

FILED
MAR 16 2009
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID W. McKEE,)
)
 Plaintiff,)
)
 v.)
)
 FEDERAL BUREAU OF PRISONS, *et al.*,)
)
 Defendants.)

Civil Action No. **09 0494**

MEMORANDUM OPINION

This matter comes before the court on review of plaintiff's application to proceed *in forma pauperis* and *pro se* civil complaint. The court will grant the application, and dismiss the complaint.

The court must dismiss a complaint if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(E)(1)(B). In *Neitzke v. Williams*, 490 U.S. 319 (1989), the Supreme Court states that the trial court has the authority to dismiss not only claims based on an indisputably meritless legal theory, but also claims whose factual contentions are clearly baseless. Claims describing fantastic or delusional scenarios fall into the category of cases whose factual contentions are clearly baseless. *Id.* at 328. The trial court has the discretion to decide whether a complaint is frivolous, and such finding is appropriate when the facts alleged are irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

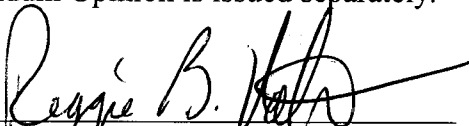
Plaintiff alleges that the defendants "force[d] [him] to participate in a top secret government experiment at FCI Allenwood," the purpose of which was "to break or drive crazy

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career criminals.” Compl. at 4-5 (page numbers designated by the Court). He further alleges that the defendants “put chemicals in . . . food,” and with these chemicals in the body defendants could “tune into . . . brain frequenc[ies] and transmit[] negative subliminal messages into [the] brain” so that “they can control all body functions.” *Id.* at 5. Plaintiff demands compensatory and punitive damages, and asks the Court “to take this process out of [his] minds [sic] eye or brain.” *Id.*

The court is mindful that complaints filed by *pro se* litigants are held to less stringent standards than those applied to formal pleadings drafted by lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). Having reviewed plaintiff’s complaint, it appears that its factual contentions are baseless and wholly incredible. For this reason, the complaint is frivolous and must be dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

An Order consistent with this Memorandum Opinion is issued separately.


United States District Judge

Date: March 9, 2009