

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00405-GPG

BILLY F. MAY,

Plaintiff,

v.

GEORGE SANTINI,
FRANK CORDOVA, and
FEDERAL BUREAU OF PRISONS,

Defendants.

ORDER TO DISMISS IN PART AND TO DRAW CASE

Plaintiff Billy F. May is in the custody of the Federal Bureau of Prisons and currently is incarcerated at the Federal Prison Camp in Florence, Colorado. Plaintiff, 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. Plaintiff has been granted leave to proceed pursuant to § 1915.

Plaintiff asserts that his constitutional rights have been violated because Defendants Frank Cordova and George Santini have refused to treat his severe allergies and provide him Benadryl and an EpiPen to counter any allergy attack. Plaintiff further asserts that he has suffered Anaphylaxis shock three times in his life due to his allergies and has been told that if he suffers a fourth episode his survival rate without medication is only about twenty percent. Plaintiff seeks injunctive relief and compensatory damages. These claims asserted against Defendants Cordova and

Santini will be drawn to a presiding judge and when applicable to a magistrate judge.

Plaintiff, however, may not sue the Federal Bureau of Prisons for damages 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). Any *Bivens* claims for damages against the Bureau are barred by sovereign immunity. Furthermore, a request for injunctive relief against BOP subordinate officials is not construed as a suit against the BOP because an injunction against the named individuals would not be granted against the BOP. See *Jordan v. Sosa*, 654 F.3d 1012, 1031 (10th Cir. 2011). The BOP, therefore, will be dismissed. Accordingly, it is

ORDERED that Defendant Federal Bureau of Prisons will be dismissed from the action. It is

FURTHER ORDERED that the claims asserted against Defendants Frank Cordova and George Santini shall be drawn to a presiding judge and when applicable to a magistrate judge.

DATED at Denver, Colorado, this 19th day of March, 2015.

BY THE COURT:

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