

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KENT E. TURNBAUGH, #42450-037
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

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CIVIL NO. 3:17-CV-0719-M-BK

**ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. No objections were filed, nor did Plaintiff seek to amend his Complaint after the Findings, Conclusions and Recommendation were entered. However, on October 24, 2017, Plaintiff filed a “Motion for Extension of Time to Answer with Amendments,” which this Court construes as directed to Plaintiff repleading to attempt to allege a viable claim against Defendants Hunter and Mejia, in their individual capacities, stemming from a delay of his second cataract surgery.

The District Court reviewed the proposed Findings, Conclusions and Recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge, except as slightly modified below.

IT IS THEREFORE ORDERED that Plaintiff’s claims under the Federal Tort Claims Act and against the Defendants in their official capacities under *Bivens* are **DISMISSED WITHOUT PREJUDICE** for want of jurisdiction, *see* [FED. R. CIV. P. 12\(h\)\(3\)](#).

IT IS FURTHER ORDERED that Plaintiff’s claims for violations under [28 U.S.C. § 3001](#), general civil rights violations, employment discrimination, and breach of contract and

breach of duty are **DISMISSED WITH PREJUDICE** as frivolous and for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A(b).

IT IS FURTHER ORDERED that Plaintiff's *Bivens* claims against the Defendants in their individual capacities will be summarily **DISMISSED WITHOUT PREJUDICE** for failure to state a claim unless Plaintiff files an Amended Complaint, limited to such claim, by November 22, 2017.

SO ORDERED this 30th day of October, 2017.


BARBARA M. G. LYNN
CHIEF JUDGE