

ENTERED

September 16, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISIONLAURA MIRELES,
Plaintiff,

VS.

UNITED STATES OF AMERICA &
DANIEL RIANO,
Defendants.§
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CIVIL NO. B-13-197

ORDER

On July 29, 2016, the United States Magistrate Judge filed a Report and Recommendation (Doc. No. 100). Defendant Riano has also objected (Doc. No. 103) to said Report and Recommendation and Plaintiff has responded to those objections (Doc. No. 104). Plaintiff has also filed a pleading she has labeled as objections, which are more properly labeled as proposed factual modifications to the Report and Recommendation (Doc. No. 102). Having considered *de novo* the Magistrate Judge's Report and Recommendation, the issues raised by the objections of both parties, and the Plaintiff's response, the Court hereby adopts the Report and Recommendation.

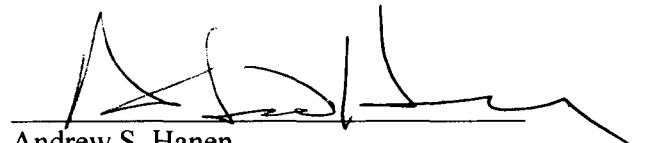
While adopting the Report and Recommendation of the United States Magistrate Judge, the Court feels compelled to emphasize two points. First, the facts in this matter are disputed and those disputed facts must be considered by a trial court, who is called upon to resolve a summary judgment motion, "in the light most favorable to the non-moving party." *Bone v. Dunnaway, et al.*, ___ F.3d ___, No. 15-30846 (5th Cir. August 5, 2016). That being the case, at this state the "facts" must be construed in the light most favorable to Ms. Mireles. Furthermore, once a material factual dispute has been identified, there is no need to detail every factor that might enhance this dispute.

Secondly, as can be seen by the citation in the proceeding paragraph, the Fifth Circuit has once again been called upon to address a case with immunity issues. While this is not necessarily

a surprising turn of events, given that the Circuit is frequently confronted with immunity issues, this Court notes that many of the disputes that faced the panel in *Bone* are similar to those present in this case. Indeed, the *Bone* facts, while different, present many of the same legal issues. The Fifth Circuit concluded that “[g]iven this factual dispute we cannot resolve the qualified immunity question as a matter of law” and it remanded the case for trial. As noted, this case has many of the same factual problems as those in *Bone v. Dunnaway*. The required analysis, as performed by the United States Magistrate Judge in the Report and Recommendation, not surprisingly reached the same result that the Fifth Circuit did in *Bone*—that the factual disputes necessitate a resolution by a jury.

The Report and Recommendation is hereby adopted. The Motion for Summary Judgment filed by Defendant Daniel Riano (Doc. No. 73) is denied.

Signed this 15th day of September, 2016.



Andrew S. Hanen
United States District Judge