

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

KEVIN WAYNE DAVIS,	§	
#12591-088,	§	
PLAINTIFF,	§	
	§	
v.	§	CIVIL CASE NO. 3:22-CV-2395-M-BK
	§	
BOP, ET AL.,	§	
DEFENDANTS.	§	

**AMENDED 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. Plaintiff filed objections on May 16, 2023 and also moved for appointment of counsel. Doc. 19.

By order filed May 11, 2023, the Court accepted the Findings, Conclusions and Recommendation of the United States Magistrate Judge, not having seen Plaintiff’s objections, and entered Judgment dismissing Plaintiff’s claims. Doc. 17; Doc. 18.

Plaintiff dated his objections on May 5, 2023, the last day on which to timely object to the Magistrate Judge’s recommendation. Doc. 14; Doc. 19. But he did not certify the date on which he placed the objections in the prison mailbox and there is no other marking or stamp on the envelope reflecting the date on which it was deposited in the prison mailbox. Further, the U.S. Postal Service did not stamp mark the objections until May 10, 2023, five days later. Doc. 19. That notwithstanding, the Court now considers the objections, in the event they were timely deposited in the prison mailbox.


Plaintiff seeks to “amend” to name the United States as the “sole Defendant.” He states that the denial of prescription medications rose to deliberate indifference to his health and

wellbeing. Doc. 19. As explained in the recommendation, the FTCA waives the United States' sovereign immunity from tort suits, not deliberate indifference claims. 28 U.S.C. § 2674; 28 U.S.C. § 1346(b)(1). As the United States is immune from a deliberate indifference claim, Plaintiff's request to amend the complaint to sue the United States for deliberate indifference would be futile. Thus, his belated request to amend is DENIED.

The Court has reviewed de novo those portions of the proposed findings, conclusions, and recommendation to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. The objections are OVERRULED. As a result, the judgment remains undisturbed.

Plaintiff's motion to appoint counsel is DENIED as this case is closed.

SO ORDERED this 22nd day of May, 2023.

  
BARBARA M. G. LYNN  
UNITED STATES DISTRICT JUDGE