

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

OCT 22 2009

GREGORY C. LANGHAM
CLERK

Civil Action No. 09-cv-01514-BNB

SAMUEL P. SUTTON,

Applicant,

v.

BLAKE R. DAVIS, Warden

Respondent.

ORDER OVERRULING OBJECTION

This matter is before the Court on the "Appeal of Order to Consture [sic]" that Mr. Sutton, a federal prisoner housed in the State of Colorado, filed with the Court on September 24, 2009. In the Appeal, Mr. Sutton objects to Magistrate Judge Boyd N. Boland's August 25, 2009, Order that construes the claims he asserts in his 28 U.S.C. § 2241 Application as conditions of confinement claims and directs Mr. Sutton to submit his claims in a Prisoner Complaint pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The Court will construe the Appeal liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A). For the reasons stated below, the Objection will be overruled.

Pursuant to 28 U.S.C. § 636(b)(1)(A), a judge may reconsider any pretrial matter designated to a magistrate judge to hear and determine where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law. Mr. Sutton asserts in the Objection that his First, Eighth, and Fourteenth Amendment rights have been

violated because he has been placed in administrative detention due to threats against his life and not for disciplinary reasons, but as a result of the placement is being denied the same privileges he enjoyed while in general population. Mr. Sutton contends that under the writ of habeas corpus he is not required to file a **Bivens** action. In the Application, Mr. Sutton asserts that because of his current placement he has been denied the use of an adequate law library and access to religious services and recreation. Mr. Sutton is challenging the conditions of his confinement.

The Court concludes that Magistrate Judge Boland's August 25, 2009, Order neither is clearly erroneous nor contrary to law. A claim regarding the conditions of confinement in a federal prison properly is considered pursuant to **Bivens**. **United States v. Furman**, 112 F.3d 435, 439 (10th Cir. 1997) (citing **Richards v. Bellmon**, 941 F.2d 1015, 1018 (10th Cir. 1991)). Therefore, Mr. Sutton's liberally construed Objection will be overruled.

Mr. Sutton is instructed to comply with the August 25, 2009, Order or the Complaint and action will be dismissed for failure to cure the deficiencies. Mr. Sutton is directed to complete and return to the Court the Court-approved forms sent to him with the August 25, 2009, Order if he desires to proceed with the instant action in this Court. Accordingly, it is


ORDERED that Mr. Sutton's Appeal of Order to Construe filed September 24, 2009, is construed liberally as an Objection filed pursuant to 28 U.S.C. § 636(b)(1)(A) and is overruled. It is

FURTHER ORDERED that Mr. Sutton has **twenty days from the date of this Order** to comply with the August 25, 2009, Order. It is

FURTHER ORDERED that if Mr. Sutton fails to comply with the August 25, 2009, Order as directed, within the time allowed, the Complaint and action will be dismissed without further notice.

DATED at Denver, Colorado, this 21 day of Oct., 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

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CERTIFICATE OF MAILING

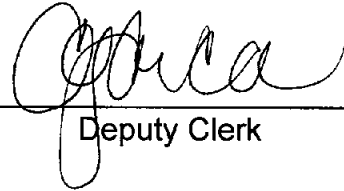
Civil Action No. 09-cv-01514-BNB

Samuel P. Sutton
Reg No. 13714-041
US Penitentiary
P.O. Box 7000
Florence, CO 81226-7000

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 10/22/09

GREGORY C. LANGHAM, CLERK

By: _____



Deputy Clerk