

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02167-BNB

BRUCE W. JONES,

Plaintiff,

v.

DR. JEFFREY ALLEN, Individually and in his Official Capacity, Chief Health Programs,
Health Services Division, Washington D.C., North Central Region, Kansas City,
Kansas,

LISA GREGORY, Individually and in her Official Capacity, Regional Health Services
Administrator, North Central Regional Office, Kansas City, Kansas,

UNITED STATES OF AMERICA,

MARK KELLAR, Individually and in his Official Capacity, Health Services Administrator,
Federal Correctional Inst., Florence,

ALLYSON ALVARADO, Individually and in her Official Capacity, Asst. Health Services
Administrator, Federal Correctional Institute, Florence,

LT. CIMAROSSA, Individually and in her Official Capacity, Acting Asst. Health
Services Health Administrator, Federal Correctional Institute, Florence,

GEORGE SANTINI, Individually and his Official Capacity, Staff Physician, Federal
Correctional Institute, Florence,

ALICIA VINYARD, Individually and in her Official Capacity, Midlevel Provider, Federal
Correctional Institute, Florence,

GILBERTA TRUJILLO, Individually and in her Official Capacity, Medical Secretary,
Federal Correctional Institute, Florence,

P. RANGEL, Individually and in his Official Capacity, Associate Warden, Federal
Correctional Institute, Florence, and

JAMES PELTON, Individually and in his Official Capacity, Acting Clinical Director,
Federal Correctional Institute, Florence,

Defendants.

ORDER TO DISMISS IN PART AND TO ASSIGN CASE
TO A DISTRICT JUDGE AND TO A MAGISTRATE JUDGE

Plaintiff, Bruce W. Jones, is in the custody of the United States Bureau of Prisons

and currently incarcerated at the Federal Correctional Institution in Florence, Colorado. Mr. Jones, acting *pro se*, initiated this action by filing a Prisoner Complaint pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. On August 19, 2013, Magistrate Judge Boyd N. Boland granted Mr. Jones leave to proceed pursuant to 28 U.S.C. § 1915. Magistrate Judge Boland also entered an order directing Mr. Jones to show cause why the claims asserted against Defendants Mark Kellar, George Santini, Alicia Vinyard, Gilberta Trujillo, and James Pelton should not be dismissed as repetitive of the claims that he asserted and are pending in *Jones v. Kellar*, No. 11-cv-02721-RM-KMT (D. Colo. filed Oct. 19, 2011). Mr. Jones filed a Response on August 27, 2013.

Mr. Jones contends that the claims he asserts in this case involve only constitutional violations that took place from February 2012 forward, whereas the claims in Case No. 11-cv-02721-RM-KMT took place prior to his surgery, which was performed mid-February 2012. The Court, therefore, finds that claims in this action are not repetitive of the claims asserted in Case No. 11-cv-02721-RM-KMT. For the following reasons, the Complaint will be dismissed in part.

Mr. Jones may not sue the United States of America in a *Bivens* action. The United States has not waived sovereign immunity for itself or its agencies under *Bivens* for constitutional tort claims. *FDIC v. Meyer*, 510 U.S. 471, 486 (1994); *Chapoose v. Hodel*, 831 F.2d 931, 935 (10th Cir. 1987). Therefore, any *Bivens* claims for damages against the United States is barred by sovereign immunity. Furthermore, a request for injunctive relief against BOP subordinate officials is not construed as a suit against the

United States because an injunction against the named individuals would not be granted against the United States. See *Jordan v. Sosa*, 654 F.3d 1012, 1031 (10th Cir. 2011).

The United States therefore, will be dismissed.

Also, the Court will dismiss Defendant Mark Kellar based on Mr. Jones' Response, in which he concedes Mr. Kellar should be dismissed from the action. Accordingly, it is

ORDERED that Defendants United States of America and Mark Kellar are dismissed from the action and the Clerk of the Court shall terminate these Defendants as parties to this action. It is

FURTHER ORDERED that the claims as asserted against the remaining Defendants shall be assigned to District Judge Raymond P. Moore, pursuant to D.C.COLO.LCivR 40.1C.1., and to Magistrate Judge Kathleen M. Tafoya.

DATED at Denver, Colorado, this 26th day of September, 2013.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court