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Appellate Court Dismissal Judgment

APPENDIX (B)

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
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Elisabeth A. Shumaker
Clerk of Court

June 12, 2019

Chris Wolpert
Chief Deputy Clerk

Mr. Christopher Allman
Office of the United States Attorney
District of Kansas
500 State Avenue, Suite 360
Kansas City, KS 66101

Mr. Manetirony Clervrain #96396-004
Big Spring Correctional Institution
2001 Rickabaugh Drive
Big Spring, TX 79720

Mr. Timothy M. O'Brien
United States District Court for the District of Kansas
Office of the Clerk
444 Southeast Quincy
U.S. Courthouse
Room 490
Topeka, KS 66683-0000

RE: 18-3216, Clervrain v. United States, et al
Dist/Ag docket: 5:17-CV-03194-SAC

Dear Counsel, Clerk and Appellant:

Please be advised that the court issued an order today dismissing this case.

In addition, pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate issued today, and the court's judgment takes effect.

Please contact this office if you have questions.

Sincerely,

A handwritten signature in black ink that reads "Elisabeth A. Shumaker". The signature is fluid and cursive, with "Elisabeth" and "Shumaker" being the most distinct parts.

Elisabeth A. Shumaker
Clerk of the Court

EAS/dd

UNITED STATES COURT OF APPEAL

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

June 12, 2019

Elisabeth A. Shumaker
Clerk of Court

MANETIRONY CLERVRAIN,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA;
BUREAU OF PRISONS,

Defendants - Appellees.

No. 18-3216
(D.C. No. 5:17-CV-03194-SAC)
(D. Kan.)

ORDER

Before MATHESON and BACHARACH, Circuit Judges.

On April 25, 2019, this court: (1) held that the Prison Litigation Reform Act, 28 U.S.C. § 1915(g) applies to this appeal; (2) ordered pro se appellant Manetirony Clervrain to pay the entirety of the \$505.00 appellate filing fee to the district court by May 15, 2019; and (3) advised Mr. Clervrain that, if the district court did not receive timely payment in full of the appellate filing fee, this court would dismiss his appeal for lack of prosecution. *See* 28 U.S.C. § 1915(g); 10th Cir. R. 3.3(B); 10th Cir. R. 42.1. The court later extended the deadline for payment to June 5, 2019 and again advised Mr. Clervrain that, if the district court did not receive full payment on or before that date, this court would dismiss Mr. Clervrain's appeal for lack of prosecution.

This matter is now before the court on Mr. Clervrain's *Motion for Consideration and Imminent Danger by Punitive Act*. Upon consideration, the court construes the motion as a motion for reconsideration of its April 25, 2019 and denies it as construed.

Mr. Clervrain has not paid the full appellate filing fee to the district court. Accordingly, this court dismisses Mr. Clervrain's appeal for lack of prosecution. *See* 10th Cir. R. 3.3(B); 10th Cir. R. 42.1.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court
ELISABETH A. SHUMAKER, Clerk



by: Lisa A. Lee
Counsel to the Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MANETIRONY CLERVRAIN,

Plaintiff,

v.

CASE NO. 17-3194-SAC

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter was dismissed by the Court on September 19, 2018. Since that date, Plaintiff has filed thirty-five (35) motions and a Notice of Appeal. Defendant United States filed a response to sixteen (16) of those motions and a Motion for Filing Restrictions on November 14, 2018. *See* ECF No. 87. The additional nineteen (19) motions were filed after Defendant's response.

Plaintiff's Complaint challenged the BOP's decision to aggregate three FOIA requests and to deny his request for a fee waiver. He also initially included a Federal Tort Claims Act (FTCA) claim that was dismissed by the Court upon screening, after giving Plaintiff an opportunity to show cause why it should not be dismissed. Defendant filed a motion to dismiss or for summary judgment, which the Court granted on September 19, 2018. The Complaint was dismissed because Plaintiff failed to exhaust his administrative remedies on his fee waiver request, because the fee waiver denial was otherwise proper, and because the BOP's aggregation of the three requests was justified.

Each of Plaintiff's thirty-five (35) motions is listed and addressed below. The motions cover a range of topics, are difficult to decipher, and are largely repetitive. Several could be construed as motions for relief from judgment. However, Mr. Clervrain's filing in this closed case of motions attempting to add claims or defendants, motions asking to consolidate all of his many cases, motions for discovery, motions attempting to force other federal agencies to "intervene", motions asking to be transferred to a different prison or to home confinement, motions for computer access, and demands for a jury trial are ineffectual. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate.

A recurring theme in Plaintiff's filings with this Court, in this case as well as in his other cases, is that he believes he should not have to explain his claims or even file a proper Complaint before conducting discovery. He repeatedly argues he needs to conduct discovery first, apparently so he can bolster his vague, unsupported allegations. The Court is not, however, "required to permit plaintiff to engage in a 'fishing expedition' in the hope of supporting his claim." *S.E.C. v. Goldstone*, 301 F.R.D. 593, 643 (D.N.M. 2014) (quoting *McGee v. Hayes*, 43 F. App'x 214, 217 (10th Cir. 2002)). "'Discovery ... is not intended to be a fishing expedition, but rather is meant to allow the parties to flesh out allegations for which they initially have at least a modicum of objective support.'" *Rivera v. DJO, LLC*, No. CIV 11-1119, 2012 WL 3860744, at *8 (D.N.M. 2012) (quoting *Tottenham v. Trans World Gaming Corp.*, No. 00 Civ. 7697, 2002 WL 1967023, at *2 (S.D.N.Y. 2002)).

Another recurring theme in Plaintiff's motions is that he repeatedly tries to add unrelated, unsupported claims to this lawsuit. Motions seeking to pursue claims that are not alleged in the pleadings will be denied on their face. These claims are not properly joined with the FOIA claims he raised here. Plaintiff tries to argue they are supplements to his Complaint under Rule 15(d).

Rule 15(d) is designed to allow a Plaintiff to supplement his pleading to add claims that arise after filing. The claims must not only arise after filing but also must be based on the same subject matter or claim for relief as set out in the original complaint. For instance, if Plaintiff had made another request to the BOP for documents under FOIA which was denied after he filed his Complaint, he might have been able to properly supplement his Complaint to add the new denial. Supplementing is not proper to add completely different or peripherally related claims. To add claims or parties following dismissal, Plaintiff must first move to reopen the case under 59(e) or 60(b), which he arguably has done, and then he must file a motion for leave to amend under Rule 15(b), with the proposed amended complaint attached. Here, the Court denies Plaintiff's request to reopen the case, so Plaintiff should not waste his time on a motion for leave to amend or on preparing an amended complaint.

Plaintiff also repeatedly asks for access to the internet, Lexis, Westlaw, and MS Word, as well as unlimited copying of documents, unlimited envelopes and unlimited postage. Plaintiff does not state a valid claim for denial of access to the courts. The right to access to courts neither requires “unlimited access to a law library” nor allows inmates “the right to select the method by which access will be provided.” *Penrod v. Zavaras*, 94 F.3d 1399, 1403 (10th Cir. 1996) (citations omitted). His “ample filings [in this Court] belie any argument that he is being denied meaningful access to the courts.” *Rudnick v. Raemisch*, 731 F. App'x 753, 755 (10th Cir. 2018). Moreover, Plaintiff has not shown that “the denial of legal resources hindered [his] efforts to pursue a nonfrivolous claim.” *See id.*, quoting *Penrod*, 94 F.3d at 1403. Plaintiff's requests for relief are denied.

Having reviewed and considered all of Plaintiff's thirty-five (35) post-dismissal motions, the Court finds Plaintiff has raised no proper grounds for relief from the judgment. He has not

explained why the Court was wrong to find that the BOP's decision to aggregate his requests was justified, wrong to find that he did not follow the proper administrative procedures and exhaust his remedies on the fee waiver issue, or wrong to find the BOP's denial of a fee waiver was also justified. Plaintiff's requests for relief from judgment are therefore denied, as further discussed below.

While pro se litigants are entitled to a measure of leeway, the Court cannot devote all of its time to Plaintiff's cases, particularly on post-dismissal motions that have every appearance of being frivolous, nor does the Court expect the U.S. Attorney to do so. Therefore, Defendants are relieved of responding to Plaintiff's motions unless ordered to do so by the Court. Plaintiff is hereby informed that if he files additional motions in this case, they are subject to summary dismissal.

Motion for Amending After Filing All Motions for Discovery in Such Complex Controversies (ECF No. 57)

In this wide-ranging motion, Plaintiff appears to be asking for discovery under Rules 26 and 56(d) so he can prove his allegations of "secret operations", mass deportations, overcrowding, and criminal activity, presumably within the Bureau of Prisons. He alleges Defendants denied his fee waiver request to protect "higher officials", "domestic terrorist actors", and "greed capitalist actors." Plaintiff further claims "the entire INA [Immigration and Naturalization Act] should be declared unconstitutional because its promote terms and language of discrimination, even if Webster's was defined 'alien' as a foreigner, at this current time Plaintiff alleges that term refers as 'negro' inferiority or relevant to call an 'ant' because it only an ant should declare inferior than American citizen, they are so strange in a way that they lift anything, and the Defendants can not prove how a foreign of any country will be different physically with any American citizens." ECF

No. 57 at 4-5. Plaintiff concludes by asking the Court to reconsider because of his need to investigate his claims, and he also requests access to MS Word and the internet.

The Court denies Plaintiff's motion. The relevant issues to this lawsuit were whether the BOP properly aggregated his FOIA requests and properly denied his request for a fee waiver based on the information he provided at the time. The Court found in favor of Defendants and dismissed the lawsuit. Nothing Plaintiff alleges in this motion is relevant to that determination.

Motion for Consideration and Oppositions Pursuant to Fed. R. Civ. P. 50, 52(b), 59, and 60 (ECF No. 58)

In this motion, Plaintiff alleges the dismissal of this case was "not in good faith." He complains the Court dismissed his lawsuit without considering his FTCA claim, aggregation, or fee waiver, as well as the intent behind the aggregation: to withhold evidence of criminal activity and apartheid. He further complains he did not actually respond to Defendants' motion to dismiss, and he should not have to respond until Defendants provide him with the information he asked for in his FOIA requests. In addition, Plaintiff asks that all of his cases be consolidated and that this Court forward his motion to the Fifth Circuit Court of Appeals to reinstate one of his cases that was dismissed by the U.S. District Court for the District of Maryland.

Because this motion was filed within 28 days of the entry of judgment, the Court construes it as a motion to alter or amend a judgment under Rule 59(e). Defendants have filed a response (ECF No. 87). Rule 59(e) provides the Court may reconsider a final decision if the moving party can establish (1) an intervening change in the controlling law; (2) the availability of new evidence that could not have been obtained previously through the exercise of due diligence; or (3) the need to correct clear error or prevent manifest injustice. *See Servants of the Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000).

Plaintiff does not claim there has been an intervening change in the controlling law or that there is new evidence available. Hence, Plaintiff must establish that the judgment was clearly erroneous or resulted in manifest injustice. He does not do so. His argument that the Court did not address his FTCA claim is erroneous; the Court found Plaintiff did not state a valid FTCA claim in two Orders (ECF No. 7 at 3-4 and ECF No. 15 at 1-2). Plaintiff has never explained how that finding was wrong. Plaintiff's argument that he did not actually respond to Defendant's motion to dismiss is also disingenuous. Moreover, if he had anything relevant to argue in response to the motion to dismiss, he should have included it here to demonstrate the Court's dismissal was clearly erroneous.

Plaintiff also argues that the Court did not consider his claim that Defendant's intent behind the aggregation decision was to withhold evidence of criminal activity and apartheid. The Court found Defendant had demonstrated its decision complied with the terms of 28 C.F.R. § 16.10(h), i.e., it was justified in aggregating Plaintiff's FOIA requests. Plaintiff has the burden to show Defendant's reliance on the terms of the regulation was pretextual. The agency's declarations are presumed to be submitted in good faith, and Plaintiff's mere speculation cannot rebut the presumption. *Banks v. Dep't of Justice*, 605 F. Supp. 2d 131, 140 (D.D.C. 2009), citing *see SafeCard Servs., Inc. v. Sec. & Exch. Comm'n*, 926 F.2d 1197, 1200 (D.C. Cir. 1991) (citation and internal quotation marks omitted). "The factual assertions in the BOP's declarations are accepted as true absent a showing by plaintiff of his own declarations or documentary evidence to the contrary." *Banks*, 605 F. Supp. 2d at 140, citing *Neal v. Kelly*, 963 F.2d 453, 456 (D.C. Cir. 1992). Plaintiff has offered only his own self-serving, unsupported allegation to rebut the presumption of good faith, which is insufficient to create a genuine issue of material fact regarding the BOP's asserted reason for aggregating Plaintiff's requests. *See Schoenman v. F.B.I.*, 573 F. Supp. 2d 119,

147 (D.D.C. 2008) (discussing pretext in the context of law enforcement exception to disclosure under FOIA), citing *see Hastie v. Potter*, Civ. No. 00-5423, 2001 WL 793715, at *1 (D.D.C. June 28, 2001) (finding no genuine issue of material fact where the sole evidence plaintiff provided was “her own self-serving and conclusory statement”); *Saunders v. DiMario*, Civ. No. 97-1002, 1998 WL 525798, at *4 (D.D.C. Aug. 14, 1998) (“Plaintiff has otherwise offered the type of self-serving allegations that are simply insufficient to establish pretext.”).

Plaintiff seems to lose sight of the fact that at no time did the BOP *deny* his FOIA requests. The BOP merely found that his three identical requests made at the same time should be aggregated and that Mr. Clervrain was not entitled to a fee waiver. If Plaintiff had come up with \$308.50, the BOP would have provided him with the documents he requested (and presumably still would). The Court notes that amount is less than the filing fee for this action.

Finally, Plaintiff’s argument that he should not have to respond to the motion to dismiss until he receives the documents he asks for in his FOIA request is frankly ridiculous. How would documents relating to (1) contact information for each of 57 federal penal institutions; (2) the admission and orientation handbook for each institution; (3) the current financial statement for commissary purchases and funds distribution; (4) the current financial statement for the inmate telephone system and funds distribution; (5) copies of items sold in the commissary and the wholesale prices for each item; (6) documents identifying inmates incarcerated at each institution by race and each institution’s classification level; and (7) information regarding each warden including their experience, salary, and bonuses demonstrate Defendant should not have aggregated his multiple FOIA requests or demonstrate Plaintiff was entitled to a fee waiver?

Nothing Plaintiff has argued in this motion or any of the thirty-four (34) other motions he has filed since dismissal causes the Court to believe it committed clear error by dismissing this action or that the dismissal results in manifest injustice. Plaintiff's motion is denied.

If Plaintiff also intended ECF No. 58 as a motion to recuse, such motion is also denied. Plaintiff failed to file the affidavit required under 28 U.S.C. § 144 and failed to establish that a reasonable person would believe the Court has displayed such "deep-seated favoritism or antagonism that would make fair judgment impossible." *Liteky v. United States*, 510 U.S. 540, 555 (1994).

Motion for Continuation of Circumstances and Retaliation by the Defendants Transferred (ECF No. 59)

Plaintiff makes the following allegations: Defendants have repeatedly transferred him without justification over the last seven years; Defendants have exposed him to extortion in some unexplained way; and someone named Jose Santana has engaged in unspecified misconduct that somehow supports Plaintiff's claim that the BOP aggregated his FOIA requests to hide evidence. Plaintiff asks the Court to initiate an investigation against Defendants, to order Defendants to show cause why he has to be incarcerated in Texas or any prison in the South, and to order him housed in home confinement.

This motion is denied. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied.

Motion to Compel and Similarity (FOIA) Circumstances as Evidence in Supporting the Case (ECF No. 60)

As far as the Court can discern, Plaintiff is complaining about injury claims. This motion raises no new issues and provides no information relevant to this lawsuit. The motion is denied.

Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate.

Motion for Constitutionality Claims and Defenses (ECF No. 61)

In this motion, Plaintiff argues dismissal was premature and that there were genuine issues of material fact, which he fails to describe. He does, however, make an argument that different federal correctional facilities are “unrelated matters” under 28 C.F.R. 16.10(h) because each institution may operate differently and the responsive information for each will be different. He seems to say that if this argument is not successful, 28 C.F.R. 16.10(h) should be declared unconstitutional because it promotes discriminatory enforcement. He concludes by asking for discovery and for consolidation of all his cases across the country.

The Court is relieved that Plaintiff addresses a relevant issue in this motion. 28 C.F.R. § 16.10(h) provides, “Multiple requests involving unrelated matters shall not be aggregated.” There is a dearth of case law on what constitutes “unrelated matters.” Plaintiff’s requests ask for the same information with the only difference being the first request was sent to the Mid-Atlantic Region of the BOP requesting the same information for 19 correctional institutions, the second to North Central Region encompassing 18 institutions, and the third to the Southeast Region encompassing 20 different institutions. The BOP concluded these requests involve related matters. The agency’s determination is entitled to a presumption of good faith. *Espinoza v. Dep’t of Justice*, 20 F. Supp. 3d 232, 239 (D.D.C. 2014). Plaintiff’s argument that the requests are unrelated matters because each institution may operate differently and the information for each will be different is incongruous with his grouping of multiple institutions in each request. In addition, Plaintiff has provided nothing more than speculation to attempt to overcome the presumption of good faith. Upon reconsideration, the Court declines to change its judgment on the issue of aggregation.

Plaintiff's other arguments and requests in this motion are denied because the Court finds they have no merit. This motion is denied.

Motion for Permissible Intervention for the (FOIA) Controversial Allegations (ECF No. 62)

Plaintiff moves pursuant to Rule 24(b) (Permissive Intervention) to consolidate his cases filed in Texas, California, Georgia, Pennsylvania, and Maryland. Even if this Court could grant such a request, the United States Judicial Panel on Multidistrict Litigation has rejected Plaintiff's attempt to consolidate his cases. *See* Civil Docket for Case No. KS/5:17-cv-03194, referencing MDL No. 2860 (Lead Case). This motion is denied.

Motion for Opposition the Defendants Omnibus Responses and Bad Faith Intent (ECF No. 63)

Plaintiff alleges defense counsel "continuously acting the same as pattern to interfere with the court proceedings" and has acted with the "purpose of confusing him" by filing an omnibus response to eighteen (18) of Plaintiff's motions. Plaintiff asks the Court to order Defendants to respond separately to each of his motions. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. Moreover, this motion utterly lacks merit. The motion is denied.

Motion to Compel the (BOP) for Legal Materials as an Indigent Inmate Against Apartheid (ECF No. 64)

Plaintiff again alleges Defendants have denied him access to the courts. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. In addition, this motion is denied for the reasons stated above (at 3).

Motion as Notice for the Defendants Avoiding the Allegation of "Criminal Enterprises" in Responses (ECF No. 65)

Plaintiff again attempts to add claims and argues the aggregation of his FOIA requests and the denial of a fee waiver was pretextual. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Placement in Home Confinement and Exceptional Circumstances to Litigate the Controversies (ECF No. 69)

Plaintiff asks the Court to order he be held in home confinement pursuant to 18 U.S.C. § 3582. This Court does not have jurisdiction over Plaintiff's sentencing. Plaintiff is again reminded this lawsuit involves FOIA requests and was dismissed on September 19, 2018. This motion is denied.

Motion for the Defendant(s) Failure to Consider Circumstantial Evidence in the (FOIA) Allegations (ECF No. 70)

Plaintiff alleges actions of the BOP are evidence of Defendants' "bad faith intent" in aggregating his FOIA requests and denying a fee waiver. This issue is addressed above. This motion is denied.

Motion to Compel for Efficient Law Library (ECF No. 71)

Plaintiff again complains about not having access to MS Word and the internet for researching and litigating his cases. For the reasons discussed above, this motion is denied.

Motion for Exposure Under Degradment of Confinement Based Upon My Classification (ECF No. 72)

Plaintiff asks the Court to order him transferred to "a facility appropriate" for him. Plaintiff may be attempting to raise a civil rights claim that he has a liberty interest in avoiding transfers between federal correctional facilities. To properly raise this claim, this case would need to be reopened, Plaintiff would need to request leave to amend his Complaint and file his proposed

Amended Complaint. However, the Court denies all of Plaintiff's requests for relief from judgment. This motion is denied.

Motion to Compel the (DSCC) for Transfer to a Facility Where Resources Applicable to Litigate (ECF No. 73)

Plaintiff again complains about transfers and lack of access to a computer and internet legal research. He also attempts to add claims and alleges dismissal was premature and numerous other federal agencies, as well as Congress, should intervene in this action. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

• **Motion for Leave to Appeal in forma pauperis (ECF No. 75)**

“In order to succeed on [a motion for leave to proceed in forma pauperis on appeal], an appellant must show a financial inability to pay the required filing fees and the existence of a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal.” *DeBardeleben v. Quinlan*, 937 F.2d 502, 505 (10th Cir. 1991). “An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). “The Supreme Court has held that good faith is to be judged by an objective standard, for review of any issue ‘not frivolous.’” *Spearman v. Collins*, 500 F. App’x 742, 743 (10th Cir. 2012) (quoting *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). “An appeal is frivolous when the result is obvious, or the appellant’s arguments of error are wholly without merit.” *Spearman*, 500 F. App’x at 743 (quotation omitted). *See also Thompson v. Gibson*, 289 F.3d 1218, 1222 (10th Cir. 2002) (noting that an appeal is frivolous if it “lacks an arguable basis in either law or fact”).

The Court does not doubt that Mr. Clervrain is unable to pay the filing fee. However, Mr. Clervrain has not shown the “existence of a reasoned, nonfrivolous argument on the law and facts

in support of issues raised on appeal.” *See Debardeleben*, 937 F.2d at 505. Accordingly, the Court concludes that Mr. Clervrain’s appeal is not taken in good faith and therefore denies his motion.

Motion for Rights and Permissible Intervention (ECF No. 76)

Plaintiff again argues his case should not be dismissed. He does not make any new arguments. His motion is denied.

Motion for Opposing Premature Summary Judgment, in the Alternative Frivolous, or Not Being Patient (ECF No. 77)

Plaintiff states he is moving pursuant to Rule 56. He claims the Court failed to consider “important factors” when it granted summary judgment to Defendant. He again asserts Defendant’s purpose or intent in aggregating his requests and denying the fee waiver was to interfere with his activism and that the Court failed to consider all of his claims relating to the FTCA. The Court has addressed these arguments and denies relief on these bases.

Plaintiff does make a new argument that Defendant never responded to his fee waiver request and thus violated 5 U.S.C. § 555(e) requiring agencies to give prompt notice of the denial of requests. If it were correct that Defendant did not respond to Plaintiff’s fee waiver request, Plaintiff would be relieved of the requirement that he exhaust his administrative remedies as to that request. However, Defendant did respond by letter dated April 4, 2017. *See* ECF No. 29-1 at 70. Moreover, the Court found the denial of a fee waiver was justified because Plaintiff did not demonstrate that he met several of the statutory requirements. *See* ECF No. 54 at 4-6. The Court rejects Plaintiff’s argument and denies this motion.

Motion for Judicial Appellate Panel and Controversies (ECF No. 78)

Plaintiff moves pursuant to Federal Rules of Appellate Procedure 8, 15 and 21 for a “judicial appellate panel” of the Third, Tenth, Fifth, Second, Seventh, and Sixth Circuit Courts of

Appeals. No factual basis or legal authority is presented that would entitle Plaintiff to the requested action. This motion is denied.

Motion for the Court to Perform Its Duties and Interest of Justice (ECF No. 79)

Plaintiff argues the Court abused its discretion in dismissing all pending motions with no cause or explanation given when it dismissed Mr. Clervrain's case. He wants relief from the order.

Plaintiff had the following motions pending when this action was dismissed:

- * Motion for Consideration the Court Order (ECF No. 19) (Plaintiff complains about the Court's dismissal of his FTCA claim, about having to pay the full filing fee, about having to provide "evidence" in support of his FOIA fee waiver request, about needing access to MS Word, about needing access to Lexis or Westlaw, and about a Mr. Henderson or "Pecos").
- * Motion for Remarkable Conflict of Interest (ECF No. 25) (Plaintiff asks the Court to intervene in a federal lawsuit Plaintiff is pursuing in the Eastern District of Texas, and/or may be requesting a protective order, and/or may be requesting an injunction of some kind, and/or may be requesting leave to amend his Complaint).
- * Motion to Suppress Evidence for the Allegations of Criminal Enterprise (ECF Doc. 32) (Plaintiff seems to be asking to amend his Complaint to add that he suffered from apartheid and a criminal enterprise to support his dismissed FTCA claim, to consolidate this case with a case he has pending in Texas, to request discovery including a list of documents, to order the BOP to release him from the SHU, and to order the BOP to give him access to a computer and printer).
- * Motion to Consolidate Cases for Discovery and Trial under Rule 42 (ECF Doc. 33) (Plaintiff asks to amend his Complaint; alleges Defendants engaged in fraud; states he requires all management information from the entire management team for the Department of Justice, the Bureau of Prisons, the FBI, the Office of the Inspector General, the Postmaster General, the AUSA,

the Special Investigation Agency, the Office of Internal Affairs, the Office of Personnel Management, the main inspectors of all states, all management information for all private correctional institutions, Department of Homeland Security, Department of Treasury, Government Accounting Office, Internal Revenue Service, Department of Defense, INTERPOL, Department of Commerce, Social Security Administration, Department of Consular Affairs, Department of State; and again asks to consolidate this case with one of his Texas cases);

- * Motion for Consideration and Opposing the Court Extension of Time (ECF Doc. 34) (Plaintiff complains of being housed in the SHU and requests the Court order him to be released and initiate a criminal investigation “for torturing immigrant by the (KKK) members”; complains of being forced to work; and states he “requires more evidence” to respond to the motion to dismiss);
- * Motion for Request of Extension of Time (ECF Doc. 37) (Plaintiff claims he was placed in the SHU for a “nonjustifiable reason” and was therefore needed more time to respond to the motion to dismiss; an attached incident report shows Plaintiff refused an order to clean his legal papers off the top bunk in his cell so another inmate could be housed with him, saying he could not have a cellmate for “security reasons”);
- * Motion for Judicial Panel for Multidistrict Litigation (ECF Doc. 38) (Plaintiff attempted to have all of his various lawsuits consolidated; the Panel for Multidistrict Litigation rejected his request on October 3, 2018);
- * Motion for Remarkable Contradictions (ECF Doc. 39) (Plaintiff again argues he is “entitled” to discovery before having to respond to the motion to dismiss and to amend his Complaint; he also wants counsel for Defendants to initiate a “criminal investigation against all private prisons, federal or state”);

- * Motion for Opposition and Stipulations (ECF Doc. 41) (Plaintiff argues the U.S. Attorney has a duty to inquire about his broad allegations of “criminal activities”, there is “no evidence that the [plaintiff] is subject to summary judgment”, the aggregation of Plaintiff’s FOIA requests was “pretextual” to protect the private institutions, he needs access to MS Word, and he should be granted “additional time until moved to a new facility”);
- * Motion for Allowing Discovery and Opposition (ECF Doc. 42) (Plaintiff again denies all of Defendants’ allegations and claims he has set forth facts that the defendant “continuously withheld evidence”; also argues it is clear the Court “has not dismissed any claims relating to his FTCA claims but asked the Defendants to response” and “FOIA is not the issues in this case”; further again argues his cases should be consolidated, and he should be entitled to conduct discovery);
- * Motion for Notice and Circumstances (ECF Doc. 43) (Plaintiff seems to be notifying the Court of a probable transfer and asking for the proceedings to be delayed indefinitely);
- * Motion for Emergency and Circumstances (ECF Doc. 44) (Plaintiff complains his property was boxed up and theorizes he is being transferred to deny him access to stamps or computers by keeping him “travelling for months without reach any location for a long period of time”; he further complains of a conspiracy, mail fraud, and “pretextual FOIA claims” and again argues this case should be consolidated with his “Beaumont case”);
- * Motion for Evidence and Lack of Integrity (ECF Doc. 45) (Plaintiff repeats previous allegations and complaints, emphasizing that Defendants have not responded to his Complaint);
- * Motion for Allowing Other Brief After Being Transfer at the Sexual Predator Operation (ECF Doc. 50) (This seems to be a list of motions Plaintiff intends to file in the future); and

* Motion for Efficient Law Library and the Internet for Potential Claims of Apartheid (ECF Doc. 53) (Plaintiff again claims to need additional access to the law library so he can prepare and file another 10 motions).

None of these pending motions raised issues or arguments relevant to the issue of proper aggregation of his FOIA requests, exhaustion of his administrative remedies as to his fee waiver request, or whether the denial of his request for a fee waiver was otherwise proper. Therefore, they were properly dismissed as moot when the Court found against Plaintiff on the relevant issues. This motion is denied.

Motion for Public Disclosure and Trade Secret Claims (ECF No. 81)

This motion, while nineteen (19) pages long, does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. Plaintiff again attempts to add numerous claims. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. For the previously stated reasons, the motion is denied.

Motion for Evidence and Fear of Death Claim (ECF No. 82)

This motion does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. Plaintiff again attempts to add numerous claims. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Evidence and Manipulate Rates in the Market (ECF No. 83)

This motion does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. Plaintiff again attempts to add numerous

claims, this time arguing he is supplementing his Complaint under Rule 15. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Undeveloped Facts and Independent Counsel (ECF No. 84)

This motion does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. Plaintiff argues all of his assorted claims and cases should be consolidated under the Rules of Criminal Procedure. This motion is frivolous and repetitive. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Deny Access to the Courts by Illegal Contract or Negligence for Evidence and Interest of Justice (ECF No. 85)

Plaintiff's claim of denial of access to the courts is addressed above. This motion is denied for the previously stated reasons.

Motion for Interest of Justice and Fear Liability Claim (ECF No. 86)

This motion does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. This motion is frivolous and repetitive. Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Jury Demands and Interest of Justice (ECF No. 88)

This motion does not raise any new arguments relevant to the question of whether Plaintiff's FOIA complaint should have been dismissed. Unless and until the case has been

reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Evidence and Causation for Withheld Evidence (ECF No. 91)

In this motion, Plaintiff repeats arguments he has previously made. He also adds to the information he wants Defendants (including new defendants ICE, the IRS, and the Social Security Administration) to provide. For example, Plaintiff wants “[a]ll Embasador of each country that are in the United States, and their management operation, as well as their United Nations representative.” He further states that “the defendants should know that the request is for the last (15) years” and “he may require additional information.” ECF No. 91 at 7.

Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Exceptional Circumstances and Demand for Motions Copies Filed (ECF No. 92)

Plaintiff again asks for relief from the judgment and leave to amend his Complaint to add various claims, including an arbitration claim, a denial of access to the courts claim, “illegal” transfer claim, a claim that non-citizens are treated worse than citizens in the federal prison system, a claim that the BOP’s contracts with private prisons are illegal, and a claim relating to mail.

Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for International Concerns (ECF No. 93)

This motion repeats previous arguments and complaints. Plaintiff also complains about being given juice with aspartame and argues there should be a “national menu system under the Federal control.” ECF No. 93 at 3, 7. He requests a preliminary injunction.

Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Equitable Tolling and Ulterior Motive Claims (ECF No. 94)

Plaintiff argues he did not receive the letter denying a fee waiver and therefore his failure to exhaust his administrative remedies on that issue should be excused. Assuming for the sake of argument that Plaintiff did not receive the denial and cannot now exhaust his administrative remedies, the Court found, and continues to find, that Plaintiff’s request for a fee waiver did not meet the requirements under 5 U.S.C. § 552(a)(4)(A)(iii). *See Memorandum and Order of Dismissal*, ECF No. 54 at 4-6. He has not shown that “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government,” nor has he demonstrated his “ability and intention” to disseminate the requested information to the public, which “alone [provides] a sufficient basis for denying the fee waiver request.” *Larson v. Central Intelligence Agency*, 843 F.2d 1481, 1483 (D.C. Cir. 1988).

To the extent this could be considered a motion for relief from judgment, it is denied.

Motion for Public Interest Concerns and Interest of Justice (ECF No. 95)

This motion does not raise any new arguments relevant to the question of whether Plaintiff’s FOIA complaint should have been dismissed. This motion is frivolous and repetitive. Unless and until the case has been reopened, no motion other than a motion for relief from

judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

Motion for Opposing the Defendant(s) Restrictions (ECF No. 97)

Plaintiff argues against Defendant's request for filing restrictions, asserting his prolific, repetitive, rambling filings have not been harassing or abusive of the legal process. He also again argues he should be able to amend his Complaint, and his Complaint should not have been dismissed before he was permitted to conduct discovery ("Nothing under the rule mandate that the plaintiff must amend until the Evidence is available for him to amend the complaint," ECF No. 97 at 3). Finally, Plaintiff appears to repeat his complaint that the Court is biased against him.

To the extent this is a motion at all, it is denied. The Court is not imposing filing restrictions on Plaintiff at this time but is putting Plaintiff on notice that any future motions filed in this case may be summarily denied and is relieving Defendant of responding to any future motions absent court order.

• Motion for Additional Evidence and for Jurisdictional Defects (ECF No. 98)

In this motion, Plaintiff asks the Court for the following relief: (1) order Defendants to respond independently to all motions filed; (2) initiate an investigation into all of Plaintiff's claims; (3) consider all claims by allowing Plaintiff to amend or supplement on the basis of all of his motions; (4) order Defendants to provide all resources necessary as requested by Plaintiff; (5) update the Court's docket information by adding the Social Security Administration, the IRS, the OIP, the FBI, the AUSA, the OIG, the OIA, and the Postmaster General as defendants; (6) send Plaintiff a monthly printout of the docket; (7) inform "all the courts" that "amending is premature"; (8) "apply all relief on the motion for the Southeast Injustice Relief Act"; and (9) electronically file this motion with the Tenth Circuit. ECF No. 98 at 10-11.

Unless and until the case has been reopened, no motion other than a motion for relief from judgment is appropriate. To the extent this could be considered a motion for relief from judgment, it is denied for the previously stated reasons.

IT IS THEREFORE ORDERED Plaintiff's Motion for Amending After Filing All Motions for Discovery in Such Complex Controversies (ECF No. 57) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Consideration and Oppositions Pursuant to Fed. R. Civ. P. 50, 52(b), 59, and 60 (ECF No. 58) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Continuation of Circumstances and Retaliation by the Defendants Transferred (ECF No. 59) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel and Similarity (FOIA) Circumstances as Evidence in Supporting the Case (ECF No. 60) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Constitutionality Claims and Defenses (ECF No. 61) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Permissible Intervention for the (FOIA) Controversial Allegations (ECF No. 62) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Opposition the Defendants Omnibus Responses and Bad Faith Intent (ECF No. 63) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel the (BOP) for Legal Materials as an Indigent Inmate Against Apartheid (ECF No. 64) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion as Notice for the Defendants Avoiding the Allegation of "Criminal Enterprises" in Responses (ECF No. 65) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Placement in Home Confinement and Exceptional Circumstances to Litigate the Controversies (ECF No. 69) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for the Defendant(s) Failure to Consider Circumstantial Evidence in the (FOIA) Allegations (ECF No. 70) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel for Efficient Law Library (ECF No. 71) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Exposure Under Degradment of Confinement Based Upon My Classification (ECF No. 72) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel the (DSCC) for Transfer to a Facility Where Resources Applicable to Litigate (ECF No. 73) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Leave to Appeal in forma pauperis (ECF No. 75) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Rights and Permissible Intervention (ECF No. 76) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Opposing Premature Summary Judgment, in the Alternative Frivolous, or Not Being Patient (ECF No. 77) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Judicial Appellate Panel and Controversies (ECF No. 78) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for the Court to Perform Its Duties and Interest of Justice (ECF No. 79) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Public Disclosure and Trade Secret Claims (ECF No. 81) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Evidence and Fear of Death Claim (ECF No. 82) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Evidence and Manipulate Rates in the Market (ECF No. 83) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Undeveloped Facts and Independent Counsel (ECF No. 84) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Deny Access to the Courts by Illegal Contract or Negligence for Evidence and Interest of Justice (ECF No. 85) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Interest of Justice and Fear Liability Claim (ECF No. 86) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Jury Demands and Interest of Justice (ECF No. 88) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Evidence and Causation for Withheld Evidence (ECF No. 91) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Exceptional Circumstances and Demand for Motions Copies Filed (ECF No. 92) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for International Concerns (ECF No. 93) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Equitable Tolling and Ulterior Motive Claims (ECF No. 94) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Public Interest Concerns and Interest of Justice (ECF No. 95) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Opposing the Defendant(s) Restrictions (ECF No. 97) is **denied**.

IT IS FURTHER ORDERED that Plaintiff's Motion for Additional Evidence and for Jurisdictional Defects (ECF No. 98) is **denied**.

IT IS FURTHER ORDERED that Defendants' Motion for Extension of Time to File Response (ECF No. 74) is **denied as moot**.

IT IS FURTHER ORDERED that Defendants' Motion for Filing Restrictions (ECF No. 89) is **denied**. However, Defendants are relieved of responding to any future motions filed by Plaintiff unless ordered to do so by the Court, and any additional motions filed by Plaintiff are subject to summary dismissal.

IT IS SO ORDERED.

DATED: This 8th day of January, 2019, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MANETIRONY CLERVRAIN,

Plaintiff,

v.

CASE NO. 17-3194-SAC

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM AND ORDER OF DISMISSAL

This matter is an action under the Freedom of Information Act (FOIA). Plaintiff is a federal prisoner who proceeds pro se and in forma pauperis. Defendants have filed a motion to dismiss, or, in the alternative, for summary judgment (ECF Doc. 29). Plaintiff has filed several pleadings that include responses to Defendants' motion, including ECF Doc. 33, which is titled "motion to consolidate cases for discovery and trial under Rule 42" and which states it is also a response to Defendants' motion. In addition, Plaintiff has numerous pending motions.

Background

Mr. Clervrain asserts that he is an activist who is directing his efforts at ending the "apartheid" of non-citizen prisoners and/or overcrowding in the federal prison system. Apparently in furtherance of his goal, he submitted three (3) FOIA requests to the Bureau of Prisons (BOP) in August of 2015. The three requests had the same date, and each sought the following information from a different set of penal institutions (a total of 57 institutions): (1) contact information for each institution; (2) the admission and orientation handbook for each institution; (3) the current financial

statement for commissary purchases and funds distribution; (4) the current financial statement for the inmate telephone system and funds distribution; (5) copies of items sold in the commissary and the wholesale prices for each item; (6) documents identifying inmates incarcerated at each institution by race and each institution's classification level; and (7) information regarding each warden including their experience, salary, and bonuses.

By letter dated October 15, 2015, BOP informed Mr. Clervrain that his requests had been aggregated, and he must make advance payment of the anticipated fee amount (\$308.50) prior to the processing of his request. Mr. Clervrain requested a fee waiver as to two of his FOIA requests in October 2015, and again requested a fee waiver in his appeal of the aggregation decision, which he submitted to the Office of Information Policy (OIP) at the Department of Justice (DOJ) in November of 2015. OIP denied his appeal by letter dated May 13, 2016, and remanded his request for a fee waiver to the BOP regional offices. The letter informed Mr. Clervrain that he could file suit if he wanted to appeal the aggregation further. BOP responded to Plaintiff's request for a fee waiver on April 4, 2017, denying his request. This action followed.

Defendants seek dismissal of this action on the grounds that: (1) Plaintiff failed to exhaust his administrative remedies as to his fee waiver request; (2) even if he had properly exhausted, his fee waiver request was properly denied by BOP; and (3) BOP properly aggregated Plaintiff's FOIA requests.

Discussion

Standard for Summary Judgment

Defendants seek dismissal of this action, or, in the alternative, summary judgment. Generally, a motion to dismiss for failure to state a claim for relief pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure is decided upon the sufficiency of the complaint. However,

because Defendants have submitted additional materials, and the Court has examined them, the pending motion will be construed as a motion for summary judgment pursuant to Fed. R. Civ. P. 56. *See Fed. R. Civ. P. 12(d)* (“If, on a motion under Rule 12(b)(6) . . . matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56.”).

On summary judgment, the moving party bears the initial burden to point out the portions of the record which show that the movant is entitled to judgment as a matter of law. *Thomas v. Wichita Coca-Cola Bottling Co.*, 968 F.2d 1022, 1024 (10th Cir. 1992), *cert. denied*, 506 U.S. 1013 (1992). Where this burden is met, the opposing party must come forth with specific facts from which a rational fact-finder could find in that party’s favor. *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 671 (10th Cir. 1998). Summary judgment is appropriate “if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

Aggregation

28 C.F.R. § 16.10(d) provides that fees may be charged for any search or release of records when the release exceeds 100 pages, when the search for records exceeds 2 hours, and where the total fees exceed \$25.00. The fee for copies is 5 cents per page for every page over 100.

When an agency “reasonably believes that a requester . . . is attempting to divide a single request into a series of requests for the purpose of avoiding fees,” the agency can aggregate those requests and charge as if they were a single request. 28 C.F.R. § 16.10(h). The regulation states an agency “may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees.” *Id.* However, “[m]ultiple requests involving unrelated matters shall not be aggregated.” *Id.*

Plaintiff alleges that BOP's aggregation of his three requests for information under FOIA was unreasonable and pretextual. The Court disagrees. 28 C.F.R. § 16.10(h) provides that BOP is entitled to presume that multiple requests of the same type made within a 30-day period were made in order to avoid fees. Plaintiff filed three separate requests on the same date. The three requests sought the same information. The only difference between the requests was to which institutions the information pertained. Plaintiff stated in his appeal to OIP of the aggregation that the reason he filed separate requests was that he "needed each file by their own region" so it would be "more clear for [him] when filing court paperwork." ECF Doc. 29-1 at 65. Whether or not Plaintiff's primary purpose was to avoid fees, the effect would have been a fee reduction, and aggregation was reasonable. Defendants are entitled to summary judgment on Plaintiff's aggregation claim.

Fee Waiver

To obtain a waiver of the fees associated with a FOIA request, "a requester must demonstrate that 'disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.'" *Stewart v. U.S. Dep't of Interior*, 554 F.3d 1236, 1241–42 (10th Cir. 2009) (quoting 5 U.S.C. § 552(a)(4)(A)(iii)); accord 28 C.F.R. § 16.10(k)(1). A requester of a FOIA fee waiver has the burden of demonstrating that the statutory conditions are met. *Forest Guardians v. U.S. Dep't of the Interior*, 416 F.3d 1173, 1177 (10th Cir. 2005).

DOJ regulations include the following factors the agency must consider in deciding whether the standard for waiving fees is met:

- (i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable

operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. Components will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester.

28 C.F.R. § 16.10(k)(2).

Plaintiff's fee waiver request was made in a letter dated September 18, 2015 (ECF Doc. 1-1 at 41). He first states that he accepts the fees, but his financial condition as an incarcerated person does not allow him to pay. Mr. Clervrain goes on to request a fee waiver. He states that "disclosure of the information sought is in the public interest, as it is likely to contribute significantly to public understanding of the operation or activities of the Bureau . . . and disclosure is not in my commercial interest." *Id.* Mr. Clervrain distinguishes his request from those made by prisoners who seek records related to their criminal cases that would serve primarily their own interests. *Id.*

"[F]ee waiver requests must be made with reasonable specificity ... and based on more than conclusory allegations." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003)

(internal quotation marks and citations omitted). Indigence alone is not sufficient to justify a fee waiver. *See Ely v. United States Postal Service*, 753 F.2d 163, 165 (D.C. Cir. 1985) (“Prior decisions clearly tie fee waivers to public benefit.”). A requestor must do more than recite the regulatory factors; he must specify the public interest, identify the governmental activity or operation on which he intends to shed any light, and explain how disclosure of the requested information would contribute to the public's understanding of such activity or operation. *See Smith v. Fed. Bureau of Prisons*, 517 F. Supp. 2d 451, 454–55 (D.D.C. 2007). Further, a requestor must state his ability and intention to effectively disseminate the information to the public. *Id.*, quoting *Larson v. CIA*, 843 F.2d 1481, 1483 (D.C. Cir. 1988) (plaintiff's failure to do so was “alone [] a sufficient basis for denying the fee waiver request.”); 28 C.F.R. § 16.10(k)(2)(ii)(B).

Mr. Clervrain's fee waiver request simply recited the factors provided by 28 C.F.R. § 16.10(k)(2). He specifies no public interest, he does not identify with any clarity the governmental activity on which he wants to shed light, he does not explain how the requested information would help the public better understand that vague activity, and he gives no indication he could effectively disseminate the information to the public. The Court finds Defendants were justified in denying Plaintiff's fee waiver request.

However, Plaintiff failed to exhaust his administrative remedies on the denial of his fee waiver request, meaning review by this Court is premature. *See Oglesby v. U.S. Dep't of Army*, 920 F.2d 57, 61, 67 (D.C. Cir. 1990); *Taylor v. Appleton*, 30 F.3d 1365, 1367–68 (11th Cir. 1994) (citations omitted), *cited with approval in Roberts v. Paulson*, 263 F. App'x 745, 747–48 (10th Cir. 2008). A FOIA requester “may not seek judicial review of an agency's denial of a fee-waiver request until he administratively appeals the denial or pays the assessed fee.” *Bartko v. United States Dep't of Justice*, 102 F. Supp. 3d 342, 348 (D.D.C. 2015). The requestor must demonstrate

that he complied with the agency's filing procedures and internal appeals process. *Hidalgo v. FBI*, 344 F.3d 1254, 1259 (D.C. Cir. 2003). DOJ's internal appeals process begins with an appeal to OIP. 28 C.F.R. § 16.8. Mr. Clervrain never appealed BOP's denial of a fee waiver to OIP. Because Plaintiff did not exhaust this claim at the administrative level, it will be dismissed without prejudice.

Other Pending Motions

Plaintiff has the following motions pending: motion for reconsideration (ECF Doc. 19); motion for order (ECF Doc. 25); motion to suppress evidence (ECF Doc. 32); motion to consolidate cases (ECF Doc. 33); motion for reconsideration (ECF Doc. 34); motion for extension of time (ECF Doc. 37); motion for judicial panel for multidistrict litigation (ECF Doc. 38); motion for remarkable contradictions (ECF Doc. 39); motion for opposition and stipulations (ECF Doc. 41); motion for discovery and opposition (ECF Doc. 42); motion for notice and circumstances (ECF Doc. 43); motion for emergency and circumstances (ECF Doc. 44); motion for evidence and lack of integrity (ECF Doc. 45); motion for orders (ECF Doc. 50); and motion for orders (ECF Doc. 53). Because the Court finds this action is subject to dismissal, all pending motions are denied as moot.¹

Conclusion

For the reasons set forth above, Plaintiff's claim challenging Defendants' aggregation of his FOIA requests is dismissed with prejudice, and his claim challenging the denial of a fee waiver is dismissed without prejudice for failure to exhaust.

¹ Some of Plaintiff's filings attempt to raise claims involving access to the law library, misconduct of corrections officials, a conspiracy against him, a conspiracy to abuse immigrants in the federal prison system, fraud, forced labor, retaliation, deprivation of property, and/or a broad "criminal enterprise." His allegations are vague and fail to state an actionable claim. Furthermore, such claims are not properly joined to this FOIA lawsuit against the United States and the Bureau of Prisons. To the extent Plaintiff is requesting leave to file an amended complaint, leave is denied.

IT IS THEREFORE ORDERED Defendants' motion to dismiss, or, in the alternative, for summary judgment (ECF Doc. 28), is **granted**. This matter is dismissed.

IT IS FURTHER ORDERED all of Plaintiff's pending motions (ECF Docs. 19, 25, 32, 33, 34, 37, 38, 39, 41, 42, 43, 44, 45, 50, and 53) are **denied** as moot.

IT IS SO ORDERED.

DATED: This 19th day of September, 2018, at Topeka, Kansas.

s/ Sam A. Crow
SAM A. CROW
U.S. Senior District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS

JUDGMENT IN A CIVIL CASE

MANETIRONY CLERVRAIN,

Plaintiff,

v.

CIVIL NO. 17-3194-SAC

UNITED STATES OF AMERICA and
BUREAU OF PRISONS,

Defendants.

- () **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- (x) **DECISION BY THE COURT.** This action came before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that defendants' motion to dismiss or, in the alternative, for summary judgment is granted.

Entered on the docket 09/19/18

Dated: September 19, 2018

TIMOTHY M. O'BRIEN, CLERK

s/S. Nielsen-Davis
Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**