

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 13-cv-02296-REB-CBS

BOB CUSTARD,

Plaintiff,

v.

DAVID ALLRED,
YVETTE BROUILLET-FETTERHOFF,
BUREAU OF PRISONS,
CHAVEZ,
CORDOVA,
ENCARANANZE,
FIEF,
ANDREW FENLON,
B. KASDON,
KOCH-COULTER,
PATRICIA RANGEL,
PAUL ZOHN, and
ZONNO,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the following: (1) the **Motion To Dismiss** [#74]¹ of the defendants filed April 14, 2014; and (2) the corresponding **Recommendation of United States Magistrate Judge** [#122] filed January 26, 2015. The plaintiff filed objections [#123] to the recommendation, the defendants filed a response [#126], and the plaintiff filed a reply [#130].

¹ “[#74]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court’s case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which the plaintiff objects. I have considered carefully the recommendation, the objections, the other filings in this case, and the applicable case law. Because the plaintiff is proceeding *pro se*, I have construed his pleadings and other filings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991). I overrule the objections, approve and adopt the recommendation, and grant the motion to dismiss [#74].

The plaintiff, Bob Custard, is a prisoner incarcerated at the United States Penitentiary, High Security, in Florence, Colorado. In this case, he asserts a variety of claims under ***Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics***, 403 U.S. 388 (1971). The magistrate judge details the reasons that Mr. Custard cannot pursue his First Amendment and Fifth Amendment claims as ***Bivens*** claims, and why he cannot pursue any ***Bivens*** claim against the Federal Bureau of Prisons. Based on my *de novo* review of the apposite record and law, I concur. I note, however, that Mr. Custard also seeks injunctive relief against the Bureau of Prisons based on his alleged First Amendment claim. This claim for injunctive relief is not included in the dismissal of the ***Bivens*** claims against the Bureau of Prisons. The magistrate judge details also why the claims of Mr. Custard against the defendant named in the complaint [#10] as “Cordova” must be dismissed. Again, my *de novo* review constrains concurrence. The objections [#123] and reply [#130] of Mr. Custard do not vitiate the thorough and circumstantiated ratiocination of the magistrate judge.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#122] filed January 26, 2015, is approved and adopted as an order of this court;
2. That the objections [#123] of the defendant are overruled;
3. That the **Motion To Dismiss** [#74] of the defendants filed April 14, 2014, is granted;
4. That the claims of the plaintiff alleging violation of the First Amendment and Fifth Amendment and asserted under ***Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*** are dismissed with prejudice;
5. That all of the claims of the plaintiff asserted under ***Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*** against the Federal Bureau of Prisons are dismissed with prejudice;
6. That all of the claims of the plaintiff against the defendant named in the complaint [#10] as “Cordova” are dismissed; and
7. That accordingly, the remaining claims pending in this case include: (a) the Eighth Amendment claims; (b) the claim for injunctive relief against the Federal Bureau of Prisons; and (c) the claim for declaratory relief.

Dated March 16, 2015, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge