

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00741-GPG

WILLIAM GILMORE,

Plaintiff,

v.

TRUDY SICOTTE, PA,  
DAVID TESSIER, HCA, and  
FREMONT CORRECTIONAL FACILITY

Defendants.

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ORDER TO DISMISS IN PART AND TO DRAW CASE

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Plaintiff William Gilmore is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Fremont Correctional Facility in Cañon City, Colorado. Plaintiff, acting *pro se*, initiated this action by filing a Prisoner Complaint pursuant to 42 U.S.C. § 1983, 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 14<sup>th</sup> day of April, 2015.

BY THE COURT:

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