

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

FILED
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PATRICK C. DEFFY, CLERK
BY _____
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GREAT FALLS DIVISION

DONALD F. DUBRAY,

Plaintiff,

vs.

SPECIAL AGENT TED CHESTER
and CRAIG GILUM,

Defendants.

Cause No. CV 10-52-GF-SEH-RKS

RECOMMENDATION AND ORDER TO
DENY MOTION TO PROCEED IN FORMA
PAUPERIS AND DISMISSING
COMPLAINT

Plaintiff Donald F. Dubray has filed a Motion to Proceed in Forma Pauperis (Court Doc. 1) and proposed Complaint alleging illegal extradition. (Court Doc. 2). This case presents a federal question over which the Court possesses jurisdiction pursuant to 28 U.S.C. § 1331.

Indigent litigants may proceed in forma pauperis upon completion of a proper affidavit of indigency. 28 U.S.C. § 1915(a). But the court has broad discretion in denying an application to proceed in forma pauperis. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845, 84 S.Ct. 97, 11 L.Ed.2d 72 (1963). "A district court may

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deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed complaint that the action is frivolous or without merit." *Tripati v. First Nat'l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987). Mr. Dubray's motion should be denied because his Complaint is barred by the applicable statute of limitations.

Mr. Dubray is a federal prisoner proceeding without counsel. The named Defendants are: F.B.I. Agent Ted Chester and B.I.A. Agent Craig Gilum.

Mr. Dubray alleges he was arrested and transported off the Blackfoot Indian Reservation by Defendants in violation of Federal and State Extradition laws, the Uniform Extradition Act, and Federal Code of Regulation Title 25, C.F.R. 11.318. (Court Doc. 2, p. 3).

Federal courts have authority to award damages to plaintiffs whose federal constitutional rights were violated by federal officers. *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 395, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). The forum state's statute of limitations governing personal injury actions governs the limitations period for a

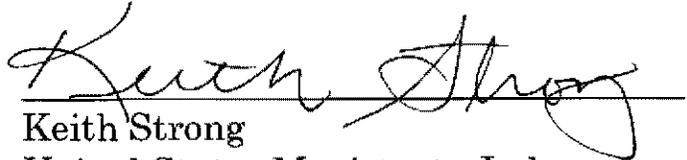
Bivens action. *Van Strum v. Lawn*, 940 F.2d 406, 410 (9th Cir. 1991); *Papa v. United States*, 281 F.3d 1004, 2009 (9th Cir. 2002). In Montana, that period is three years after the action accrues. *Mont. Code. Ann.* § 27-2-204(1). Mr. Dubray signed his Complaint on August 10, 2010, accordingly, any claims arising prior to August 10, 2007 are barred by the statute of limitations.

There is no record of Mr. Dubray being arrested by federal officers in the past three years. In fact, it appears Mr. Dubray has been in federal custody since 1990. Therefore, Mr. Dubray's claims accrued prior to August 10, 2007 and are barred by the applicable statute of limitations. This is not a defect which could be cured by amendment. Accordingly, Mr. Dubray's Complaint should be dismissed with prejudice.

Because Mr. Dubray is not entitled to a ten-day period to object, this Order will be entered directly upon endorsement. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1114 (9th Cir. 1998) (per curiam). No motion for reconsideration will be entertained.

Based on the foregoing, the Court **RECOMMENDS** that the following Order be issued by Judge Haddon.

DATED this 4 day of October, 2010.

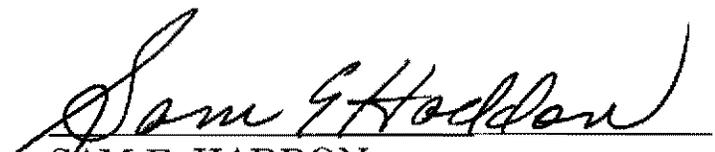

Keith Strong
United States Magistrate Judge

Based upon the above Recommendation by Judge Strong, the Court issues the following:

ORDER

1. Mr. Dubray's motion to proceed in forma pauperis (Court Doc. 1) is **DENIED** and this matter is **DISMISSED** for failure to file within the applicable statute of limitations.
- 2) The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 5th day of October, 2010.


SAM E. HADDON
United States District Judge