

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01836-BNB

DERRICK WEST,

Plaintiff,

v.

UNITED STATES OF AMERICA,
FEDERAL BUREAU OF PRISONS,
J. DAVIS, Corrections Officer,
RODRIQUEZ, Corrections Officer, and
O'DONNELL, Corrections Officer,

Defendants.

ORDER TO DISMISS IN PART AND TO DRAW IN PART

Plaintiff, Derrick West, is in the custody of the Federal Bureau of Prisons at the Federal Correctional Institution in Florence, Colorado. Plaintiff initiated this action by filing *pro se* a Civil Rights Complaint. Magistrate Judge Boyd N. Boland reviewed the Complaint, found it was deficient, and directed Plaintiff to file his claims on a Court-approved form, which Plaintiff did on July 22, 2014.

After review of the July 22 Prisoner Complaint, Magistrate Judge Craig B. Shaffer directed Plaintiff to amend the Complaint to clarify if he intends to pursue only a Federal Tort Claims Act (FTCA) claim or if he desires to assert both an FTCA claim and a claim under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Magistrate Judge Shaffer also directed Plaintiff to name proper defendants and assert what they did to violate his constitutional rights if he intends to assert a *Bivens* claim and to state in the Request for Relief section of the Complaint form what relief he desires.

On September 16, 2014, Plaintiff filed an Amended Complaint. In the caption of the Complaint form, Plaintiff has named five defendants: (1) United States of America; (2) Federal Bureau of Prisons; (3) J. Davis, Corrections Officer; (4) Rodriquez, Corrections Officer; and (5) O'Donnell, Corrections Officer. In the Jurisdiction section of the Complaint form, Plaintiff indicates he is filing this action only pursuant to the FTCA, 28 U.S.C. §§ 1346(b) and 2671-80. Plaintiff does not indicate that he intends to file this action pursuant to *Bivens*.

Plaintiff, however, does assert in the body of the Complaint that two of the correctional officers he names in the caption intentionally placed him in the same cell as another inmate and watched as the inmate assaulted Plaintiff. Plaintiff seeks injunctive relief and money damages.

Nothing that Plaintiff asserts in the Cause of Action section of the Complaint form, however, indicates that Plaintiff intends to assert a *Bivens* claim against the three correctional officers. In Claim One, Plaintiff only refers to the FTCA as a basis for this action based on the officers' actions, and in Claim Two, he states the prison officials displayed "negligence" and "reckless disregard" for his safety. Am. Compl., ECF No. 17, at 6. Plaintiff does refer to the Constitution and to *Farmer v. Brennan*, 511 U.S. 825, 844 (1994), in Claim Two, but he does not state with any specificity that the officers' actions inflicted cruel and unusual punishment or were violations of the United States Constitution. Based on Plaintiff's failure to identify *Bivens* as a basis for jurisdiction and to assert a specific constitutional violation against Defendants O'Donnell, Rodriquez, and Davis, the Court finds these defendants are improperly named parties to this action.

Defendant Federal Bureau of Prisons also is an improperly named party because

the only proper defendant in an FTCA claim is the United States. See *Oxendine v. Kaplan*, 241 F.3d 1272, 1275 n.4 (10th Cir. 2001). The Court, therefore, will dismiss Defendants Federal Bureau of Prisons, O'Donnell, Rodriquez, and Davis. Accordingly, it is

ORDERED that Defendants Federal Bureau of Prisons, J. Davis, Rodriquez, and O'Donnell are dismissed as improperly named parties to this action. It is

FURTHER ORDERED that the FTCA claim asserted against the United States of America shall be drawn to a presiding judge and when appropriate to a magistrate judge.

DATED at Denver, Colorado, this 23rd day of September, 2014.

BY THE COURT:

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