

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BATSAIHAN PURVEEGIIN : CIVIL ACTION
: :
v. : :
: :
UNITED STATES OF AMERICA, et al. : NO. 05-5944-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 9, 2006

Plaintiff, Batsaihan Purveegiin, is currently in the custody of the Bureau of Immigration and Customs Enforcement ("ICE"), awaiting the conclusion of his removal proceedings. In this *pro se* action, originally filed in the Middle District of Pennsylvania and transferred to this court on November 10, 2005, plaintiff complains that on September 24, 2003, ICE agents Joel Mickelson and others, acting without a warrant, entered plaintiff's apartment, destroyed his artwork, and took him into custody. Plaintiff alleges various constitutional violations and seeks relief under the Federal Tort Claims Act ("FTCA") and Bivens.

The case is now before this court on defendants' motion to dismiss pursuant to Fed. R. Civ. Proc. 12(b)(1) and 12(b)(6) and plaintiff's cross-motion for summary judgment. Plaintiff's motion will be denied, for it fails to show that the standard for

summary judgment has been satisfied. Defendants' motion will be granted in part and denied in part.

The complaint is muddled and difficult to understand, but describes in essence an illegal search and seizure. Defendants point out that the FTCA did not waive sovereign immunity for constitutional torts. However, the alleged actions of agents Mickelson and others may also be characterized as common law torts, e.g., assault, false arrest, false imprisonment. Such torts, if committed by law enforcement officers of the United States, such as ICE agents, may give rise to liability under the FTCA. See 28 U.S.C. § 2680(h). The same alleged actions may also give rise to a Bivens action against the individual government employee for violating plaintiff's constitutional rights as guaranteed by the Fourth and Fifth Amendments.

Plaintiff cannot sue agent Mickelson in his official capacity. Nor has plaintiff alleged sufficient facts to support his claims that defendants violated his rights under the First and Eighth Amendments. To the extent that the complaint asserts such claims, they will be dismissed.

An Order follows.

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AND NOW, this 9th day of November, 2006, IT IS ORDERED:

1. Plaintiff's Cross-Motion for Summary Judgment is DENIED.
2. Defendants' Motion to Dismiss is GRANTED IN PART and DENIED IN PART. Plaintiff may proceed on (a) claims under the Federal Tort Claims Act against the United States; and (b) Bivens action against Joel Mickelson for violating plaintiff's rights under the Fourth and Fifth Amendments. All other claims are DISMISSED.
3. The Clerk is directed to terminate defendant Homeland Security Department.
4. The Clerk is directed to correct the spelling of defendant Joel Mitchelson's last name to "Mickelson".

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.