

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TONY E. KANNO,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-12-1334-D
)	
UNITED STATES JUSTICE DEPARTMENT)	
and HOMELAND SECURITY,)	
)	
Defendants.)	

ORDER

Upon initial review of Plaintiff’s *pro se* Complaint, the Court finds it should be dismissed for failure to state a claim and frivolousness, pursuant to 28 U.S.C. § 1915(e)(2).

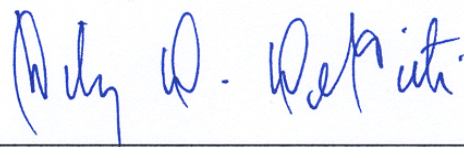
Plaintiff’s present filing is his third attempt to assert claims that he is being tortured and punished in violation of the Eighth Amendment through “getting slowly burned to death” by domestic drones for the past five years under a secret anti-terrorist program operated by the federal government. *See* Compl. [Doc. No. 1] at 3 (page number assigned by the ECF system). The first case, also brought against the United States Justice Department and the Department of Homeland Security, was dismissed for failure to file a pleading that satisfied Fed. R. Civ. P. 8(a). The action was dismissed without prejudice on September 15, 2009, for failure to plead a jurisdictional basis or a justiciable claim. *See Kanno v. Justice Dep’t*, Case No. CIV-09-923-D, Order at 2 (W.D. Okla. Sept. 15, 2009). Plaintiff refiled on January 10, 2011, in a civil rights complaint asserting similar claims against unnamed federal deputy marshals under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971). Because Plaintiff was then a state prisoner, his case was referred to a magistrate judge; upon initial screening of the complaint, the magistrate recommended that the action be dismissed as time-barred and frivolous. This recommendation was adopted by the Court over

Plaintiff's objection, and the action was dismissed under 28 U.S.C. § 1915A(b)(1). *See Kanno v. Three Unknown Agents of the Federal Marshals of Oklahoma City Office*, Case No. CIV-11-32-D, Judgment (W.D. Okla. July 11, 2011). For the same reasons stated by the magistrate judge and the undersigned, the court of appeals affirmed the dismissal, and denied Plaintiff permission to proceed *in forma pauperis*. *See Kanno v. Three Unknown Agents of the Federal Marshals*, 441 F. App'x 614 (10th Cir. 2011).

By the present action, Plaintiff seeks to demonstrate that his claims are not frivolous with renewed factual allegations and photographic proof of burns to his body. The claims that Plaintiff seeks to assert, however, are identical to the ones previously asserted in Case No. CIV-09-923-D. For the reasons previously stated in dismissing that case, Plaintiff's pleading is insufficient to state a justiciable claim. The United States, including its agencies and departments, enjoys sovereign immunity, and Plaintiff states no legal basis for his action against the federal government. Further, for the reasons stated in dismissing similar claims against federal agents in Case No. CIV-11-32-D, a case based on factual allegations that are fanciful, fantastic, and delusional is frivolous. *See Kanno*, 441 F. App'x at 614 (quoting *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992)). The frivolousness of Plaintiff's allegations was determined in Case No. CIV-11-32-D, and Plaintiff's new complaint provides no basis for relief from that determination.

Therefore, the Court finds that this action should be dismissed as frivolous pursuant to 28 U.S.C. § 1915(e)(2)(i) and (ii). Judgment shall be entered accordingly.

IT IS SO ORDERED this 18th day of December, 2012.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE