

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-00153-LTB-MEH

JERRY LEE BUSTOS,

Plaintiff,

vs.

UNITED STATES OF AMERICA;
JOHN DOE #1, individually and officially;
JOHN DOE #2, individually and officially;
JOHN DOE #3, individually and officially; and

Defendants.

ORDER

This case is before me on the Recommendation of the Magistrate Judge that Defendant United States of America's Motion to Dismiss and Motion for Judgment on the Pleadings (Doc 282) be granted. The Plaintiff, through counsel, has filed specific written objections to the Magistrate Judge's recommendation. The United States has filed its response to those objections and the Plaintiff has filed his reply to the response. I have therefore reviewed the recommendation *de novo* in light of the file and record in this case. First, I conclude that the recommendation is correct insofar as it is based upon Plaintiff's failure to allege sufficiently a physical injury in the operative complaint to establish the requisite physical injury in this case. And, as the United States notes in its response to the objections, although the Magistrate Judge did not find it is necessary to base his recommendation on the Defendant's argument that an inmate must allege and establish physical injury occurring before alleged emotional distress, the motion to dismiss is warranted for that additional reason. 28 U.S.C. § 1346(b)(2) and 42 U.S.C. § 1997(e)(e). Accordingly

IT IS ORDERED that the Motion of the United States of America (Doc 282) to Dismiss and Motion for Judgment on the Pleadings is GRANTED and the action is DISMISSED as to the United States of America.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Judge

DATED: December 14, 2010