

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

FRANK GABALDON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 2:25-cv-00149-MPB-MJD
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Order Screening Complaint and Directing Further Proceedings

Plaintiff Frank Gabaldon is a prisoner currently incarcerated at the United States Penitentiary ("USP") in Allenwood, Pennsylvania. He filed this civil action while he was incarcerated at USP Tucson based on events that occurred while he was incarcerated at USP Thomson (located in Thomson, Illinois) and USP Terre Haute (located in Terre Haute, Indiana). Because Mr. Gabaldon is a "prisoner," this Court must screen the complaint before service on the defendants. 28 U.S.C. § 1915A(a), (c).

I. Screening Standard

When screening a complaint, the Court must dismiss any portion that is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915A(b). To determine whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Schillinger v. Kiley*, 954 F.3d 990, 993 (7th Cir. 2020). Under that standard, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court construes *pro se* complaints liberally and holds them to a "less stringent standard than pleadings drafted by lawyers." *Cesal v. Moats*, 851 F.3d 714, 720 (7th Cir. 2017).

II. The Complaint

Mr. Gabaldon brings claims against the United States of America under the Federal Tort Claims Act ("FTCA"). He seeks money damages and injunctive relief. He bases his complaint on the following allegations, which are accepted as true at the pleading stage, *see Lisby v. Henderson*, 74 F.4th 470, 472 (7th Cir. 2023)¹:

Over the course of several years, while housed in the Special Housing Unit ("SHU") at USP Thomson and then in the SHU at USP Terre Haute, Mr. Gabaldon was subject to multiple problematic conditions. For example, he was housed in isolation in the SHU at USP Thomson even though a Bureau of Prisons ("BOP") medical staff member found that his mental health conditions were so severe that he should be exempt from the SHU. He was also denied care for his mental and physical health conditions, even though he was self-harming daily. These conditions caused his mental health to deteriorate even further.

After his transfer to the SHU at USP Terre Haute, Mr. Gabaldon was also subject to isolation and other problematic conditions. For example, he was denied access to recreation and exercise for more than seven months, was denied access to hygiene products and showers for extended periods of time, was forced to urinate and defecate on the floor of his cell, and lost track of the difference between day and night because his lights were on 24 hours per day. These conditions caused him both physical and psychological harm. Even though he had a history of self-

¹ Mr. Gabaldon's complaint is some 30 pages long and includes many details about the conditions he faced at USP Thomson and USP Terre Haute. The Court's recitation of the complaint's allegations is summary in nature, and the failure to mention any particular fact does not mean that Mr. Gabaldon cannot rely on such fact to support his claims.

harm, staff members gave him objects like razors and sporks that he used to cut and stab himself dozens of times. This continued even after psychology staff posted signs on his cell telling custodial staff not to give him sporks or sharp objects. Staff members also failed to intervene when he harmed himself. When he arrived at USP Terre Haute, he was denied necessary medications for more than two weeks. In addition, he was denied private sessions with mental health staff, and, when he asked for private sessions, mental health staff refused to speak to him.

III. Discussion of Claims

Although a plaintiff need not plead legal theories in a complaint, see Fed. R. Civ. P. 8(a), Mr. Gabaldon has identified the theory he wishes to use—the FTCA. Where a pro se litigant has expressly stated the legal theory he wishes to pursue, the district court is not required to analyze whether the allegations in the complaint might state a claim under a different legal theory. *See Larry v. Goldsmith*, 799 F. App'x 413, 416 (7th Cir. 2016) (citing *Clancy v. Office of Foreign Assets Control of U.S. Dep't of Treasury*, 559 F.3d 595, 606-07 (7th Cir. 2009)). Thus, the Court analyzes Mr. Gabaldon's claims only under the FTCA.

Mr. Gabaldon's claims for injunctive relief are **dismissed**. The FTCA does not allow plaintiffs to sue the United States for injunctive relief. *See* 28 U.S.C. § 1346(b) (giving district courts jurisdiction over suits for damages against the United States under the FTCA). And, even if the Court ignored the FTCA label Mr. Gabaldon assigns to his claims, injunctive relief is only available if a plaintiff is currently being subject to unlawful conditions. Mr. Gabaldon was not incarcerated at USP Thomson or USP Terre Haute when he filed his lawsuit and, in any event, he has since been transferred again—from USP Tucson to USP Allenwood—and there is no indication that he is still subject to any unlawful conditions. *See* *Lehn v. Holmes*, 364 F.3d 862, 871 (7th Cir. 2004) ("when a

prisoner who seeks injunctive relief for a condition specific to a particular prison is transferred out of that prison, the need for relief, and hence the prisoner's claim, become moot"). If Mr. Gabaldon believes that he is still being subject to unlawful conditions and seeks injunctive relief, he should file another civil lawsuit in his current district of incarceration after exhausting available administrative remedies. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326 (2015); *Whiteside v. Hill*, 2022 WL 970586 at *4 (S.D. Ill. Mar. 31, 2022) (citing *White v. Sloop*, 772 F. App'x 334, 336 (7th Cir. 2019)) ("Declaratory and injunctive relief may [] be pursued against a high-ranking federal agency official in his or her official capacity.").

Mr. Gabaldon's claims for damages against the United States shall, however, **proceed** as submitted under the FTCA as claims for negligence (or, as appropriate, medical malpractice) and intentional infliction of emotional distress. *See* 28 U.S.C. § 1346(b) ("the district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred").

This summary of claims includes all of the viable claims identified by the Court. All other claims have been dismissed. If Mr. Gabaldon believes that additional claims were alleged in the complaint, but not identified by the Court, he shall have **through April 30, 2025**, in which to identify those claims.

IV. Conclusion and Service of Process

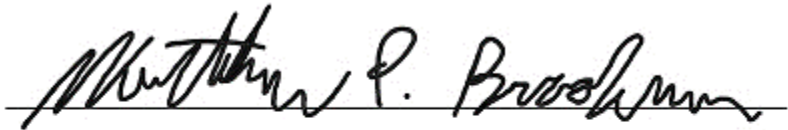
The following claims are proceeding: Mr. Gabaldon's claims for damages against the United States under the FTCA as claims of negligence and intentional infliction of emotional distress. All other claims have been dismissed.

The **clerk is directed** to issue a single summons to the United States attorney for this district and the Attorney General of the United States at Washington, D.C., pursuant to Fed. R. Civ. P. 4(i)(1). The Marshal for this District is directed to **serve** the summons and complaint by registered or certified mail at the expense of the United States.

Nothing in this Order prohibits the filing of a proper motion pursuant to Rule 12 of the Federal Rules of Civil Procedure.²

IT IS SO ORDERED.

Dated: March 31, 2025

A handwritten signature in black ink, reading "Matthew P. Brookman", written over a horizontal line.

Matthew P. Brookman, Judge
United States District Court
Southern District of Indiana

² The Court recognizes that Mr. Gabaldon's complaint includes allegations about two different prisons—one in this district (USP Terre Haute) and one outside this district (USP Thomson). Under the FTCA, "[v]enue [for claims brought under 28 U.S.C. § 1346(b)] is proper only in the judicial district where the plaintiff resides or where the act or omission complained of occurred." 28 U.S.C. § 1402 (b). The Court will not, however, *sua sponte* dismiss or sever the claims related to Mr. Gabaldon's time at USP Thomson. Courts appear to be divided as to whether the FTCA's venue provision is jurisdictional, and, in any event some courts have held that a prisoner's "residence" for purposes of the FTCA's venue provision is not synonymous with his place of incarceration. *See Moler v. Wells*, 18 F.4th 162, 166 (5th Cir. 2021) (discussing cases). The record is, however, silent as to what Mr. Gabaldon's "residence" is for these purposes. In addition, Mr. Gabaldon asserts that the claims from his time at USP Thomson are related to the claims from his time at USP Terre Haute. Because of the complexities of the venue issue, the United States should raise any venue objection by motion.

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