

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 15, 2011

No. 10-10298

Lyle W. Cayce
Clerk

OSTAP KAPELIOUJNYI

Plaintiff-Appellant

v.

WARDEN K. DIXON, Dalby Correctional Facility; WARDEN L. BOND, Programs Warden at Dalby; H. Bryan, Security Warden at Dalby; CAPTAIN E. MATHIS, at Dalby; F. POSTEL, Programs Manager at Dalby; M. CRUISE, Librarian at Dalby; JOHN AND JANE DOE, known and unknown, As Employees and in their individual capacities; MANAGEMENT AND TRAINING CORPORATION, Manages Dalby Correctional Facility and employs all Defendants named above,

Defendants-Appellees

Appeal from the United States District Court
for the Northern District of Texas
USDC. No. 5:09-CV-100

Before JONES, Chief Judge, BENAVIDES and STEWART, Circuit Judges.

PER CURIAM:*

Appellant Ostap Kapelioujnyi is a federal prisoner who at one time was housed at the Giles W. Dalby Correctional Facility (the Dalby Facility) in Post, Texas. Appellant brought a suit pursuant to 42 U.S.C. § 1983, claiming his

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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constitutional rights had been violated at the Dalby Facility. The court below characterized his claim as a *Bivens* claim¹ and dismissed his constitutional claims and declined to exercise supplemental jurisdiction over the state law claims complained of by Appellant.

On appeal, Appellant contends that the district court erred in characterizing his claim as a *Bivens* claim, asserting that he has properly stated a claim under § 1983; or in the alternative, he has made a proper complaint under *Bivens*. Whether or not Appellant's claim is properly viewed as a *Bivens* claim or a § 1983 claim, we find no error in the decision of the district court to dismiss for failure to state a claim upon which Appellant can recover. Accordingly, the judgment of the district court is AFFIRMED.

¹ *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).