

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

ANTONIO M. SMITH,  
Plaintiff,

v.

Civil No. 3:22cv428 (DJN)

MR. LEU, *et al.*,  
Defendants.

**MEMORANDUM OPINION**

Plaintiff, a former federal inmate proceeding *pro se* and *in forma pauperis*, filed this *Bivens* action.<sup>1</sup> To state a viable claim under *Bivens*, a plaintiff must allege that a person acting under color of federal authority deprived him or her of a constitutional right or of a right conferred by a law of the United States. *Williams v. Burgess*, 2010 WL 1957105, at \*2 (E.D. Va. May 13, 2010) (citing *Goldstein v. Moatz*, 364 F.3d 205, 210 n.8 (4th Cir. 2004)). In his current Complaint, Plaintiff does not identify the particular constitutional right that was violated by Defendants' conduct. Plaintiff's current allegations also fail to provide each defendant with fair notice of the facts and legal basis upon which his or her liability rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). Accordingly, by Memorandum Order entered on November 16, 2022, the Court directed Plaintiff to submit a particularized complaint within thirty (30) days of the date of entry thereof.<sup>2</sup> (ECF

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<sup>1</sup> *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).


<sup>2</sup> In the November 16, 2022 Memorandum Order, the Court erroneously referred to this action as one brought pursuant to 42 U.S.C. § 1983. However, that error has no bearing on the disposition of this action, because Plaintiff failed to file a particularized complaint.

No. 11.) The Court warned Plaintiff that the failure to submit a particularized complaint would result in the dismissal of the action. (*Id.* at 2.)

More than thirty (30) days have elapsed since the entry of the November 16, 2022 Memorandum Order. Plaintiff failed to submit a particularized complaint or otherwise respond to the November 16, 2022 Memorandum Order. Accordingly, the action will be DISMISSED WITHOUT PREJUDICE.

An appropriate Final Order will accompany this Memorandum Opinion.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Plaintiff.

  
\_\_\_\_\_/s/  
David J. Novak  
United States District Judge

Richmond, Virginia  
Dated: February 27, 2023