

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
NEW YORK

McClellon v. United States

No. 25-CV-2988 (VSB) (BCM) (S.D.N.Y. Nov. 24, 2025) · No. 25-CV-2988 (VSB) (BCM) · Decided November 24, 2025

SUMMARY

The United States District Court for the Southern District of New York extended Donte McClellon's deadline to oppose the government's motion to dismiss his FTCA and Bivens claims until December 15, 2025. The court denied his motions for appointment of pro bono counsel and for service by the U.S. Marshals Service, finding that service was moot and that he had demonstrated an ability to litigate the case pro se. The court directed the Clerk to close those motions.

CASE DETAILS

COURT	United States District Court for the Southern District of New York
WRITING FOR THE COURT	Barbara Moses
JURISDICTION	United States District Court for the Southern District of New York
DECIDED	November 24, 2025
DOCKET	25-CV-2988 (VSB) (BCM)
DISPOSITION	other
PROCEDURAL POSTURE	The United States moved to dismiss the plaintiff's FTCA and Bivens claims under Federal Rule of Civil Procedure 12(b)(1). While that motion remained pending, the plaintiff moved for appointment of pro bono counsel and for an order directing service by the U.S. Marshals Service. The court extended the deadline for opposing the motion to dismiss and denied both plaintiff's motions.
STANDARD OF REVIEW	The court applied its discretion in deciding whether to request volunteer counsel for an indigent civil litigant and determined that service by the Marshals Service was moot because the government had appeared.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Donte McClellon v. United States of America

TOPICS

motions to dismiss

subject matter jurisdiction

civil procedure

prisoners rights

civil rights

PRACTICE AREAS

civil procedure

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QUESTIONS PRESENTED

1. Whether plaintiff's deadline to oppose the government's motion to dismiss should be extended because of repeated transfers and delayed receipt of motion papers.
2. Whether plaintiff's request for an order directing Marshals Service to serve the summons and complaint was moot after the government appeared and defended the action.
3. Whether plaintiff demonstrated sufficient merit, ability, or need to justify a request for pro bono counsel under 28 U.S.C. § 1915(e)(1).

HOLDINGS

1. The court extended plaintiff's deadline to file an opposition to the government's motion to dismiss until December 15, 2025.
2. The request for Marshals Service to serve the summons and complaint was denied as moot because the United States had appeared and was defending the action.
3. The court denied plaintiff's request for pro bono counsel because he had not shown that counsel was warranted, including because he was capable of litigating the action without assistance and the court was not persuaded that his claims had substance or a likelihood of success.

KEY QUOTATIONS

“The motion for service is moot, because the government has appeared and is defending this action.”

“As a threshold matter, plaintiff must demonstrate that his claim has substance or a likelihood of success.”

FACTUAL BACKGROUND

Donte McClellon, proceeding pro se, sought damages against the United States under the Federal Tort Claims Act and Bivens, alleging that the Bureau of Prisons failed to credit him with good-conduct time, First Step Act credits, and Residential Drug Abuse Program credits. The government moved to dismiss for lack of subject-matter jurisdiction, asserting failure to exhaust administrative remedies and sovereign immunity from constitutional tort claims for money damages. Because plaintiff had been moved among federal facilities and may not have received the motion papers promptly, the court extended his opposition deadline.

PROCEDURAL HISTORY

Plaintiff filed an action seeking damages against the United States based on alleged failure by the Bureau of Prisons to credit sentence reductions. The government moved to dismiss for lack of subject-matter jurisdiction, principally arguing failure to exhaust the FTCA claim and sovereign immunity from Bivens damages claims

against the United States. The court extended plaintiff's response deadline to December 15, 2025, denied his requests for pro bono counsel and Marshals service, and directed the Clerk to close those motions.

DISPOSITION

other

CASES CITED

- Bivens v. Six Unknown Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- McClellon v. Marshall, 24-CV-10053 (S.D.N.Y. Dec. 20, 2024)
- Hodge v. Police Officers, 802 F.2d 58, 60-61 (2d Cir. 1986)
- Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296, 301-10 (1989)
- Cooper v. A. Sargenti Co., Inc., 877 F.2d 170, 172-73 (2d Cir. 1989)
- United States v. McClellon, No. 2:22-CR-00073-LK (W.D. Wash. Oct. 19, 2025)
- McClellon v. Rikard, No. 2:24-CV-01975 (W.D. Wash. Mar. 4, 2025)
- McClellon v. Weaver, No. 2:25-CV-566 (W.D. Wash. Apr. 8, 2025)
- McClellon v. Illa, No. 2:25-CV-609 (W.D. Wash. Apr. 16, 2025)