

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF  
NEW YORK**

**Oudekerk v. Wanninger et al.**

Oudekerk · No. 9:24-CV-113 (AJB/MJK) · Decided November 25, 2025

---

**OPINION**

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK  
\_\_\_\_\_  
NICHOLAS OUDEKERK, Plaintiff, -v- 9:24-CV-  
113 (AJB/MJK) WANNINGER et al., Defendants. \_\_\_\_\_

APPEARANCES: OF COUNSEL: NICHOLAS OUDEKERK Plaintiff, Pro Se 15509 Warren  
County Correctional Facility 1400 State Route 9 Lake George, NY 12845 HON. LETITIA  
JAMES ALEXANDRA L. GALUS, ESQ.

New York State Attorney General Assistant Attorney General Attorneys for Defendants The  
Capitol Albany, NY 12224 Hon. Anthony Brindisi, U.S. District Judge: ORDER ON REPORT &  
RECOMMENDATION On January 23, 2024, pro se plaintiff Nicholas Oudekerk (“plaintiff”)  
filed this 42 U.S.C. § 1983 action alleging that five John Doe correction officers violated his  
constitutional rights on October 30, 2022, while he was being held in the custody of the New York  
State Department of Corrections and Community Supervision (“DOCCS”) at Mid-State  
Correctional Facility.

Dkt. No. 1. Along with his complaint, plaintiff moved for leave to proceed in forma pauperis  
(“IFP Application”). Dkt. Nos. 2, 4, 5. The matter was initially assigned to U.S. District Judge  
David N. Hurd, who granted the IFP Application and concluded that plaintiff’s § 1983 Eighth  
Amendment excessive force claims survived initial review against the five Doe correction  
officers.

Dkt. No. 7. Pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d Cir. 1997) (per curiam), Judge Hurd  
requested assistance from the New York State Attorney General’s Office in ascertaining the  
identities of the Doe defendants who were involved in the use-of-force incident with plaintiff on  
October 30, 2022. Dkt. No. 7. Thereafter, the Attorney General filed a response, Dkt.

No. 9, and plaintiff submitted an amended complaint that identified four of the five Does: (1)  
Correction Officer Wanninger; (2) Correction Officer Pekala; (3) Correction Sergeant Congleton;  
and (4) Deputy Superintendent Burns. Dkt. No. 11. Judge Hurd reviewed plaintiff’s amended  
complaint, concluded that the § 1983 Eighth Amendment excessive force claims survived initial  
review against defendants Wanninger and Pekala, ordered service on those defendants, and  
dismissed the remaining claims.

Dkt. No. 12. After defendants Wanninger and Pekala answered the amended complaint, Dkt. No. 22, and the matter was reassigned to this Court, Dkt. No. 37, plaintiff moved to compel discovery, Dkt. No. 42, and for summary judgment, Dkt. No. 46. Defendants opposed, Dkt. Nos. 44, 59, and plaintiff replied, Dkt. No. 59, 63.

On October 31, 2025, U.S. Magistrate Judge Mitchell J. Katz granted in part and denied in part plaintiff's motion to compel. Dkt. No. 66. At that time, Judge Katz advised by Report & Recommendation ("R&R") that plaintiff's motion for summary judgment should be denied based on the existence of issues of fact. See *id.* Neither party has lodged objections.

The time period in which to do so has expired. See Dkt. No. 66. Upon review for clear error, the R&R will be accepted and adopted. See FED. R. Civ. P. 72(b). Therefore, it is ORDERED that 1. The Report & Recommendation (Dkt. No. 66) is ACCEPTED; and 2. Plaintiff's motion for summary judgment (Dkt. No. 46) is DENIED.

The Clerk of the Court is directed to terminate the pending motions. IT IS SO ORDERED. Dated: November 25, 2025 ° Utica, New York. Anthony J. Brindisj U.S. District a -3-