

APR 24 1990

UNITED STATES COURT OF APPEALS
TENTH CIRCUITROBERT L. HOECKER
Clerk

ORLANDO MARTINEZ,	)	
	)	
Plaintiff-Appellant,	)	
	)	Nos. 89-1330 & 89-1345
v.	)	(D.C. Nos. 89-B-1617
	)	and 89-B-1618)
UNITED STATES GOVERNMENT,	)	(D. Colo.)
FEDERAL DETENTION CENTER, and	)	
MR. REARDON, THE ADMINISTRATOR,	)	
	)	
Defendant-Appellee.	)	

ORDER AND JUDGMENT*

Before LOGAN, SEYMOUR and BALDOCK, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Orlando Martinez brought two pro se complaints in forma pauperis against the United States, the Federal Detention Center at Englewood, Colorado, and Mr. Reardon, the Center's administrator. Martinez claims in one complaint that Detention

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Center staff improperly confiscated one hundred seven packages of cigarettes from his cell. He alleges in another complaint that employees at the Center failed to properly inventory his property when he was admitted there, and that as a result he has lost a gold ring allegedly valued at \$900. Both complaints were filed on September 19, 1989. Two days later, on September 21, the magistrate recommended their dismissal under 28 U.S.C. § 1915(d). The district court entered orders of dismissal pursuant to section 1915(d). Martinez filed a combined Motion to Appeal Order or Request for Reconsideration in both actions. The district court denied the motions to reconsider and then processed them as a notice of appeal. Although the Government was never served with the complaints, it entered an appearance in this court in both cases and subsequently filed motions in both cases requesting that we affirm in part and remand for further proceedings. When that motion was denied, the Government filed briefs in both appeals in which it renewed its request.¹

Although Martinez filed his complaints on forms used by pro se prisoners to bring civil rights complaints against state officials under 42 U.S.C. § 1983 (1982), Martinez is asserting claims against the federal government and a federal official for

¹ In view of the Government's entry of appearance and its filing of a motion and brief in this matter, we conclude that the Government has waived the lack of proper service. See Smith v. McNamara, 395 F.2d 896, 898 (10th Cir. 1968), cert. denied, 394 U.S. 934 (1969).

deprivations of his property. The Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671-2680 (1982), waives the United States' sovereign immunity from suit on such claims. Martinez has alleged the requisite exhaustion of administrative remedies. See id. at § 2675; Nero v. Cherokee Nation of Oklahoma, 892 F.2d 1457, 1463 (10th Cir. 1989). Construing the complaints liberally, as we must, see Meade v. Grubbs, 841 F.2d 1512, 1526 (10th Cir. 1988), we conclude that Martinez has stated claims under the FTCA and we agree with the Government that dismissal was therefore improper.

To the extent that Martinez asserts Bivens claims against Reardon in his individual capacity, even when we view these claims under the less stringent standards applicable to pro se pleadings, dismissal was proper. A denial of procedural due process does not occur "if a meaningful post deprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984). Although Hudson involved a claim against a state official alleging a violation of the Due Process Clause of the Fourteenth Amendment, its holding is equally applicable in a suit against a federal official alleging a Fifth Amendment due process violation. Here, as set out above, Martinez has a meaningful post deprivation remedy under the FTCA.

Accordingly, we affirm dismissal of all claims except the FTCA claims against the United States. On those causes of action,

we reverse and remand for further proceedings. The mandate shall issue forthwith.

Entered for the Court

Stephanie K. Seymour
Circuit Judge