

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Case No. 12-cv-00349-REB-BNB

WILLIE HORTON,

Plaintiff,

v.

BLAKE R. DAVIS, Warden,
MARK COLLINS, Adm. Remedy Coordinator,
P. RANGEL, Unit Manager,
D. FOSTER, Counselor, and
A. FENLON, Case Manager,

Defendants.

ORDER

This matter arises on **Defendants' Motion to Dismiss Official Capacity Claims** [Doc. #16, filed 04/30/2012] (the "Motion") submitted by defendants Rangel, Foster, and Fenlon. The Motion is DENIED WITHOUT PREJUDICE.

The plaintiff filed his Prisoner Complaint [Doc. #1] (the "Complaint") on February 9, 2012. The Complaint asserts two claims: (1) retaliation by defendants Rangel, Foster, and Fenlon in violation of the plaintiff's First Amendment rights; and (2) violation of the plaintiff's First Amendment right to access the courts by defendants Davis, Collins, and Foster. The First Amendment claim against defendants Davis, Collins, and Foster was dismissed on February 27, 2012 [Doc. #7]. The plaintiff was permitted to amend his Complaint to reinstate the claim on March 22, 2012 [Doc. #14]. However, the Motion is brought only on behalf of defendants Rangel, Foster, and Fenlon, and not on behalf of defendants Davis and Collins.

Defendants Rangel, Foster, and Fenlon assert that the claims against them in their official capacities are barred by sovereign immunity. The defendants do not discuss Simmat v. United States Bureau of Prisons, 413 F.3d 1225 (10th Cir. 2005), which holds that 5 U.S.C. § 702 waives sovereign immunity in most suits for nonmonetary relief.

Defendants Davis and Collins have not answered or otherwise responded to the Complaint, and defendants Rangel, Foster, and Fenlon have not answered the Complaint in their individual capacities. Accordingly,

IT IS ORDERED:

(1) The Motion is DENIED WITHOUT PREJUDICE subject to reassertion, if appropriate, on behalf of all defendants and in light of Simmat v. United States Bureau of Prisons, 413 F.3d 1225 (10th Cir. 2005); and

(2) All of the defendants shall answer or otherwise respond to the Complaint on or before **May 29, 2012**.

Dated May 18, 2012.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge