

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

Civil Action No. 22-cv-02501-SBP
(To be supplied by the court)

NOV 27 2023

JEFFREY P. COLWELL
CLERK

Vincent Lemus Morales, Plaintiff

v.

Jury Trial requested:
(please check one)
 Yes No

United States of America,

Federal Bureau of Prisons,

Nurse Lindsay, Dr. MCGaugh,
R&D Correctional officers
and John And Jane Does, Defendant(s).

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

SECOND AMENDED
PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Vincent Lemus Morales · Reg# 55064-048
(Name, prisoner identification number, and complete mailing address)

Fairton Federal Correctional Institution · P.O. Box 420 · Fairton, NJ, 08320
(Other names by which you have been known)

Indicate whether you are a prisoner or other confined person as follows: (check one)

- Pretrial detainee
- Civilly committed detainee
- Immigration detainee
- Convicted and sentenced state prisoner
- Convicted and sentenced federal prisoner
- Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: United States of America Federal Bureau of Prisons
(Name, job title, and complete mailing address)

FCI · Florence, Colorado 5880 State Highway 67 South
unknown, Colorado, 81226

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

The agency failed to protect me while in their
custody.

Defendant 1 is being sued in his/her individual and/or official capacity.

B. DEFENDANT(S) INFORMATION

Defendant #4

Name: John Does R&D Correctional Officers FCI-Florence, Co.

Address: 5880 State Highway 67 South. Unknown, Colorado, 81226

At the time the claim(s) in this Complaint arose, was this defendant acting under color of state or federal law Yes or No
Defendant 4 is being sued in his/her individual and/or official Capacity.

Defendant #5

Name: Jane Does R&D Correctional Officers FCI-Florence, Colorado

Address: 5880 State Highway 67 South. Unknown, Colorado, 81226

At the time the claim(s) in this Complaint arose, was this defendant acting under color of the state or federal law Yes or No
Defendant 5 is being sued in his/her individual and or official Capacity

Defendants 4 and 5 failed to protect me while in their custody's

Defendant 2: FNU Nurse Lindsay, FCI-Florence, Colorado
(Name, job title, and complete mailing address)

5880 State Highway 67 South, Unknown, Colorado, 81226

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

She was the acting nurse who seen me after the incident in question at the prison.

Defendant 2 is being sued in his(her) individual and/or official capacity.

Defendant 3: FNU Dr McGaugh, FCI-Florence, Colorado
(Name, job title, and complete mailing address)

5880 State Highway 67 South, Unknown, Colorado, 81226

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? Yes No (check one). Briefly explain:

He was the acting Doctor who seen me after the incident in question at the prison.

Defendant 3 is being sued in his/her individual and/or official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

State/Local Official (42 U.S.C. § 1983)

Federal Official

As to the federal official, are you seeking:

Money damages pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)

Declaratory/Injunctive relief pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361, or 28 U.S.C. § 2201

Other: (please identify) Cruel and unusual punishment for medical treatment. NEGLECTED.

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: Negligence, Deliberate Indifference, and Failure to Protect

Supporting facts: On September 28th, 2020 I was moved from the SHU of FCI Florence to that of USP Florence. While in R&D of FCI ~~USP~~ Florence, I as well as several other inmates, was uncuffed and placed in holding cells. While waiting to be processed in the holding cell, I was assaulted by Inmate Jesse Barrios, an active Sureno, because I was a known drop-out undergoing the process of debriefing. After being blindsided by Inmate Barrios, another inmate, Augustin Madrid, joined him in assaulting me. This lasted for a minute or more before I was able to escape to the doorway of the holding cell. As I attempted to get the attention of a C/O, the two inmates began assaulting inmate Pedro Villarreal (another drop-out). This second assault also lasted for about a minute.

After several minutes, one of the C/Os in R&D came to let us out and noticed the blood on my face and jumpsuit. We were taken to medical for review and while there, I told Nurse Lindsay that I had a lump on the side of my head, was dizzy, and that I could not hear. I stated as well that I could feel liquid running down from inside my ear due to the assault. Upon inspecting my ear, the nurse (Ms. Lindsay) informed me this was just earwax and that the inmates had done me a favor in loosening it. I continued to explain that I was dizzy and that I had been shot previously in the head and that subsequent injury could kill me. I also told her that this was in my medical file and she could verify it. All nurse Lindsay did was put some glue in the cut and told me that I would be fine. I stated again that I was dizzy and that my head was hurting a lot.

Before exiting Medical to go to the SHU, I was seen by SIS Officer Rios who told me that the R&D C/Os should have never placed me in the holding cell with Inmates Barrios and Madrid, and additionally that we should have all remained handcuffed. I made substantial efforts and acted responsible to disassociate from a gang (Continued on Attachment...)

D. STATEMENT OF CLAIM(S)
(Continued...)

lifestyle going through a debriefing process and the R&D C/Os had placed my life in danger.

Once placed in a cell in the SHU, my cellmate Pedro Villarreal told me that I was still bleeding from inside my right ear and placing some toilet paper into the ear canal, I verified this. This continued throughout the next day and my ear turned purple and then black. My head continued to hurt and I was too dizzy to stand. When nurse lindsay came to do pill call that morning I told her of my problems and that I thought I had a concussion. She again told me I was fine and said she would get me some Tylenol. Soon after this, I fell unconscious and remained sleeping for nearly three full days as when I would awaken I felt dizzy and lightheaded and would immediately fall back to sleep.

From Sept, 28 to Nov. 12 of 2020, Medical never returned to check on my injuries. This despite the fact that I had submitted several copouts requesting medical attention and review.

As a result of this incident, I have lost the majority of the hearing in my right ear and I will often have brown liquid begin draining from my ear that lasts for days and even weeks. During this time I am also dizzy and lightheaded. I still believe that I suffered a concussion and experience constant ongoing issues as a result of this.

Additionally, I become nervous now when people stand too close to me, have a tendency to forget recent events and generally have lost trust and confidence in the good will and intention of both staff and inmates alike.

Due to transfers, quarantines, and the repeated denials of filings for various technical reasons, I am submitting this filing now. In addition, I was afraid that if I were to put in a BP-8 while at Florence, that staff would place me into another precarious situation or retaliate themselves.

The failure to protect of said Defendants is a Constitutional Violation of the 8th Amendment. (1)that [the plaintiff] is incarcerated under conditions posing a substantial risk of serious harm and, (2)that the prison official had a sufficiently culpable state of mind, 'deliberate indifference to inmate' health or safety.

rest of page
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E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? Yes No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): BOP Officer Olajda and officer Makanya

Docket number and court: Don't know the docket number. ^{United States} District Court NY

Claims raised: Carelessness, Negligence, Deliberate Indifference.

Disposition: (is the case still pending? has it been dismissed?; was relief granted?) Closed.

Reasons for dismissal, if dismissed: N/A

Result on appeal, if appealed: N/A

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

Yes No (check one)

Did you exhaust administrative remedies?

Yes No (check one)

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF."

I am seeking monetary demand of 10 (ten million dollars), seek ongoing medical treatment, and immediate release for pain and suffering, serious physical injury, loss of memory, and traumatic depression from the brutal assault that occurred.

H. PLAINTIFF'S SIGNATURE *V. M. [Signature]* 11.21.2023

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

V. M. [Signature]
(Plaintiff's signature)

11.21.2023
(Date)

Certificate of Service

I hereby certify that a copy of the foregoing Pleading/documents was mailed to the United States District Courts of Colorado at: Alfred A. ArraJ Court house 901-19th St., Room A105 Denver, CO. 80294-3589 This is being mailed from F.C.I. Fairton Legat mailing system that is provided for inmates here at the institution. It is being mailed with a prepaid mailing postage to the above Courts on November 21st, 2023

Respectfully Submitted

Date: 11.21.2023

V. M. M.