeal E- Consent at this time please file. Cover (2) pgs and

v/r



or GEORGE BALDWIN HUTCHINSON JR

Baldwin: man: beneficiary – House of Hutchinson

Date in time for this effort April 11, 2024

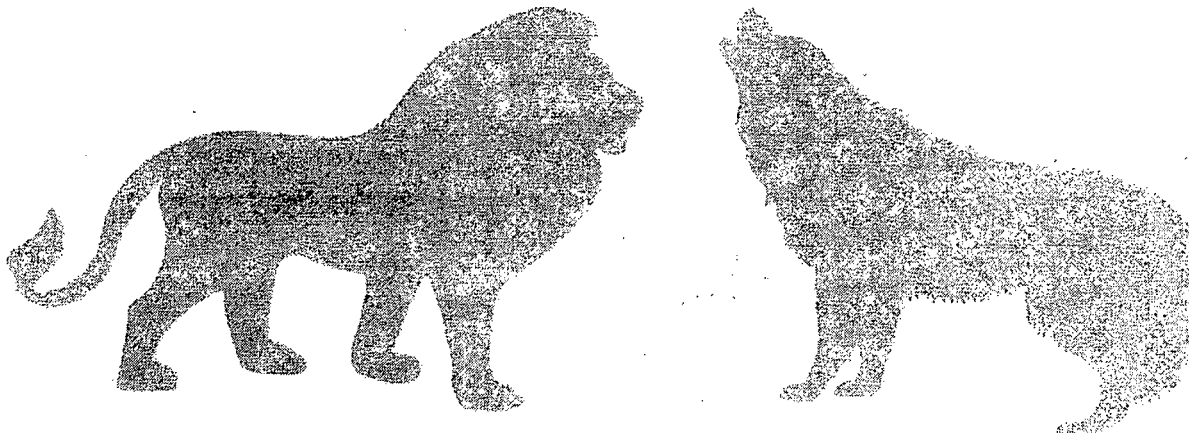
commonlawarbitration@gmail.com

Main 678 653 0237

Alt 404 721 2276



What Is A Veteran?
A "Veteran" - whether active
duty, discharged, retired, or
deceased - is someone who at one
point in his life, wrote a blank
check made payable to "The
United States of America," for an
amount of "glory and including
his life."
That is not how it should be.
For many people in this country
today, it is no longer understood
that fact.





This envelope is only for FedEx Express shipments.

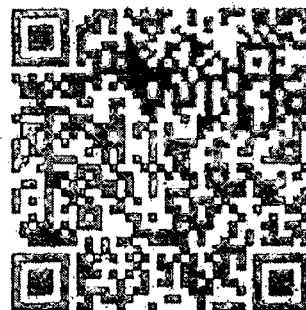
You can help us get your package safely to its destination by packing your items securely. Need help? Go to [fedex.com/packaging](https://www.fedex.com/packaging) for packing tips.

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

GEORGE BALDWIN HUTCHINSON JR., (π) §
G. Baldwin: (House of Hutchinson): man, §
Plaintiff, §

vs. §

Civil Action No.: 3:23-6178-MGL

UNITED STATES ET AL, [*defendant/\Delta*] (81st §
Readiness Division Ft Jackson SC) §
(*Wrongdoers*) §
Defendant. §

ORDER AFFIRMING THE MAGISTRATE JUDGE'S ORDER

Plaintiff George Baldwin Hutchinson Jr. (Hutchinson), proceeding pro se, brings this declaratory judgment action against Defendant "United States Et Al." (the United States).

This matter is before the Court for review of Hutchinson's appeal of the Magistrate Judge's order denying his motion to receive notice of electronic filings by email, in addition to mail. The Magistrate Judge's order was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge issued her order on March 29, 2024. Hutchinson appealed on April 15, 2024. The United States failed to respond to the appeal.

When a Magistrate Judge issues an order in a civil case, "[t]he district judge must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law." Fed. R. Civ. P. 72(a).

The Court will reverse the Magistrate Judge's holdings only if it is "left with the definite and firm conviction that a mistake has been committed." *United States v. Harvey*, 532 F.3d 326,

337 (4th Cir. 2008) (quoting *In re Mosko*, 515 F.3d 319, 324 (4th Cir. 2008)) (internal quotation omitted).

As an initial matter, with the three extra days provided for service by mail, Hutchinson's appeal is timely. *See* Fed. R. Civ. P. 72(a) (explaining party must appeal a Magistrate Judge's order within fourteen days).

Hutchinson contends the Magistrate Judge erred in denying notification by email because such an accommodation would fail to place any extra burden on the Clerk's Office, it would allow him to participate more effectively in the case, other courts allow it, and it would promote equal access to the courts.

Although other courts, such as the Fourth Circuit, allow electronic notification for pro se parties, this Court's policy is different. *See* ECF Policies and Procedures ¶ 5 (explaining only filing users may receive electronic notice); ¶ 3.3 (stating pro se parties are unallowed to register as filing users). Without a change in the policy, the Court is uninclined to make an exception for this plaintiff.

Therefore, the Magistrate Judge's order was neither clearly erroneous nor contrary to law. Accordingly, it is the judgment of the Court the Magistrate Judge's order is **AFFIRMED**.

IT IS SO ORDERED.

Signed this 2nd day of May 2024, in Columbia, South Carolina.

s/ Mary Geiger Lewis
MARY GEIGER LEWIS
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this Order within sixty days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

Tab 5: Timely Postmarked Envelope

APPENDIX A-5

COPY OF POSTMARKED ENVELOPE SHOWING TIMELY MAILING

Document Entry: DE 1-3

Filed: December 1, 2023

Page: 1 of 2

Demonstrates pre-deadline postmark under Mailbox Rule.

U.S. POSTAGE PAID
FCM LG ENV
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NOV 24, 2023



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R2303M148305-08

Retail



RDC 90

UNITED STATES

DATE: 11/24/2023



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