

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 06-6919**

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MICHAEL TROY FOREMAN,

Plaintiff - Appellant,

versus

FEDERAL CORRECTIONAL INSTITUTION, Beckley;  
JOYCE K. CONLEY, Warden; ASHOK BHALODI, M.D.;  
DOCTOR MCLAIN; S. ROSE, Clinical Director; J.  
KOBY; S. A. TAYLOR, PA-C; M. OWENS, Clinical  
Nurse; N. RETTBERG, D. O. Staff Physician; J.  
W. THOMPSON; A. BLANKENSHIP; K. KAISER;  
JESSICA GRIFFITH, Contract Medical Assistant;  
CAPTAIN HARE; J. KIFKLAND, RN/AHSA,

Defendants - Appellees.

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Appeal from the United States District Court for the Southern  
District of West Virginia, at Beckley. Joseph Robert Goodwin,  
District Judge. (5:04-cv-01260)

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Submitted: October 31, 2006

Decided: November 20, 2006

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Before NIEMEYER, TRAXLER, and DUNCAN, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Michael Troy Foreman, Appellant Pro Se. Michael Lee Keller, Sandra  
Henson Kinney, OFFICE OF THE UNITED STATES ATTORNEY, Charleston,  
West Virginia; Scott E. Johnson, STEPTOE & JOHNSON, Charleston,  
West Virginia; Monica Lynn Dillon, OFFICE OF THE UNITED STATES  
ATTORNEY, Charleston, West Virginia; Richard Allen Hayhurst,  
Parkersburg, West Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit.  
See Local Rule 36(c).

PER CURIAM:

Michael Troy Foreman appeals the district court's order accepting the recommendation of the magistrate judge and denying relief on his complaint 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 ("FTCA"), 28 U.S.C. §§ 2671-2680 (2000). Foreman also argues that his claims should be construed as claims pursuant to 42 U.S.C. § 1983 (2000). However, Foreman's claims were not filed under § 1983, and there are no exceptional circumstances to merit the consideration of this new argument on appeal. See Muth v. United States, 1 F.3d 246, 250 (4th Cir. 1993). With respect to Foreman's Bivens and FTCA claims, we have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Foreman v. Fed. Corr. Inst., No. 5:04-cv-01260 (S.D. W. Va. Mar. 30, 2006). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED