

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5225**September Term, 2019****1:19-cv-01703-UNA****Filed On:** January 14, 2020

Frank Eugene Lamb, III,

Appellant

v.

Bureau of Alcohol, Tobacco, Firearms and
Explosives, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Katsas and Rao, Circuit Judges, and Sentelle, Senior Circuit Judge

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and appendix filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's order filed July 3, 2019, be affirmed. The district court properly dismissed for lack of subject matter jurisdiction appellant's claims for money damages against four federal government agencies alleging deprivations of his constitutional rights under 42 U.S.C. § 1983, because appellant has not shown that the agencies acted under color of state law, or that the agencies may be held liable for tort claims alleging constitutional violations. See Settles v. U.S. Parole Comm'n, 429 F.3d 1098, 1104 (D.C. Cir. 2005) ("To recover under § 1983, the plaintiff must show that the defendant was acting 'under color' of state law. Section 1983 does not apply to federal officials acting under color of federal law."); FDIC v. Meyer, 510 U.S. 471, 478 (1994) ("[T]he United States simply has not rendered itself liable . . . for constitutional tort claims."). Moreover, appellant's reliance on the Administrative Procedure Act ("APA") is misplaced, because the APA waives sovereign immunity only for actions seeking "relief other than money damages." 5 U.S.C. § 702. Further, appellant has not demonstrated that the district court erred in dismissing his remaining claims under the Federal Tort Claims Act ("FTCA") for failure to exhaust his administrative remedies. See 28 U.S.C. §§ 2401(b), 2675(a); Simpkins v. District of Columbia Gov't, 108 F.3d 366, 371 (D.C. Cir. 1997) ("This court . . . [has] treated the

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19-5225**September Term, 2019**

FTCA's requirement of filing an administrative complaint with the appropriate agency prior to instituting an action as jurisdictional."). Appellant's arguments as to why the exhaustion requirement should not apply in this case are without merit. Finally, to the extent appellant wishes to assert new claims, the district court's dismissal of the case without prejudice will allow him to file a new complaint. See Ciralsky v. CIA, 355 F.3d 661, 666 (D.C. Cir. 2004).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Daniel J. Reidy
Deputy Clerk