

DEC 16 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BOBBY LEN FRANKLIN,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>MARK CHATTERTON; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 08-16439

D.C. No. 2:07-CV-01400-RLH-RJJ

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
Roger L. Hunt, Chief District Judge, Presiding

Submitted November 17, 2009\*\*

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Bobby Len Franklin appeals pro se from the district court’s judgment dismissing for lack of subject matter jurisdiction his actions brought under 42

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument, and grants appellees’ motion. *See* Fed. R. App. P. 34(a)(2).

U.S.C. § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and from an order imposing a pre-filing restriction on him. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

The district court properly dismissed the claims against the United States for lack of subject matter jurisdiction because Franklin failed to exhaust the required administrative procedures. *See Doria Mining and Eng'g Corp. v. Morton*, 608 F.2d 1255, 1257 (9th Cir. 1979) (“When the regulations governing an administrative decision-making body require that a party exhaust its administrative remedies prior to seeking judicial review, the party must do so before the administrative decision may be considered final and the district court may properly assume jurisdiction.”); *United States v. Alisal Water Corp.*, 431 F.3d 643, 650 (9th Cir. 2005) (stating de novo standard of review). We previously rejected Franklin’s contentions regarding the Confirmation Statute, 43 U.S.C. § 1165, and *Stockley v. United States*, 260 U.S. 532 (1923), and they remain unavailing. *See Franklin v. United States*, 46 F.3d 1140 (9th Cir. Jan. 10, 1995) (unpublished mem.); *Franklin v. United States*, 46 F.3d 1141 (9th Cir. Jan. 10, 1995) (unpublished mem.).

The district court did not abuse its discretion when it issued a pre-filing review order against Franklin, after giving him notice and an opportunity to be heard, developing a record for review, making findings regarding previous filings,

and tailoring the restriction narrowly. *See De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990) (stating standard of review and explaining factors).

Franklin's remaining contentions, including those regarding judicial recusal, are unpersuasive.

**AFFIRMED.**