

Date June 20, 2024.

RE: Motion For Extension To File Writ OF Certiorari

Dear Sir OR Madam:

My name is Darnell Anderson and I am a federal inmate currently housed in Federal BOP (USP Tucson). In any event, I am requesting a 45 day extension from the date of July 08, 2024, which I assume is my due date for my writ of certiorari to be filed in this Court. See Exhibit A. In support of said request, Anderson states as follows:

1. On April 09, 2024, Anderson's Petition For Re-hearing was denied by the United States Court Of Appeals For The Sixth. See Ex. A. Thus, this Court has jurisdiction of this matter pursuant to 28 U.S.C. 1254. Since then, Anderson has been involved in extensive litigation with the U.S.P. Tucson's Executive staff with respect to a staff misconduct complaint, which has significantly impacted his mental health and interfered with his ability to prepare for this case. See Exhibit B. In addition, USP Tucson has been placed on several institutional lockdown which has also interfered with his ability to prepare for this case.

In sum, Anderson is seeking an extension of time to file his writ of certiorari

Date: 6-20-2024

Respectfully Submitted,
Darnell Anderson (Pro Se)
USP Tucson / P.O. Box 24550
Tucson, AZ 85734.

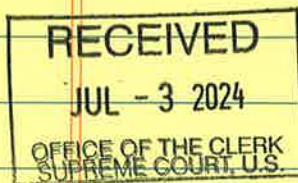


Exhibit A

DECLARATION OF DARNELL ANDERSON

1. My name is Darnell Anderson and I am a pro se inmate, currently housed in the United States Penitentiary Tucson in Arizona. Thus, I state as follows:
1. The document included in Exhibit A is an Order from the United States Court of Appeals For The ~~10th~~ 6th Circuit.
2. The document included in Exhibit B is an inmate to staff correspondence amongst myself and the Chief Psychologist at USP Tucson. This document was printed off the Inmate Trulines System on June 19, 2024.
3. This Request was given to U.S.P. Tucson prison officials on 6-20-2024, for U.S. Postal Mail. I, declare pursuant to 28 U.S.C. 1746, that the abovementioned facts are true and correct.

Darnell Anderson

Date: 6-20-2024

Reg. No 38150-007

United States Penitentiary Tucson

No. 23-5342

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 9, 2024
KELLY L. STEPHENS, Clerk

DARNELL ANDERSON,
Plaintiff-Appellant,
v.
AARON FUSON, ET AL.,
Defendants-Appellees.

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ORDER

BEFORE: STRANCH, BUSH, and MATHIS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

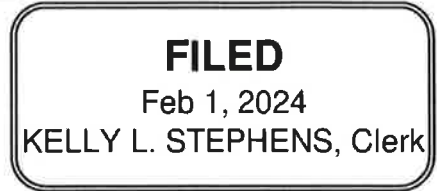
ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

NOT RECOMMENDED FOR PUBLICATION

No. 23-5342

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT



| | | |
|-----------------------|---|---------------------------|
| DARNELL ANDERSON, |) | |
| |) | |
| Plaintiff-Appellant, |) | |
| |) | ON APPEAL FROM THE UNITED |
| v. |) | STATES DISTRICT COURT FOR |
| |) | THE EASTERN DISTRICT OF |
| AARON FUSON, et al., |) | KENTUCKY |
| |) | |
| Defendants-Appellees. |) | |

ORDER

Before: STRANCH, BUSH, and MATHIS, Circuit Judges.

Darnell Anderson, a pro se federal prisoner, appeals the district court’s judgment dismissing his complaint filed pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). He also moves for the appointment of counsel. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm.

In June 2020, Anderson sued United States Penitentiary (USP) McCreary employees Officer A. Fuson, Officer D. Gabbard, Lieutenant L. Chaney, Officer Whitaker, and Lieutenant Posey for Eighth Amendment violations. According to the complaint, Fuson escorted Anderson to a cell in the special housing unit for cell rotation. Because Anderson was afraid of the other inmate in the cell, he refused to enter. Fuson pushed Anderson into the cell and the officers attempted to remove Anderson’s hand restraints, but Anderson refused to let them. Gabbard then stuck his arm through the food tray slot to grab Anderson, but he was unable to do so. The officers then opened the door and pulled Anderson out of the cell.

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After his refusal to enter the cell and submit to the removal of his restraints, officers took Anderson to a different cell and placed him in four-point restraints, a waist chain, and leg restraints. He remained in these restraints for seven to eight hours. During this time, Anderson suffered an anxiety attack, urinated on himself, and missed his evening meal because the restraints were too tight. The “most excruciating pain” Anderson experienced during this time was when Whitaker and Posey ignored the tightness of the waist chain and pushed Anderson on the bed to remove the leg restraints, which Whitaker acknowledged was “going to hurt.” Compl., R. 1, PageID 15. Anderson alleged that it “felt like razor-wire tearing into his skin,” which he endured “all over again” when the officers later pulled him from the bed. *Id.*

Anderson alleged that he filed a grievance one week after the events but that he never received a response. In June 2020, he filed this lawsuit. The defendants filed a motion to dismiss or, in the alternative, for summary judgment. The district court granted the motion in part and dismissed the claims against Whittaker and Posey without prejudice for failure to exhaust. The district court denied the motion as to the remaining defendants.

After discovery, the remaining defendants again moved for dismissal or summary judgment. The district court adopted a magistrate judge’s recommendation to grant the defendants’ motion and deny Anderson’s various motions as moot. In adopting the recommendation, the court noted that *Bivens* does not provide a monetary remedy for Eighth Amendment excessive-force claims. The court then received, considered, and overruled Anderson’s objections to the report and recommendation. Specifically, the court noted that nothing in Anderson’s objections changed its conclusion that there was no federal cause of action for Anderson’s claims. And because the action was foreclosed, the district court reasoned that the magistrate judge properly concluded that Anderson’s motions were moot.

Anderson filed a motion for reconsideration, arguing that he pled a viable deliberate-indifference claim. The district court treated his motion as a Federal Rule of Civil Procedure 59(e) motion and denied it, reasoning that the circumstances supporting a recognized deliberate-

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indifference claim under *Bivens* differ “markedly” from Anderson’s allegations. Memorandum Order, R. 200, PageID 2095.

On appeal, Anderson argues that the district court erred in denying his motion for reconsideration; granting summary judgment in favor of the defendants; and denying his motions for a discovery extension, appointment of counsel, and a fee waiver. He does not challenge the dismissal of Whitaker and Posey for failure to exhaust, so his claims against them are not before us. See *United States v. Russell*, 26 F.4th 371, 374 (6th Cir.), *cert. denied*, 143 S. Ct. 385 (2022).

I. Summary judgment and reconsideration

We review the district court’s grant of summary judgment de novo. *Hurst v. Caliber Home Loans, Inc.*, 44 F.4th 418, 424 (6th Cir. 2022). Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). We review the denial of a Rule 59(e) motion for an abuse of discretion. See *Intera Corp. v. Henderson*, 428 F.3d 605, 619 (6th Cir. 2005). A district court may grant a Rule 59(e) motion “if there is: (1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Id.* at 620.

To establish a claim under *Bivens*, a plaintiff must show that he was “deprived of rights secured by the Constitution or laws of the United States” and that “the defendants who allegedly deprived [him] of those rights acted under color of federal law.” *Marie v. Am. Red Cross*, 771 F.3d 344, 364 (6th Cir. 2014) (emphasis omitted) (citing *Bivens*, 403 U.S. at 397). The Supreme Court has explicitly recognized only three contexts in which a private right of action for damages may be properly brought against federal officials for constitutional violations: (1) under the Fourth Amendment for violations of the prohibition against unreasonable searches and seizures, *Bivens*, 403 U.S. at 397; (2) under the Fifth Amendment Due Process Clause for gender discrimination, *Davis v. Passman*, 442 U.S. 228, 248-49 (1979); and (3) under the Eighth Amendment for failing to provide adequate medical treatment to a prisoner, *Carlson v. Green*, 446 U.S. 14, 14-15 (1980).

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Expanding the reach of *Bivens* “is now a ‘disfavored’ judicial activity.” *Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 675 (2009)); *see also Egbert v. Boule*, 596 U.S. 482, 491 (2022). Thus, in determining whether *Bivens* can afford relief in a particular case, a court must first ask “whether the case presents ‘a new *Bivens* context.’” *Egbert*, 596 U.S. at 492 (quoting *Ziglar*, 582 U.S. at 139-40). A new *Bivens* context is where a case is “‘meaningful[ly]’ different from the three cases in which the Court has implied a damages action.” *Id.* (alteration in original) (quoting *Ziglar*, 582 U.S. at 139). If a case presents a new *Bivens* context, then a court must determine “if there are ‘special factors’ indicating that the Judiciary is at least arguably less equipped than Congress to ‘weigh the costs and benefits of allowing a damages action to proceed.’” *Id.* (quoting *Ziglar*, 582 U.S. at 136). “If there is even a single ‘reason to pause before applying *Bivens* in a new context,’ a court may not recognize a *Bivens* remedy.” *Id.* (quoting *Hernandez v. Mesa*, 140 S. Ct. 735, 743 (2020)).

Anderson’s Eighth Amendment excessive-force claims arise in a new context. *See Greene v. United States*, No. 21-5398, 2022 WL 13638916, at *4 (6th Cir. Sept. 13, 2022) (order); *Silva v. United States*, 45 F.4th 1134, 1137 (10th Cir. 2022) (declining to expand *Bivens* to a federal prisoner’s Eighth Amendment excessive-force claim). Despite recognizing a deliberate-indifference claim under the Eighth Amendment, *see Carlson*, 446 U.S. at 19, the Supreme Court has never recognized an excessive-force claim. “A claim may arise in a new context even if it is based on the same constitutional provision as a claim in a case in which a damages remedy was previously recognized.” *Hernandez*, 140 S. Ct. at 743.

And special factors advise against recognizing a *Bivens* claim in this context. First, “alternative processes exist for protecting” Anderson’s Eighth Amendment rights. *Callahan v. Fed. Bureau of Prisons*, 965 F.3d 520, 524 (6th Cir. 2020). Anderson has “full access to remedial mechanisms” through the Federal Bureau of Prisons (BOP), “including suits in federal court for injunctive relief and grievances filed through the BOP’s Administrative Remedy Program.” *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001). We have recognized that the BOP’s inmate grievance process “is substantial” in that “it contains its own statutes of limitations, filing

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procedures, and appeals process” and allows for prisoners to retain counsel to assist with the process. *Callahan*, 965 F.3d at 524. The presence of one of these alternative processes “alone may limit the power of the Judiciary to infer a new *Bivens* cause of action.” *Ziglar*, 582 U.S. at 137.

Second, Congress enacted the Prison Litigation Reform Act, which “does not provide for a standalone damages remedy against federal jailers.” *Callahan*, 965 F.3d at 524 (quoting *Ziglar*, 582 U.S. at 149). “[T]his suggests Congress chose not to extend the *Carlson* damages remedy to cases involving other types of prisoner mistreatment.” *Ziglar*, 582 U.S. at 149. Lastly, there are “separation of powers concerns” here, because excessive-force claims against federal prison employees “present a risk of interference with prison administration,” which is a task “peculiarly within the province of the legislative and executive branches.” *Callahan*, 965 F.3d at 524 (quoting *Turner v. Safley*, 482 U.S. 78, 84-85 (1987)).

In sum, we decline to extend *Bivens* to Anderson’s Eighth Amendment excessive-force claims. To the extent that Anderson claims that the district court should have liberally construed his complaint as a *Carlson* deliberate-indifference claim, this argument also fails. Anderson did not attempt to bring his claim within the framework of *Carlson*. Despite pro se complaints being entitled to liberal construction, *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam), the district court did not err in declining to construe a *Bivens* claim where the Supreme Court has cautioned that expanding the reach of *Bivens* is “a ‘disfavored’ judicial activity,” *Ziglar*, 582 U.S. at 135 (quoting *Iqbal*, 556 U.S. at 675).

Even if his complaint attempts to state a deliberate-indifference claim, Anderson’s allegations are “‘meaningful[ly]’ different” from *Carlson*, such that we would have to infer a new *Bivens* cause of action. *Egbert*, 596 U.S. at 492 (quoting *Ziglar*, 582 U.S. at 139-40). In *Carlson*, the Court applied *Bivens* to an Eighth Amendment claim for inadequate medical treatment of a federal prisoner after he died from an asthma attack due to prison officials being “deliberately indifferent” to his “serious medical needs.” 446 U.S. at 16 & n.1, 18-19. Here, Anderson alleged that officers failed to conduct a medical examination when his restraints were removed and that he

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suffered “significant injuries” to his waist area and lasting anxiety. These allegations differ markedly from a prisoner dying after an asthma attack where his asthma was not properly treated. *See Egbert*, 596 U.S. at 492; *Hernandez*, 140 S. Ct. at 743 (“[O]ur understanding of a ‘new context’ is broad.”).

And for the same reasons stated above, special factors advise against recognizing a *Bivens* claim in this context. Thus, the district court did not err in granting summary judgment to the defendants on Anderson’s excessive-force claims. Nor did the court abuse its discretion in denying Anderson’s Rule 59(e) motion on the grounds that Anderson’s complaint failed to state a deliberate-indifference claim similar to *Carlson*. *See Intera Corp.*, 428 F.3d at 619.

II. Anderson’s motions

Anderson argues the district court erred in denying his motions for the appointment of counsel, a discovery extension, and a fee waiver. Anderson does not elaborate on how the district court erred in denying these motions, and thus he has forfeited these issues. *See United States v. Clark*, 469 F.3d 568, 570 (6th Cir. 2006) (“[A]n issue is deemed forfeited on appeal if it is merely mentioned and not developed.”).

Finally, absent exceptional circumstances, there is no right to counsel in a civil case. *See United States v. Augustin*, 16 F.4th 227, 234 (6th Cir. 2021). Because no exceptional circumstances exist in this case, Anderson’s request for counsel is denied. *Id.*

For these reasons, we **AFFIRM** the district court’s judgment and **DENY** Anderson’s motion to appoint counsel.

ENTERED BY ORDER OF THE COURT


Kelly L. Stephens, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 02/01/2024.

Case Name: Darnell Anderson v. Aaron Fuson, et al

Case Number: 23-5342

Docket Text:

ORDER filed: We AFFIRM the district court's judgment and DENY Anderson's motion to appoint counsel [6989618-2]. Mandate to issue., decision not for publication, pursuant to FRAP 34(a)(2)(C). Jane Branstetter Stranch, Circuit Judge; John K. Bush, Circuit Judge and Andre B. Mathis, Circuit Judge.

The following document(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Darnell Anderson
U.S.P. Tucson
P.O. Box 24550
Tucson, AZ 85734

A copy of this notice will be issued to:

Mr. Robert R. Carr
Ms. Cheryl D. Morgan
Mr. Charles P. Wisdom Jr.

Exhibit B

TRULINCS 38150007 - ANDERSON, DARNELL - Unit: TCP-D-A

FROM: USP/SPC Psychology/Psicología
TO: 38150007
SUBJECT: RE:***Inmate to Staff Message***
DATE: 06/03/2024 12:22:02 PM

I have you on callout for this Friday at 8 in psychology.

From: ~^! ANDERSON, ~^!DARNELL <38150007@inmatemessage.com>
Sent: Sunday, June 2, 2024 3:15 AM
Subject: ***Request to Staff*** ANDERSON, DARNELL, Reg# 38150007, TCP-D-A

To: Chief Of Psychologist Dr. Hayden
Inmate Work Assignment: N/A

Dr. Hayden. You told me to send you a reminder about rescheduling my clinical intervention. I really need to be seen by Psychology- preferably- any day besides Tuesday/Thursday afternoon. As noted I have Pima College on those days in the PM.

Respectfully Submitted
-----USP/SPC Psychology/Psicología on 5/23/2024 7:22 AM wrote:

>
Okay, thanks for the update.

From: ~^! ANDERSON, ~^!DARNELL <38150007@inmatemessage.com>
Sent: Thursday, May 23, 2024 2:17 PM
Subject: ***Request to Staff*** ANDERSON, DARNELL, Reg# 38150007, TCP-D-A

To: Chief Of Psychologist Dr. Hayden
Inmate Work Assignment: N/A

Dr. Hayden, I was put on a call out at 8:00am for a DHO hearing in the Lieutenant's Office so I will have to be rescheduled.
-----USP/SPC Psychology/Psicología on 5/21/2024 12:17 PM wrote:

>
Anderson,
I have you on callout for USP Psychology department at 8:00 this Thursday morning. - Dr. Hayden

From: ~^! ANDERSON, ~^!DARNELL <38150007@inmatemessage.com>
Sent: Monday, May 20, 2024 4:21 PM
Subject: ***Request to Staff*** ANDERSON, DARNELL, Reg# 38150007, TCP-D-A

To: Chief Of Psychologist Dr. Hayden
Inmate Work Assignment: N/A

Yes, I forgot to mention that on Tuesdays and Thursday at 12:30-3:30 pm I have Pima College which is very strict about inmates missing class. Thus, anytime beside that would be good.
-----USP/SPC Psychology/Psicología on 5/20/2024 7:42 AM wrote:

>
I will look for a time I can see you on callout in psychology this week. - Dr. Hayden

From: ~^! ANDERSON, ~^!DARNELL <38150007@inmatemessage.com>
Sent: Sunday, May 19, 2024 9:26 PM
Subject: ***Request to Staff*** ANDERSON, DARNELL, Reg# 38150007, TCP-D-A

To: Chief Of Psychologist Dr. Hayden
Inmate Work Assignment: N/A

TRULINCS 38150007 - ANDERSON, DARNELL - Unit: TCP-D-A

Yes, I would like to sign up for a therapy session. I have been under a lot of stress lately with respect to matters surrounding 1).my expulsion from Challenge in April of 2024; and 2). Challenge Staff's violations of the BOP's Standards of Employee Coonduct. This incident has also caused my symptoms of hypervigilance and avoidance to increase whenever I have to discuss this issue with staff.

For these reasons, I am requesting a clinical intervention with respect to this underlying issue.

Respectfully Submitted