

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

DONALD KERNS
Reg # 27082-45

PLAINTIFF

v.

Case No. 2:18-cv-00086-KGB-JTR

BUREAU OF PRISONS, et al.

DEFENDANTS

ORDER

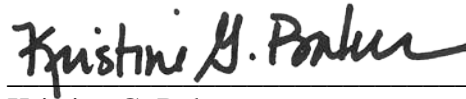
The Court has reviewed the Partial Recommended Disposition submitted by United States Magistrate Judge J. Thomas Ray (Dkt. No. 11). No objections have been filed, and the time to file an objection to the Partial Recommended Disposition has passed. Also pending before the Court is a motion for status filed by plaintiff Donald Kerns (Dkt. No. 16). For the following reasons, the Court adopts the Partial Recommended Disposition and denies as moot the motion for status (Dkt. Nos. 11, 16).

In the underlying action, Mr. Kerns filed a *pro se* action, pursuant to the Federal Tort Claims Act (“FTCA”), 28 U.S.C. §§ 1346, 2671, *et seq.*, alleging that he received negligent medical care while incarcerated in the Federal Correctional Institution located in Forrest City, Arkansas (Dkt. No. 11, at 1-2). In his Partial Recommended Disposition, Judge Ray concludes that, for screening purposes only, Mr. Kerns pled a viable FTCA claim (*Id.*, at 3). Judge Ray notes that an FTCA claim cannot be brought against an individual employee; further, a federal agency cannot be sued under the FTCA. Instead, such claims must be filed against the United States itself. On this basis, Judge Ray recommends dismissal of defendants Bureau of Prisons, Warden Gene Beasley, Nurse Practitioner Stiles, and Physician’s Assistant Wingo (*Id.*, at 3-4). However, in a separately filed order, Judge Ray directed that the United States be added as a defendant, as the exclusive legal remedy available to a party who has been injured as a result of a tort committed by

a federal employee is a claim against the United States itself, brought under the FTCA (*Id.*; Dkt. No. 12).

After careful consideration, the Court concludes that Judge Ray's Partial Recommended Disposition should be, and hereby is, approved and adopted in its entirety as this Court's findings in all respects (Dkt. No. 11). The Court permits Mr. Kerns to proceed with his FTCA claim against the United States and dismisses without prejudice defendants Bureau of Prisons, Mr. Beasley, Ms. Stiles, and Ms. Wingo from this action. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order would not be taken in good faith. The Court denies as moot Mr. Kerns' motion for status (Dkt. No. 16).

It is so ordered this 3rd day of February, 2020.



Kristine G. Baker
United States District Judge