

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

NATHAN SMITH,

Plaintiff,

v.

CASE NO. 22-3005-SAC

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil filing by a prisoner held in the Geary County Detention Center. The complaint broadly alleges that between April 2010 and January 2020, plaintiff was subjected to torture while in federal custody.

He identified the underlying acts as occurring at multiple federal correctional facilities, but none of the acts was alleged to have occurred in Kansas. Plaintiff seeks \$10,000,000.00 in damages and states that he has completed the grievance procedure for federal prisoners.

The court construed the action as a filing under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 396-96 (1971), and issued an order to show cause to plaintiff concerning why this matter should not be dismissed for lack of venue. Plaintiff filed a response in which he asserts that because he names the United States as a defendant, this matter should be allowed to proceed in the District of Kansas.

In *Bivens*, the United States Supreme Court held that an individual may seek monetary damages from federal officers in their individual capacity for claims of constitutional violations. However,

"a *Bivens* claim may not be brought directly against the United States as such" and a claim against *Bivens* defendants in their official capacity "would be an oxymoron." *Farmer v. Perrill*, 275 F.3d 958, 963 (10th Cir. 2001). Therefore, plaintiff may not cure the lack of venue by naming the United States as a defendant.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed for lack of venue.

DATED: This 27th day of January, 2022, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge