

Bivens). A *Bivens* claim is against the individual wrongdoer. As a result, “a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution.” *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009).

Although the complaint’s caption lists Mitchell as a defendant, the body of the complaint contains no allegations about Mitchell. As a result, no claim has been stated against the only permissible *Bivens* defendant. It is established that the United States, its agencies, and its employees sued in their official capacity may be sued only upon consent, which must be clear and unequivocal. *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (citation omitted); see *Lane v. Pena*, 518 U.S. 187, 192 (1996) (the United States may be sued only upon consent “unequivocally expressed in statutory text[.]”). Congress has not waived the United States’ immunity from suit for constitutional torts. *FDIC v. Meyer*, 510 U.S. 471, 477-78 (1994). Therefore, *Bivens* is simply inapplicable to the Commission and BOP. For the foregoing reasons, this case will be dismissed.¹

Date: December 12, 2017


United States District Judge

¹ A separate order accompanies this Memorandum Opinion.