

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

JAN 31 2002

PATRICK FISHER
Clerk

ROB W. ROBERTS,
Plaintiff-Appellant,

v.

TIMOTHY J. CALLAHAN,
Commander, Fort Sill Regional
Correctional Facility,
Defendant-Appellee.

No. 01-6323

(D.C. No. CV-01-191-W)

(W.D. Okla.)

ORDER AND JUDGMENT*

Before **SEYMOUR** and **McKAY**, Circuit Judges, and **BRORBY**, Senior Circuit Judge.

After examining the briefs and the 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)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

This is a pro se federal military prisoner appeal brought pursuant to 28 U.S.C. § 1331 and Bivens v. Six Unknown Named Agents of the Federal Bureau

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

of Narcotics, 403 U.S. 388 (1971). Mr. Roberts seeks monetary damages, injunctive relief, and class certification for alleged temporary deprivation of certain legal materials belonging to him and alleged inadequacies in the legal materials and legal assistance provided at his correctional facility. The district court adopted the recommendation of the magistrate judge and dismissed the complaint as to monetary damages, granted summary judgment as to injunctive relief, and denied class certification. Mr. Roberts appealed to this court.

We agree with the district court's determination that it lacked subject matter jurisdiction over Mr. Roberts' Bivens claim against Mr. Callahan in his individual capacity. The United States is immune from monetary damages for "injuries to servicemen where the injuries arise out of or are in the course of activity incident to service." Feres v. United States, 340 U.S. 135, 146 (1950). The Feres doctrine bars a military prisoner's entitlement to monetary damages. Walden v. Bartlett, 840 F.2d 771, 774 (10th Cir. 1988). Additionally, we hold that Mr. Roberts is not entitled to injunctive relief against Mr. Callahan in his official capacity. Mr. Roberts failed to allege sufficient actual injury to support standing for his lack of access to the courts claim. See Lewis v. Casey, 518 U.S. 343, 351 (1996). We also agree with the district court that class certification is not warranted in this case.

After a thorough review of Mr. Roberts' brief and the record, and for

substantially the same reasons set forth in the district court's well-reasoned August 16, 2001 Order adopting the July 30, 2001 Report and Recommendation of the magistrate judge, we hold that no relief is available to Mr. Roberts.

Appellant's appeal is **DENIED**.

Entered for the Court

Monroe G. McKay
Circuit Judge