

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DEXTER ANDERSON,

Plaintiff,

v.

OPINION AND ORDER

18-cv-777-wmc

UNITED STATES OF AMERICA,
D. VAIR and ORMAN,

Defendants.

Pro se plaintiff Dexter Anderson, who was previously incarcerated at the Federal Correctional Institution in Duluth, Minnesota (“FCI-Duluth”), has filed a proposed complaint, naming the United States of America and two Federal Bureau of Prisons (“BOP”) officers as defendants. Anderson claims that the two officers used excessive force against him during a prison transport in August of 2017. While he does not cite to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1974), the court understands him to be pursuing relief under this case, in which the Supreme Court held that parties may sue federal officials directly under the Constitution in certain situations. Anderson’s complaint is ready for screening pursuant to 28 U.S.C. § 1915A to determine whether he may proceed with the case. For the following reasons, the court will grant Anderson leave to proceed against two of the three named defendants.

ALLEGATIONS OF FACT¹

On August 15, 2017, Anderson was being transported by two BOP officers, defendants Orman and Vair, from FCI-Oxford to FCI-Duluth. Orman handcuffed Anderson and tightened them to a point that Anderson was in severe pain, even though Anderson claims that he was not combative or threatening. When he complained to Orman that he could not feel blood circulation in his hands and forearms, Vair apparently responded by threatening him with “more violence.” As a result, Anderson was afraid to speak up and endured significant pain and ultimately suffered from cuts and bruises on his wrists.

OPINION

The court understands plaintiff to be seeking leave to proceed against the United States of America, Orman and Vair on Eighth Amendment excessive force claims. As an initial matter, however, the court is dismissing the United States of America as a defendant, since in a *Bivens* action, a plaintiff is permitted to sue only federal *officials* in his or her individual capacity, not the United States or a federal agency. *See FDIC v. Meyer*, 510 U.S. 471, 484-86, 114 S. Ct. 996 (1994) (*Bivens* actions cannot be brought against federal agencies); *Robinson v. Turner*, 15 F.3d 82, 84 (7th Cir. 1994) (“A plaintiff bringing a *Bivens* action sues a federal employee in his or her individual capacity, rather than the governmental agency or entity employing the individual.”).

¹ Courts must read allegations in *pro se* complaints generously. *Haines v. Kerner*, 404 U.S. 519, 521 (1972). The court assumes the facts above based on the allegations made in plaintiff’s complaint.

However, plaintiff may proceed on Eighth Amendment claims against Vair and Orman. Courts have construed Eighth Amendment claims stemming from handcuffed-related injuries under two different theories: conditions of confinement or excessive force. Compare *Hope v. Pelzer*, 536 U.S. 730, 737-38 (2002) (applying deliberate indifference standard to claim that defendants handcuffed prisoner to hitching post for seven hours), and *Gruenberg v. Gempeler*, 697 F.3d 573, 579-80 (7th Cir. 2012) (applying deliberate indifference standard to claim defendants restrained prisoner for five days), and *Key v. McKinney*, 176 F.3d 1083, 1086 (8th Cir. 1999) (applying deliberate indifference standard to claim that defendants placed prisoner in shackles and handcuffs for 24 hours), with *O'Malley v. Litscher*, 465 F.3d 799, 805 (7th Cir. 2006) (applying excessive force standard to claim that defendants placed plaintiff in five-point restraints for several hours, applied them too tightly and refused to allow plaintiff to use bathroom), and *Williams v. Burton*, 943 F.2d 1572, 1576 (11th Cir. 1991) (applying excessive force standard to claim that defendants placed prisoner in four-point restraints for more than 28 hours). See also *Santiago v. Walls*, 599 F.3d 749, 757 (7th Cir. 2010) (referencing both excessive force and deliberate indifference standard in discussing use of handcuffs in prisons). Given that plaintiff has alleged injury and references the fact that he was not being combative, the court will construe his claim under an excessive force theory.

For a plaintiff to succeed on an Eighth Amendment excessive force claim, he must submit evidence that the prison official acted “wantonly or, stated another way, ‘maliciously and sadistically for the very purpose of causing harm.’” *Harper v. Albert*, 400 F.3d 1052, 1065 (7th Cir. 2005) (quoting *Wilson v. Seiter*, 501 U.S. 294, 296 (1991)).

Relevant factors are: (1) the need for the application of force; (2) the relationship between that need and the amount of force used; (3) the extent of injury inflicted; (4) the extent of threat to the safety of staff and inmates, as reasonably perceived by the responsible officials based on the facts known to them; and (5) any efforts made to temper the severity of a forceful response. *Whitley v. Albers*, 475 U.S. 312, 321 (1986). Because prison officials must sometimes use force to maintain order, the central inquiry is whether the force “was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Id.* at 320-21 (quoting *Johnson v. Glick*, 481 F.2d 1028, 1033 (2d Cir. 1973)).

Construing plaintiff’s claims generously, it is reasonable to infer that once plaintiff informed both defendants that his handcuffs were too tight and they refused to loosen them, their refusal to give him any relief may have been motivated by a malicious intent to injure him. Indeed, plaintiff has not alleged that he was disobeying orders or posed a safety or security risk during the transport, so there is no reason to infer that defendants’ refusal to loosen his handcuffs was due to a security threat he posed. Accordingly, the court will grant plaintiff leave to proceed against Vair and Orman for their involvement in refusing to loosen his handcuffs and threatening him if he continued to complain about them.

ORDER

IT IS ORDERED that:

1. Plaintiff Dexter Anderson is GRANTED leave to proceed on Eighth Amendment excessive force claims against defendants Orman and D. Vair.
2. Plaintiff is DENIED leave to proceed on any other claim, and the United States of America is DISMISSED as a defendant.
3. The clerk's office will prepare summons and the U.S. Marshal Service shall effect service upon defendants.
4. For the time being, plaintiff must send defendants a copy of every paper or document he files with the court. Once plaintiff has learned what lawyer will be representing defendants, he should serve the lawyer directly rather than defendant. The court will disregard any documents submitted by plaintiff unless plaintiff shows on the court's copy that he has sent a copy to defendants or to the defendants' attorney.
5. Plaintiff should keep a copy of all documents for his own files. If plaintiff does not have access to a photocopy machine, he may send out identical handwritten or typed copies of his documents.
6. If plaintiff moves while this case is pending, it is his obligation to inform the court of his new address. If he fails to do this and defendants or the court are unable to locate him, his case may be dismissed for failure to prosecute.

Entered this 9th day of March, 2020.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge