NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-5535

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

COREY LEA, Petitioner-Appellant, v. UNITED STATES DEPARTMENT OF AGRICULTURE; SONNY PERDUE, Commissioner, Respondents-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

ORDER

(Filed Feb. 5, 2019)

Before: MOORE, GILMAN, and DONALD, Circuit Judges.

Corey Lea, a pro se Tennessee resident, appeals the district court's judgment denying his motion to reconsider its order granting the defendants' motion to dismiss his complaint under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701, 706, for improper venue and because the complaint was frivolous and failed to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Lea sued the United States Department of Agriculture (USDA) and its Secretary, accusing them of violating a federal statute that he refers to as the Farm Bill of 2008, specifically, 7 U.S.C. § 1981a(b)(1), when the USDA failed to place a moratorium on the foreclosure of his property in 2009 after he filed a race-discrimination complaint against the agency in 2008. Lea believed that a moratorium was mandated under 7 C.F.R. § 766.358, and he cited the APA as the vehicle for his lawsuit. Lea is an African American farmer whose foreclosed-upon property is located in western Kentucky.

The defendants filed a motion to dismiss. The district court granted the motion, concluding that the venue in Tennessee was improper and that even if that venue were proper, Lea's claims were frivolous. The district court also denied Lea's motions for reconsideration and to amend his petition. This is Lea's fourth appeal involving complaints about the foreclosure. *See Lea v. Warren County*, No. 16-5329 (6th Cir. May 4, 2017); *Lea v. USDA*, Nos. 14-5445/5493 (6th Cir. Dec. 18, 2014); *Lea v. USDA*, No. 11-5969 (6th Cir. Aug. 7, 2013).

Lea argues that the district court misapplied the standard of deference to agency decisions as set forth in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), when it interpreted 7 U.S.C. § 1981a(b)(1) as permitting the USDA to apply the moratorium only to direct USDA loans but not to loans from private banks. Lea also argues that the USDA erroneously denied him a hearing on the matter

and that the district court erred by failing to examine the merits of his claims before granting the defendants' motion to dismiss. Lea challenges the district court's finding that the proper venue for the case is in Kentucky, pointing out that he resides in Tennessee, that his corporation is in Tennessee, and that the defendants never objected to venue in Tennessee. Lastly, Lea implies that "the lower courts in this circuit" have discriminated against black farmers in their rulings and that the magistrate judge in this case was biased because she "has a connection" to the chain store that allegedly owns the bank that foreclosed on his property.

We review de novo the district court's dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). *McCormick v. Miami Univ.*, 693 F.3d 654, 658 (6th Cir. 2012). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In addition, we may affirm a district court's decision "on any grounds supported by the record even if different from the reasons of the district court." *Abercrombie & Fitch Stores, Inc. v. Am. Eagle Outfitters, Inc.*, 280 F.3d 619, 629 (6th Cir. 2002).

Improper Venue

The district court's determination regarding venue is a question of law that we review de novo.

> When, as here, federal jurisdiction is not based solely upon diversity of citizenship, venue is proper in (1) the judicial district where any defendant resides, if all defendants reside in the same state, (2) the judicial district where a substantial part of the events or omissions giving rise to the claim occurred, or (3) the judicial district where any defendant may be found, if there is no other district in which the action may be brought.

Lea v. Warren County, No. 16-5329, 2017 WL 4216584, at *2 (6th Cir. May 4, 2017) (citing 28 U.S.C. § 1391(b); *First of Mich. Corp. v. Bramlet*, 141 F.3d 260, 262 (6th Cir. 1998)).

Lea raises similar, if not identical, claims regarding the property foreclosure that he raised in his previous action in the Western District of Kentucky. We already determined that the Middle District of Tennessee was an improper forum for these claims. *See Lea*, 2017 WL 4216584, at *2-3. For those same reasons, the district court did not err in finding that venue was improper and that the proper venue was in Kentucky in this case.

Frivolous Claim

Nevertheless, even if venue were proper in the Middle District of Tennessee, the district court did not err in dismissing the case after finding that Lea failed to state a claim under 7 U.S.C. § 1981a(b)(1). As that court explained, the moratorium in § 1981a(b)(1) to which Lea refers applies only to foreclosure proceedings

initiated by the USDA rather than to proceedings initiated by private banks or corporations as in this case.

Regarding Lea's argument that the magistrate judge was biased in this case, Lea failed to raise this allegation in a timely manner in the district court in a motion to recuse or otherwise. The district court thus determined that Lea waived this issue, and we likewise treat the issue as waived for appellate purposes. *See Enertech Elec., Inc. v. Mahoning Cty. Comm'rs*, 85 F.3d 257, 261 (6th Cir. 1996). Moreover, a party cannot establish bias simply because the party is unhappy with a judge's ruling. *Ullmo ex rel. Ullmo v. Gilmour Acad.*, 273 F.3d 671, 681 (6th Cir. 2001). Because Lea offers only bare allegations of judicial bias, absent any support, his claim does not warrant relief.

Accordingly, we **AFFIRM** the district court's order dismissing Lea's complaint under § 1915(e)(2).

ENTERED BY ORDER
OF THE COURT

/s/ Deb S. Hunt
Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA,	)	
Petitioner,	)	
	)	
v.	)	**Case No. 3:16-cv-00735**
	)	**Hon. Terrence G. Berg**
UNITED STATES DEPARTMENT OF AGRICULTURE, et al.	)	**Hon. Alistair E. Newbern**
	)	
Defendants.	)	

ORDER CERTIFYING APPEAL IS NOT IN GOOD FAITH

(Filed Jun. 13, 2018)

Petitioner Corey Lea appeals the dismissal of his Petition for Judicial Review and the denial of his motions under Rules 59(b) and 60(b) of the Federal Rules of Civil Procedure.

Lea was granted leave to proceed *in forma pauperis* in this Court by Order entered April 18, 2016. Dkt. 3. Under Rule 24(a)(3) of the Federal Rules of Appellate Procedure, "[a] party who was permitted to proceed *in forma pauperis* in the district-court action . . . may proceed on appeal *in forma pauperis* without further authorization, unless . . . the district court . . . certifies that the appeal is not taken in good faith." Fed. R. App. P. 24(a)(3).

As set forth in the Report and Recommendation, Petitioner has filed at least eleven prior actions, in various federal courts, asserting substantially similar if not identical claims. *See* Dkt. 33, at 3 (quoting *Lea v. United States*, 126 Fed. Cl. 203, 206-08 (Fed. Cl. 2016). Moreover, as set forth in the Report and Recommendation, it is clear that the action in this Court is frivolous. For these reasons, the Court **CERTIFIES** that the appeal is not in good faith and **DENIES** leave to appeal *in forma pauperis.*

To pursue his appeal, Petitioner must, within **30 days** after entry of this Order, pay the $505.00 appellate filing fee in full **OR** file a motion for leave to appeal *in forma pauperis* directly with the Sixth Circuit Court of Appeals, as specified by Rule 24(a)(5) of the Federal Rules of Appellate Procedure, and thereafter obtain an order from that Court granting leave to proceed *in forma pauperis.* Fed. R. App. P. 24(a)(5). The motion in the Sixth Circuit must claim an entitlement to redress and state the issues Plaintiff intends to present on appeal, and it must be accompanied by an affidavit showing his inability to pay or to give security for fees and costs. Fed. R. App. P. 24(a)(1)(B) & (C). If Plaintiff chooses to file a motion for leave to appeal *in forma pauperis*, such motion should be filed at the following address: Sixth Circuit Court of Appeals, Clerk's Office, Room 540, Potter Stewart U.S. Courthouse, 100 E. Fifth Street, Cincinnati, OH 45202. Plaintiff's submission to the Sixth Circuit should display on its face the appellate number assigned to his case by the Sixth Circuit: 18-5535.

Petitioner is forewarned that failure either to submit the full $505 filing fee or to obtain leave directly from the Sixth Circuit Court of Appeals to proceed on appeal *in forma pauperis* may result in dismissal of the appeal for failure to prosecute.

The Clerk of Court is instructed to ensure that the Clerk for the Sixth Circuit Court of Appeals receives notice of this order.

SO ORDERED.

Dated: June 13, 2018

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES
DISTRICT JUDGE
Sitting by special designation

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on June 13, 2018.

s/J. Owens
Case Manager

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA, Petitioner, v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., Respondent.	Case No. 16-00735 Hon. Terrence G. Berg Hon. Alistair E. Newbern

OPINION AND ORDER DENYING PETITIONER'S MOTIONS TO RECONSIDER, FOR A NEW TRIAL, AND FOR LEAVE TO AMEND PETITION (Dkts. 37, 38)

(Filed Apr. 16, 2018)

I. Background

Presently before the Court are Petitioner Corey Lea's ("Petitioner" or "Lea") motions for reconsideration and for leave to file an amended petition. (Dkts. 37, 38). Petitioner asks this Court to reconsider its opinion and order adopting Magistrate Judge Alistair Newbern's Report and Recommendation. Dkt. 37. In that order, this Court rejected Petitioner's objections and adopted the Magistrate's recommendation of dismissal for three separate reasons: 1) improper venue pursuant to 28 U.S.C. § 1319(e)(1); 2) frivolity under 28 U.S.C. § 1915(e)(2)(B)(i); and 3) failure to state a claim under the Administrative Procedures Act pursuant to

28 U.S.C. § 1915(e)(2)(B)(ii). *See* Dkt. 35. Consequently, the Court dismissed the case and entered judgment for Respondents. Dkts. 35, 36.

Petitioner subsequently filed this motion and a motion for leave to file an amended petition. Dkts. 37, 38. In his motion for reconsideration, Petitioner "move[s] this court to reconsider based on abuse of discretion, clear error in law and manifest injustice." Dkt. 37, Pg. ID 328. Petitioner's proposed amended petition does not include the six claims advanced in his original petition. *Compare* Dkt. 1, *with* Dkt. 38-1. Instead, Petitioner's proposed amended petition seeks an order compelling "a formal hearing on the merits before the USDA's Administrative Law Judge. . . ." Dkt. 38-1, Pg. ID 339.

II. Analysis

A. Petitioner's Motion for Reconsideration

Rule 60(b) of the Federal Rules of Civil Procedure sets forth the criteria for determining whether relief from a federal court's judgment or order is warranted. It provides:

> On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time

> to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). Relief under Rule 60 is circumscribed by a public policy favoring finality of judgment and termination of litigation. *Blue Diamond Coal v. Trs. Of UMWA Combined Benefit Fund*, 249 F.3d 519, 524 (6th Cir. 2001). Moreover, the Sixth Circuit has held that "the party seeking relief under Rule 60(b) bears the burden of establishing grounds for such relief by clear and convincing evidence." *InfoHold, Inc. v. Sound Merchandising, Inc.*, 538 F.3d 448, 454 (6th Cir. 2000).

Petitioner fails to explain how the Court's order is manifestly unjust, reflects an abuse of discretion or contains clear errors of law. Petitioner also fails to identify which Rule 60(b) provision or provisions form the basis of his request for reconsideration. Rather, Petitioner's motion merely re-raises the same arguments already considered and rejected by the Magistrate Judge and this Court—namely, arguments surrounding the United States Department of Agriculture's requirement to provide moratorium relief against foreclosure proceedings in some circumstances. *See* 7 C.F.R. § 766.358

and 7 U.S.C.A. § 1981a(b)(1).[1] Accordingly, Petitioner has failed to establish through clear and convincing evidence that extraordinary circumstances justify relief from this Court's order adopting the Magistrate's report and recommendation and dismissing Petitioner's case. Petitioner's motion for reconsideration is **DENIED**.

Petitioner's motion also seeks relief on the basis of Rule 59(b) of the Federal Rules of Civil Procedure. Rule 59(b) provides that a motion for a new trial must be filed no later than 28 days after the entry of judgment. *See* Fed. R. Civ. P. 59(b). But no trial occurred in this case. Petitioner's reliance on Rule 59(b) is not supported with any argumentation in his motion and appears to be misplaced. Petitioner's motion, in so far as it seeks reconsideration or a new trial based on Rule 59(b), is **DENIED**.

B. Petitioner's Motion for Leave to File Amended Petition

Also pending before the Court is Petitioner's Motion for Leave to File a First Amended Petition. Dkt. 38. Lea points to Rule 15(a) for the proposition that "a

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[1] In his motion for reconsideration, Petitioner identifies the Court as citing and relying on 7 U.S.C. § 1981a(b)(1), but petitioner immediately thereafter cites to 7 U.S.C. § 1981(a) and 7 U.S.C. § 1981(b)(1). *See* Dkt. 37, Pg. IDs 328-29. The Court notes that 7 U.S.C. § 1981a, regarding "Loan moratorium and policy on foreclosures," is a different statute from the one quoted by Petitioner, 7 U.S.C. § 1981, which addresses "Farmers Home Administration." *Compare* 7 U.S.C. § 1981a, *with* 7 U.S.C. § 1981.

court will freely grant leave to file an amended complaint when the interests of justice so require." *Id.* at 335. Lea also references the Sixth Circuit's "liberal policy of allowing amendments to a complaint." *Id.* Lea explains that obtaining leave to amend his complaint "allows [him] to describe in further detail the jurisdiction and the Secretary taking an inaction of a non discretionary act at issue in this action, and the Secretary's authority to enforce the said non discretionary act in a variety of way[s], but not limited to." *Id.* As an initial matter, it is not clear whether Lea seeks to *add* the claim advanced in his proposed amended petition to those advanced in his original petition, or file the proposed amended petition as a stand-alone petition. Regardless, the interests of justice are not furthered by granting Petitioner's motion to amend his petition.

Petitioner seeks to amend his petition 22 months after he initiated this case. Over the course of that 22-month period, the government moved to dismiss Petitioner's case (Dkts. 22, 23), Petitioner opposed the motion (Dkt. 24), the Magistrate Judge issued a Report and Recommendation addressing Respondents' motion to dismiss and the claims raised in Petitioner's original petition (Dkt. 33), Petitioner filed objections to the recommendation (Dkt. 34), and this Court dismissed and closed Petitioner's case (Dkts. 35, 36). While Lea's proposed amended complaint alleges a basis for federal jurisdiction never before raised in this action (based on 18 U.S.C. § 1361), Petitioner's amended petition does nothing to address the defect of improper venue, which

was one of the bases for this Court's dismissal of Petitioner's petition. *See* Dkt. 35.

Furthermore, the claim advanced in Lea's proposed amended petition involves the same underlying issue as the claims advanced in Lea's initial petition in this action—relief sought regarding alleged failure by the USDA to grant a moratorium to prevent the foreclosure of Lea's farm. *See, e.g.*, Proposed Amended Petition, Dkt. 38-1, Pg. ID 342 ("There is no doubt that the Secretary delayed the Congressional mandate to provide the moratorium relief to the petitioner. . . ."). While Rule 15(a)(2) directs the Court to "freely give leave when justice so requires," justice does not require the Court to give leave to amend here, where the Court has already dismissed Petitioner's case for improper venue pursuant to 28 U.S.C. § 1319(e)(1), as frivolous under § 1915(e)(2)(B)(i), and for failure to state a claim under the Administrative Procedures Act pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

III. Conclusion

Having reviewed Petitioner's motion to reconsider pursuant to Rules 59(b) and 60, (Dkt. 37), and his motion for leave to file first amended petition, (Dkt. 38), and for the reasons expressed in this order, the Court **DENIES** Petitioner's motions.

SO ORDERED.

Dated: April 13, 2018

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES
DISTRICT JUDGE
Sitting by special designation

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA, Petitioner, v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., Respondents.	Case No. 16-00735 Hon. Terrence G. Berg Hon. Alistair E. Newbern

OPINION AND ORDER OVERRULING PETITIONER'S OBJECTIONS (DKT. 34), ADOPTING REPORT AND RECOMMENDATION (DKT. 33) AND DENYING PLAINTIFF'S PENDING MOTIONS (DKTS. 31, 32) AS MOOT

(Filed Feb. 6, 2018)

I. Introduction

This case challenges the United States Department of Agriculture's ("USDA") alleged failure to protect Petitioner from foreclosure by a private bank that held 90% of the mortgage on Petitioner's property. Petitioner, Cory Lea ("Petitioner" or "Lea") maintains the USDA violated the 2008 farm bill legislation by not enforcing a foreclosure moratorium to halt proceedings instituted against him. Lea filed a petition under the Administrative Procedure ("APA"), 5 U.S.C. § 701, *et seq.*, related to (1) the USDA's "fail[ure] [to] act on [t]he 2008 Farm Bill and the [foreclosure] moratorium relief

it provided in 7 C.F.R 766.358" for borrowers, and (2) "an accepted discrimination complaint still unresolved [at] the USDA's Office of Civil Rights." Dkt. 1, Pg. ID 2, ¶ 1-2.

Respondent USDA filed a motion to dismiss, Dkt. 22, to which Petitioner responded in opposition. Dkt. 23. Pending before the Court is Magistrate Judge Alistair E. Newbern's Report and Recommendation ("R&R"), which recommends the Court grant Defendants' Motion to Dismiss, dismiss the Petition, and deny Lea's additional pending motions as moot. *See* Dkt. 33. Lea filed Objections to the Magistrate's R&R. Dkt. 34.

For the reasons outlined below, Petitioner's objections are **OVERRULED**; the R&R is **ADOPTED**; Defendants' motion to dismiss is **GRANTED**; and Plaintiff's Motions (Dkts. 31 and 32) are **DENIED AS MOOT**.

II. Background

The relevant facts in this case were summarized in Magistrate Judge Newbern's R&R, and those facts are adopted for purposes of this order. *See* Dkt. 33, Pg. IDs 215-20.

III. Standard of Review

Any party may object to and seek review of an R&R, but must act within fourteen days of service of the R&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*,

474 U.S. 140 (1985). Filing objections that raise some issues but fail to raise others with specificity will not preserve all objections a party has to an R&R. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir. 1991). The district court must make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. 28 U.S.C. § 636(b)(1)(c).

Only those objections that are specific are entitled to a *de novo* review under the statute. *Mira v. Marshall*, 806 F.2d 606, 637 (6th Cir. 1986). "The parties have the duty to pinpoint those portions of the magistrate's report that the district court must specially consider." *Id* (internal quotation marks and citation omitted). A general objection, or one that merely restates the arguments previously presented, does not sufficiently identify alleged errors on the part of the magistrate judge. An "objection" that does nothing more than disagree with a magistrate judge's determination, "without explaining the source of the error," is not considered a valid objection. *Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509 (6th Cir. 1991).

Specific objections enable the Court to focus on the particular issues in contention. *Howard*, 932 F.2d at 509. Without specific objections, "[t]he functions of the district court are effectively duplicated as both the magistrate and the district court perform identical tasks. This duplication of time and effort wastes judicial resources rather than saving them, and runs contrary to the purposes of the Magistrate's Act." *Id.*

"[O]bjections disput[ing] the correctness of the magistrate's recommendation but fail[ing] to specify the findings [the objector] believed were in error" are too summary in nature. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (alterations added).

IV. Analysis

The gravamen of Lea's complaint is that "the [USDA] and the secretary failed to enforce its own rules and regulations and an Act of Congress that provided moratorium relief against foreclosure until a hearing on the merits by the Administrative Law Judge." Dkt. 1, Pg. ID 6. The statute at issue provides a moratorium under certain circumstances on foreclosure proceedings "instituted by the Department of Agriculture." *See* 7 U.S.C.A. § 1981a(b)(1). However, in this case the foreclosure proceedings were instituted by a private bank, and this is the foreclosure that Lea believes the USDA should have halted with a moratorium. *See, e.g.*, Dkt. 1, Pg. ID 4.

Magistrate Judge Newbern's R&R recommends the dismissal of Lea's petition for two independent reasons. First, the report finds venue for this action is not proper in the United States District Court for the Middle District of Tennessee pursuant to 28 U.S.C. § 1391(e)(1). Moreover, rather than transfer Lea's action to the Western District of Kentucky, the R&R recommends dismissal because "transferring this matter would not serve the interests of justice" and "dismissal

is the appropriate result," pursuant to 28 U.S.C. § 1406(a). Dkt. 33, Pg. IDs 222-23.

Second, even if venue were proper in the Middle District of Tennessee, the R&R recommends dismissal because Lea's petition: 1) is frivolous and therefore subject to dismissal under 28 U.S.C. § 1915(e)(2)(B)(i), and 2) fails to state a claim upon which relief may be granted under the Administrative Procedures Act, permitting dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii). Dkt. 33, Pg. IDs 223-25.

A. Objections Addressing Improper Venue

Lea's objections to the R&R are largely non-specific and summary in nature. However, it appears that Lea objects to the R&R's recommendation of dismissal for improper venue. Lea's objection states:

> The Magistrate goes on at length about improper venue due the fact that the events occurred in Kentucky. It appears that the Magistrate has confused a complaint for money and a judicial review for non monetary damages. The denial of a formal hearing on the merits constitutes a final agency action which is controlled by: § **11.13 Judicial review**.
>
> **(a)** A final determination of the Division shall be reviewable and enforceable by any United States District Court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

> It appears that the Magistrate confuses the parts of the APA, in which in the instant case, the petitioner is compelling the named Secretary of Agriculture to grant him his right to have a hearing before the administrative law judge. . . . However, the Magistrate commits a clear error in law when she cites the jurisdiction of the Court's jurisdiction under 1391(e)(1)[.]

Dkt. 34, Pg. IDs 227-29 (emphasis in original).

Lea argues that the R&R errs by recommending dismissal for improper venue because the Court has jurisdiction to hear his case. Lea relies on 7 C.F.R. § 11.13, which states: "A final determination of the Division [USDA] shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of title 5." 7 C.F.R. § 11.13. Lea argues that because 7 C.F.R § 11.13 provides jurisdiction for any district court to review and enforce determinations by the USDA, that regulation also establishes *venue* as proper in any district court anywhere in the United States. The court disagrees.

The regulation at issue, 7 C.F.R. § 11.13, is authorized under the United States Code, 7 U.S.C. § 6999. Section 6999 is a jurisdictional statute that provides for judicial review of final determinations by the National Appeals Division of the USDA before a United States District Court. *See Deaf Smith County Grain Processors, Inc. v. Glickman*, 162 F.3d 1206, 1210 (D.C. Cir. 1998) ("It has long been settled that the federal Government may be sued in federal court only if Congress has waived sovereign immunity for the lawsuit

. . . The District Court's jurisdiction over this case is founded on Congress's waiver of sovereign immunity in 7 U.S.C. § 6999."); *see also Lackey v. United States Department of Agriculture*, No. CIV-07-484-C, 2007 WL 9662594, at *1-2 (W.D. Okla. Aug. 24, 2007) (citing *Glickman*, 162 F.3d at 1210).

Lea's objection to the R&R based on 7 C.F.R. § 11.13 and 7 U.S.C. § 6999 is not well-taken. Section 6999 confers jurisdiction on the United States District Courts to review and enforce final determinations of the USDA. *See* 7 U.S.C. § 6999. The R&R does not dispute that federal courts are empowered to review and enforce USDA determinations. *See* Dkt. 33, Pg. IDs 221-23. While Section 6999 provides a jurisdictional grant to district courts to review cases such as Lea's, venue is a separate requirement and it is governed by 28 U.S.C. § 1391(e). "Jurisdiction" answers the question of what kinds of cases a court is legally allowed to hear—and federal district courts can hear appeals of USDA determinations. "Venue" answers the question of "where," or rather, which court (located in what place) is the correct one to hear the case. Not every court is the proper place, or "venue," to bring every case. The federal statutes governing venue for this kind of case, and how to deal with cases that are filed in the wrong place, are § 1391(e)(1) and § 1406(a).

Applying these two statutes, the Magistrate Judge recommends dismissal for improper venue. Dkt. 33, Pg. IDs 221-23. Lea's objections do not address the applicability of these venue statutes. In particular, the

Magistrate Judge correctly pointed out that under § 1391(e)(1):

> In an action brought against an agency or officer of the United States, venue is proper in the district in which a defendant resides, a "substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated," or "the plaintiff resides if no real property is involved in the action."

Id. at 221. Lea does not set forth any facts contradicting the Magistrate Judge's conclusion that venue was proper "in the Western District of Kentucky, where the real property that is the subject of this action is situated." *Id.* at 222. Thus, in reviewing the R&R's recommendation of dismissal for improper venue and Lea's objections, the Court finds Lea's objection is not well founded. The Court therefore adopts the R&R's recommendation of dismissal for improper venue.

B. Objections Regarding Failure to State a Claim

The R&R also recommends dismissal for the independent reason that Lea's complaint fails to state a claim under the Administrative Procedures Act. Dkt. 33, Pg. IDs 223-25. The R&R explains that the statute upon which the merits of Lea's action are based—7 U.S.C. § 1981a(b)(1)—provides for moratorium relief, in certain circumstances, from foreclosure proceedings that are "instituted by the Department of Agriculture." Dkt 33, Pg. ID 223-24 (citing 7 U.S.C. § 1981a(b)(1)).

The R&R also notes Lea's concession that in this situation, his foreclosure was initiated by a private bank. *Id.* (internal citations omitted). Thus, the report explains, Lea has not alleged a legal wrong under the APA. *Id.* at 224. That is because claims based on an alleged failure by the USDA to enact a moratorium on foreclosures that were *not* instituted by the USDA do not find relief in § 1981a(b)(1).

Lea's objections fail to specify which findings regarding the recommendation of dismissal for failure to state a claim he believes are in error. Although Lea's objections to the R&R include a section entitled "Failure to State a Claim," they do not explain what exactly the Magistrate Judge got wrong. Rather, they simply articulate a disagreement with the Magistrate Judge's determination without specifying the source of the alleged error. Thus, this section contains no valid objections. *See Howard v. Sec'y of Health and Human Servs.*, 932 F.2d 505, 509. (6th Cir. 1991).

Having reviewed the R&R, and for the reasons explained above, the Court adopts the recommendation of dismissal for failure to state a claim under the APA.

C. Objections Regarding An Alleged Res Judicata Determination

Lea also objects to the R&R because he believes it improperly dismissed his claims under the doctrine of *res judicata*. *See* Dkt. 34, Pg. IDs 231-35. However, the R&R contains no such finding of res judicata. Instead, after noting the history of Lea's many claims in the

Eastern District of Kentucky and the United States Court of Federal Claims—all arising from the same set of facts—the R&R states that "[t]he similarity of Lea's many actions and the timing of his filing in this Court show that this lawsuit does not have a proper purpose and must be dismissed as frivolous under [28 U.S.C.] § 1915(e)(2)(B)(i) and for failure to state a claim under § 1915(e)(2)(B)(ii)." Dkt. 33 Pg. ID 224-25.

Courts may deem complaints factually or legally frivolous. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (holding that courts may dismiss a complaint not only when it is "based on an indisputably meritless legal theory" but also when the "factual contentions [on which it relies] are clearly baseless")). In this case, the R&R recommends dismissal for failure to state a legal claim pursuant to the APA, and also for factual frivolity, evidenced by the plethora of actions brought by Lea in the Eastern District of Kentucky and the Court of Federal Claims based on the same set of alleged injuries and the same set of facts. Dkt. 33. This is not a finding that Lea's claims are barred under the doctrine of res judicata. Lea's objections do not undermine the reasoning set forth in the R&R in support of dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and (ii). Consequently, the Court concludes that plaintiff's objections thereto are not well taken and the recommendation should be adopted.

D. Lea's Remaining Arguments

Lea's objections also contain a request for "Relief in the nature of mandamus," where Lea cites to 28 U.S.C. § 1361 for the first time. Dkt. 33, Pg. ID 235. Lea also requests that the case be "transferred to The District of Columbia," alleging that he "has real concerns and beliefs that Magistrate New Bern [*sic*] has a causal [*sic*] connection with . . . [two individuals who] sit on the board of the private bank that foreclosed on" Lea's property. Dkt. 34, Pg. IDs 233-35.

To the extent these arguments may be construed as objections, they fail to challenge any finding or conclusion in the R&R. These are essentially new claims that were not included in his complaint. The Court will not consider new factual assertions or claims made for the first time in post-R&R objections. *See Murr v. United States*, 200 F.3d 895, 901 n. 1 (6th Cir. 2000) (parties not generally permitted to raise new arguments or claims before the district court that were not presented to the magistrate judge).

V. Conclusion

Having reviewed the R&R (Dkt. 33) and Plaintiff's objections (Dkt. 34), the Court **OVERRULES** Plaintiff's objections; the Report and Recommendation is **ADOPTED**; Defendants' motion to dismiss (Dkt. 22) is **GRANTED**; and the case is **DISMISSED**. Because the Court must dismiss the case, all other pending motions (Dkts. 31 and 32) are **DENIED AS MOOT**.

SO ORDERED.

Dated: February 6, 2018

s/Terrence G. Berg
TERRENCE G. BERG
UNITED STATES
DISTRICT JUDGE
Sitting by special designation

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on February 6, 2018.

s/J. Owens
Case Manager

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA, Petitioner, v. UNITED STATES DEPARTMENT OF AGRICULTURE, et al., Respondents.	Case No. 3:16-cv-00735 Judge Terrence Berg Magistrate Judge Newbern

To: The Honorable Terrence G. Berg, District Judge

REPORT AND RECOMMENDATION

(Filed Dec. 11, 2017)

The District Court referred this *pro se* Petition for Judicial Review under the Administrative Procedure Act to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) to dispose or recommended disposition of any pretrial motions and to conduct further proceedings, if necessary, under Rule 72(b) of the Federal Rules of Civil Procedure and the Local Rules of Court. (Doc. No. 3.)

Pending before the Court is the Motion to Dismiss of Respondent United States Department of Agriculture (USDA) (Doc. No. 22). Petitioner Corey Lea has responded in opposition. (Doc. No. 24.) For the following reasons, the undersigned RECOMMENDS that the

motion to dismiss be GRANTED and that the Petition be DISMISSED.

I. Background

Petitioner Corey Lea brings a petition under the Administrative Procedure Act (APA), 5 U.S.C. § 701, *et seq.*, related to (1) the USDA's "fail[ure] [to] act on [t]he 2008 Farm Bill and the [foreclosure] moratorium relief it provided in 7 CFR 766.358" for borrowers, and (2) "an accepted discrimination complaint still unresolved [at] the USDA's Office of Civil Rights." (Doc. No. 1, PageID# 2, ¶¶ 1-2.) It appears Lea's claims arise out of a foreclosure on Lea's property, which Lea believes the USDA should have stopped, and Lea's status as a "socially disadvantaged farmer and . . . a member of a protected class, African American." (*Id.* at PageID# 3-4, ¶ 7; PageID# 4, ¶ 8; PageID# 5, ¶ 11-12; PageID# 8, ¶ 20.) He seeks "an expedited formal hearing on the merits before the Department of Agriculture's Administrative Law Judg[e and,] if necessary, a judicial review of the ALJ's decision." (*Id.* at PageID# 9.)

Factual context is almost entirely absent from Lea's complaint in this action. However, Lea has brought substantially similar, and sometimes identical, claims in other courts which illuminate the present action. The United States Court of Federal Claims described Lea's related litigation history as follows in a 2016 order:

> This is *pro se* plaintiff Corey Lea's third action initiated in the United States Court of Federal

Claims arising from the same underlying facts filed within a two-year time period. Plaintiff alleges that, in November 2007, the now-dissolved company Corey Lea, Inc. obtained a loan from Farmers National Bank to purchase farm property. This loan was guaranteed by the United States Department of Agriculture (USDA) Farm Service Agency (FSA) through a loan guarantee agreement. As a result, Farmers National Bank held a first mortgage on 90 percent of the property, and the USDA FSA held a second mortgage on 10 percent of the property. Mr. Lea attached the loan guarantee agreement to the complaint filed in the current action, which identifies "COREY LEA, INC." as the "Borrower," and "FARMERS NATIONAL BANK" as the "Lender." (capitalization in original). Although plaintiff did not provide a copy of the second mortgage held by the USDA FSA with his complaint, defendant provided a copy of this second mortgage as an attachment to its motion to dismiss. This second mortgage document identifies the mortgagor as "COREY LEA, INCORPORATED." (capitalization in original).

Subsequently, in December 2007, plaintiff alleges that he secured a loan from Independence Bank to fund the construction of a new house on the property and to refinance the existing loan from Farmers National Bank. According to plaintiff, he requested a loan subordination from the USDA, however, the USDA denied the request after conducting an appraisal of the property and appraising the value of the property at $18,035.00 less than

the amount of debt that plaintiff would incur with the new loan, if completed. Following this denial, plaintiff filed a complaint with the USDA Office of Civil Rights, which was received by the USDA on May 1, 2008, alleging that the denial of the loan resulted from racial discrimination. It is not clear from the record in [this] case how these allegations were resolved.

In February 2009, Farmers National Bank initiated a foreclosure action on the farm property due to a failure to make payments for five months. Plaintiff alleges that, by July 28, 2009, the office of the USDA FSA responsible for adjudicating plaintiff's discrimination complaint had requested suspension of the foreclosure action. In October 2009, however, Farmers National Bank was granted a Judgment and Order of Sale as to the farm property. Thereafter, plaintiff filed multiple suits in the United States District Court for the Western District of Kentucky, and the United States Court of Federal Claims, "seeking an injunction against the farm's foreclosure as well as damages for the USDA's alleged earlier discrimination."

In addition to [the present] case, which the court refers to as *Lea IV*, plaintiff, Corey Lea, has filed at least eleven separate actions within the federal judiciary system based on the same set of facts, including: *Lea v. United States*, No. 3:16–CV–00735 (M.D. Tenn. April 13, 2016) (ongoing); *Lea v. Farmers Nat'l Bank*, No. 3:15–CV–00595 (M.D. Tenn. May

27, 2015) (finding plaintiff's case "to be legally frivolous by reason of improper venue"); *Lea v. United States*, No. 14–44C, 2014 WL 2101367 (Fed. Cl. May 19, 2014) *(Lea I), aff'd in part, vacated in part*, 592 Fed. Appx. 930 (Fed. Cir. 2014) *(Lea II)* (voluntarily dismissed); *Lea v. United States*, 120 Fed. Cl. 440 *(Lea III)* (granting defendant's motion to dismiss); *Lea v. United States*, No. 14–CV–00040–TBR (W.D. Ky. May 29, 2014) (dismissing plaintiff's complaint for violation of the sanctions against him); *Lea v. United States*, No. 13–CV–00110–JHM (W.D. Ky. Feb. 6, 2014) (finding plaintiff's claims frivolous and issuing sanctions enjoining plaintiff from filing related civil claims), *aff'd*, No. 14–5493 (6th Cir. Dec. 18, 2014), *cert. denied*, Case No. 14–8315 (April 6, 2015); *Lea v. United States*, No. 10–CV–00052–JHM (W.D. Ky. Jul. 11, 2013) (granting defendants' motion to dismiss), *aff'd*, No. 14–5445 (6th Cir. Dec. 18, 2014), *cert. denied*, Case No. 14–8315 (April 6, 2015); *Lea v. United States*, 1:11–CV–00094–JHM (W.D. Ky. Aug. 26, 2011) (transferred to Sixth Circuit at plaintiff's request); *Lea v. United States*, No. 10–CV–00029–JHM (W.D. Ky. Jan. 19, 2011) (granting defendants' motion to dismiss), *aff'd*, No. 11–5969 (6th Cir. Aug. 7, 2013); *Lea v. Kentucky*, 1:09–CV–0056–TBR (W.D. Ky. April 20, 2010) (granting defendants' motion to dismiss); *Lea v. Farmers Nat'l Bank*, 1:09–CV–00075–JHM–ERG (W.D. Ky. July 21, 2009) (granting defendants' motion to dismiss and finding that *pro se* plaintiff Corey

Lea cannot pursue claim on behalf of corporation, Corey Lea, Inc.).

A number of *pro se*, plaintiff Corey Lea's prior complaints have been dismissed and found frivolous. For example, the United States District Court for the Western District of Kentucky specifically issued sanctions against plaintiff for his "submission of frivolous and duplicative lawsuits" and enjoined "Plaintiff Corey Lea" and his corporate affiliate, "Corey Lea, Inc.," from "filing any civil lawsuit in the United States District Court, Western District of Kentucky alleging or asserting factual or legal claims based upon or arising out of any of the legal or factual claims alleged" in plaintiff's previous actions. *Lea v. United States*, No. 13–CV–00110–JHM, ECF No. 64 (emphasis in original). The District Court explained:

> Plaintiff's repeated filing of civil actions re-hashing the same arguments is improper and harassing and clearly unwarranted. His submission of frivolous and duplicative lawsuits serves no legitimate purpose, places a tremendous burden on this Court's limited resources, and deprives other litigants with meritorious claims of the speedy resolution of their cases. The similarity of Plaintiff's actions and the timing evince his bad faith and improper purpose in filing the

> present action. As such, it is appropriate for this Court to impose sanctions upon Plaintiff.

Id.

Lea v. United States, 126 Fed. Cl. 203, 206-08 (Fed. Cl. 2016).

In May 2015, Lea initiated a separate action in this Court against the USDA, among other defendants, alleging discrimination and a violation of 7 C.F.R § 766.358. Complaint at 4–5, 11, *Lea v. Farmers Nat'l Bank*, No. 3-15-cv-00595 (M.D. Tenn. May 27, 2015), ECF 1. On February 23, 2016, the Court dismissed Lea's complaint on the grounds of frivolity based on improper venue. *Lea v. Farmers Nat'l Bank*, No. 3:15-cv-00595, 2016 WL 727775, at *1 (M.D. Tenn. Feb. 23, 2016). The Sixth Circuit affirmed that dismissal. *Lea v. Warren County*, No. 16-5329, 2017 WL 4216584, at *1 (6th Cir. May 4, 2017).

Lea filed the instant petition on April 13, 2016. (Doc. No. 1.) In it, Lea states that "the Secretary of the United States Department of Agriculture terminated the financial [assistance] provided to [Lea] in the form of a direct loan and loan guarantee to a local bank." (Doc. No. 1, PageID# 3, ¶ 5.) Construing his minimal allegations in the light most favorable to him, Lea claims that the USDA failed to protect him from foreclosure by not enforcing the foreclosure moratorium period imposed by the 2008 farm bill legislation, 7 C.F.R. § 766.358, against the private bank that held

his loan.[1] (*See* Doc. No. 1, PageID# 3-4, ¶ 7.) He cites the USDA's "long history of racial discrimination" and states that the "Secretary could have prevented the employees of the USDA from conspiring with the private bank to perfect an illegal provision." (*Id.* at PageID# 5, ¶ 12.) Lea states that he has "an accepted discrimination complaint still unresolved [at] the USDA's Office of Civil Rights." (*Id.* at PageID# 2, ¶ 2.) In response to Lea's request for a hearing on the merits of his complaint, "[t]he ALJ stated she was without jurisdiction to hold . . . the formal hearing on the merits[.]" (*Id.* at PageID# 3, ¶ 6.) Lea asserts that "the USDA has written rules against the constitution by not allowing black farmers to have a formal hearing before the Administrative Law Judge" while "a similar[ly] situated white male farmer" can. (*See id.* ¶ 4.) He asks for "an expedited formal hearing on the merits before the Department of Agriculture's Administrative Law Judg[e and,] if necessary, a judicial review of the ALJ's decision." (*Id.* at PageID# 9.)

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[1] The Food and Energy Conservation Act (or 2008 "Farm Bill") instituted a moratorium with respect to certain farmer program loans "on all acceleration and foreclosure proceedings instituted by the Department of Agriculture against any farmer or rancher" with a claim of program discrimination against the USDA. 7 U.S.C. § 1981a(b)(1). The Western District of Kentucky found, however, that the bill did not preclude foreclosure due to Lea's discrimination claim because 7 U.S.C. § 1981a "limited the moratorium solely to those foreclosures 'instituted by the Department of Agriculture,' " and a private bank, not the USDA, instituted the foreclosure proceedings in Lea's case. *Lea v. U.S. Dep't of Agric.*, No. 1:10-cv-00029, 2011 WL 182698, at *3-4 (W.D. Ky. Jan. 19, 2011).

The USDA filed its motion to dismiss on August 31, 2016. (Doc. No. 22.) In it, the United States assumes that Lea "seeks review of the two (2) most recent related decisions in the [United States Court of Federal Claims] out of the many adverse decisions against [Lea] in that court." (Doc. No. 23, PageID# 104.) The United States cites decisions from the Court of Federal Claims issued on April 25, 2016 and May 10, 2016. (*Id.*) In those decisions, the Court of Federal Claims found that Lea's claims "based on alleged takings, tort, and implied-in-fact contract" were collaterally estopped by prior decisions of that court against him and that Lea's remaining breach of contract claims were properly brought by Lea's corporate entity, Corey Lea, Inc., and not Lea personally. (*Id.* at PageID# 105-06.) The United States argues that Lea "does not plead any sufficient facts upon which relief can be granted in his Petition to challenge the decisions made by the Claims Court." (*Id.* at PageID# 106.)

II. Legal Standard

Rule 8(a)(2) of the Federal Rules of Civil Procedure states that a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Such a statement ensures that defendants receive "fair notice of what the . . . claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to

relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). In deciding whether the plaintiff has set forth a "plausible" claim, the court must accept as true the factual allegations (but not legal conclusions) in the complaint. *Iqbal*, 556 U.S. at 678.

Pro se complaints, no matter how "inartfully pleaded," are held to "less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Where a plaintiff proceeds *in forma pauperis*, "the court shall dismiss the case at any time if the court determines that the action or appeal fails to state a claim on which relief may be granted . . . " 28 U.S.C. § 1915(e)(2)(B)(ii). The court shall also dismiss any action it finds to be frivolous or maliciously filed. *Id.* § 1915(e)(2)(B)(i).

III. Analysis

As a threshold matter, the undersigned notes that the United States' motion to dismiss is based upon a faulty assumption that Lea's current petition challenges the April 25, 2016 and May 10, 2016 decisions of the Court of Federal Claims. (*See* Doc. No. 23, PageID# 104.) Lea's petition in this Court was filed on April 13, 2016, and thus could not be in response to those later-filed decisions. (*See* Doc. No. 1.) Because the United States offers no other basis for its motion, it does not provide grounds for the dismissal of Lea's complaint. However, because Lea proceeds *in forma*

pauperis in this action, the Court has an independent obligation to determine "at any time" whether the complaint is frivolous, maliciously filed, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2(B)(i)-1915(e)(2)(B)(ii). The undersigned will therefore evaluate Lea's complaint under that statute.

A. Venue

This Court has previously found, and the Sixth Circuit has affirmed, that the Middle District of Tennessee is not the proper venue for an action stemming from the foreclosure of Lea's property. *Lea v. Farmers Nat'l Bank (Lea I)*, No. 3:15-CV-00595, 2016 WL 727775, at *1 (M.D. Tenn. Feb. 23, 2016); *Lea v. Warren County (Lea II)*, No. 16-5329, 2017 WL 4216584, at *2 (6th Cir. May 4, 2017). Although the United States does not challenge venue in this case, the Court must consider sua sponte whether a lack of venue renders this matter legally frivolous under the *in forma pauperis* statute, as the Sixth Circuit found Lea's prior action to be. *Lea II*, 2017 WL 4216584, at *2. The undersigned finds that it does.

In an action brought against an agency or officer of the United States, venue is proper in the district in which a defendant resides, a "substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of the property that is the subject of the action is situated," or "the plaintiff resides if no real property is involved in the action." 28 U.S.C.

§ 1391(e)(1). It appears that Lea's claims here again center on the property located in the Western District of Kentucky and the USDA's actions surrounding its foreclosure. (Doc. No. 1, PageID#4, ¶ 7; Doc. No. 24-1, PageID# 168.) Although Lea frames this action as a challenge to the administrative law judge's failure to hold a hearing on the merits of his civil rights complaint, and not as a direct challenge to the foreclosure of his property, the foreclosure and the events surrounding it still constitute the heart of Lea's claims. As the Sixth Circuit found, "the subject property was located in Kentucky, it was sold in Kentucky, litigation regarding the property had already been brought in Kentucky courts, and Lea himself resided in Kentucky during the time of the foreclosure and the sale of the subject property." *Lea II*, 2017 WL 4216584, at *2. Thus, a "substantial part of the events or omissions giving rise" to Lea's claims occurred in the Western District of Kentucky, where the real property that is the subject of this action is situated. 28 U.S.C. § 1391(e)(1). Venue is proper in that district and not the Middle District of Tennessee.

Upon finding a case to be improperly filed in its district, a court "shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought." 28 U.S.C. § 1406(a). Lea's case would find proper venue in the Western District of Kentucky. However, it appears that Lea has been "permanently enjoined from filing any civil lawsuit in the United States District Court, Western District of Kentucky alleging or asserting factual

or legal claims based upon or arising out of [the foreclosure]." *Lea v. U.S. Dep't of Agric.*, No. 114CV-40-R, 2014 WL 2435903, at *1 (W.D. Ky. May 29, 2014).[2] Because Lea must "seek leave and written permission to file [an action in the Western District of Kentucky] and certify under oath or affirmation that the action involves new matters in accordance with the sanctions entered against him" before filing any new action in that district, the undersigned finds that transferring this matter would not serve the interest of justice and that dismissal is the appropriate result. *Id.*

B. Failure to State a Claim Under the Administrative Procedures Act

Even if venue were proper in this district, Lea's petition does not state a claim upon which relief may be granted because the petition's few facts do not allege that Lea has suffered a legal wrong within the meaning of the Administrative Procedures Act (APA). To state a claim under the APA, a petitioner must plead that "the challenged agency action caused them to suffer a 'legal wrong' or 'adversely affected or aggrieved' them 'within the meaning of a relevant statute.'" *Herr v. U.S. Forest Serv.*, 803 F.3d 809, 818 (6th Cir. 2015) (quoting 5 U.S.C. § 702). Second, the petitioner must plead that a statute has subjected the challenged agency action to review, or that the

[2] Lea filed his first action in this Court shortly after he was enjoined from proceeding in the Western District of Kentucky. *See* Complaint, *Lea v. Farmers Nat'l Bank*, No. 3:15-cv-00595 (M.D. Tenn. May 27, 2015), ECF 1.

challenged action is a "final" one "for which there is no other adequate remedy in a court." *Berry v. U.S. Dep't of Labor*, 832 F.3d 627, 632 (6th Cir. 2016) (quoting 5 U.S.C. § 704). An action is "final" when it marks "the consummation of the agency's decisionmaking process" and determines "rights or obligations." *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (internal quotations omitted).

Lea first pleads that "[t]he agency and the secretary failed to enforce its own rules and regulations and an Act of Congress that provided moratorium relief against foreclosure until a hearing on the merits by the Administrative Law Judge." (Doc. No. 1, PageID# 6, ¶ 15.) This claim fails because the Western District of Kentucky has held, and the Sixth Circuit has affirmed, that the plain language of the statute Lea references provided a moratorium only on foreclosures "instituted by the Department of Agriculture," 7 U.S.C. § 1981a(b)(1), and Lea concedes that a "private bank" initiated his foreclosure. *Lea v. U.S. Dep't of Agric.*, No. 1:10-CV-00029, 2011 WL 182698, at *4 (W.D. Ky. Jan. 19, 2011), *aff'd*, Order at 5-6, *Lea v. U.S. Dep't of Agric.*, No. 11-5969 (6th Cir. Aug. 7, 2013), ECF 95; (Doc. No. 1, PageID# 4, ¶ 7). Lea has not alleged a legal wrong under the APA; moreover, any claim he might have raised has already been determined.

Further, Lea does not include any facts to show what harm he has suffered because he did not have a hearing on the merits before the ALJ or what contracts USDA failed to enforce. (*See* Doc. No. 1, PageID# 7, ¶ 17.) Although Rule 8 does not demand that a plaintiff

make "detailed factual allegations," *Twombly*, 550 U.S. at 555, Lea's unsupported assertion that denial of the hearing "caused harm" is exactly the sort of "unadorned, the-defendant-unlawfully-harmed-me accusation" that the Supreme Court has found does not adequately state a claim. *Iqbal*, 556 U.S. at 678; (Doc. No. 1, PageID# 7, ¶ 17). Dismissal is therefore appropriate under § 1915(e)(2)(B)(ii).

Finally, although Lea brings his claims under a different cause of action than that alleged in prior suits, he seeks relief for the same injuries that have been litigated many times over. Lea's numerous cases in the Western District of Kentucky and the Court of Federal Claims—all arising from the same facts—make dismissal of Lea's case as frivolous appropriate under 28 U.S.C. § 1915(e)(2)(B)(i). *See Holder v. City of Cleveland*, 287 F. App'x 468, 471 (6th Cir. 2008) ("Where two successive suits seek recovery for the same injury, a judgment on the merits operates as a bar to the later suit, even though a different legal theory of recovery is advanced in the second suit." (quoting *Cemer v. Marathon Oil Co.*, 583 F.2d 830, 832 (6th Cir. 1978) (per curiam)); *Taylor v. Reynolds*, 22 F. App'x 537, 538 (6th Cir. 2001) (affirming dismissal of action as frivolous because claim preclusion barred "all claims by the parties or their privies based on the same cause of action, as to every matter actually litigated as well as every theory of recovery that could have been presented"). Lea has found a new bottle, but the wine is old. The similarity of Lea's many actions and the timing of his filing in this Court show that this lawsuit

does not have a proper purpose and must be dismissed as frivolous under § 1915(e)(2)(B)(i) and for failure to state a claim under § 1915(e)(2)(B)(ii).

IV. Recommendation

In light of the foregoing, the Magistrate Judge RECOMMENDS that Defendants' Motion to Dismiss (Doc. No. 22) be GRANTED and that the Petition be DISMISSED. The Magistrate Judge further RECOMMENDS that Lea's additional pending motions be DENIED AS MOOT. (Doc. Nos. 25, 31, 32.)

Any party has fourteen (14) days after being served with this Report and Recommendation in which to file any written objections to it with the District Court. Any party opposing said objections shall have fourteen (14) days after being served with a copy thereof in which to file any responses to said objections. Fed. R. Civ. P. 72(b)(2). Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of the matters disposed of therein. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Cowherd v. Million*, 380 F.3d 909, 912 (6th Cir. 2004).

Entered this 8th day of December, 2017.

/s/ Alistair E. Newbern
ALISTAIR E. NEWBERN
United States
Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

COREY LEA	]	
Petitioner,	]	
v.	]	**No. 3:16-0735**
UNITED STATES DEPARTMENT OF AGRICULTURE, et al.	]	**Judge Campbell**
Respondents.	]	

ORDER

(Filed Apr. 18, 2016)

The Court has before it a *pro se* Petition for Judicial Review (Docket Entry No. 1) under the Administrative Procedures Act, 5 U.S.C. § 701, *et seq.*, and an application to proceed in forma pauperis (Docket Entry No. 2).

The petitioner is a resident of Arrington, Tennessee. It appears from his application that he lacks sufficient financial resources from which to pay the fee required to file the Petition. Therefore, the Clerk will file the Petition in forma pauperis. 28 U.S.C. § 1915(a).

The Court has reviewed the complaint and finds that it is not facially frivolous. Accordingly, the Clerk is directed to ISSUE PROCESS to the defendants. The United States Marshal is directed to SERVE PROCESS on the defendants.

This action is REFERRED to the Magistrate Judge to enter a scheduling order for the management of the case, to dispose or recommend disposition of any pre-trial motions under 28 U.S.C. §§ 636(b)(1)(A) and (B), and to conduct further proceedings, if necessary, under Rule 72(b), Fed.R.Civ.P., and the Local Rules of Court.

It is so ORDERED.

/s/ Todd Campbell
Todd Campbell
United States District Judge

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:	)	Docket Nos. 11-0180 &
	)	11-0252
Corey Lea,	)	
Petitioner	)	**Decision and Order**

PROCEDURAL HISTORY

On August 29, 2016, Corey Lea filed an "Amended Petition for Review and Expedited Formal Request For a Hearing Before the Administrative Law Judge" [Amended Petition][1] seeking a hearing before the Office of Administrative Law Judges, United States Department of Agriculture [OALJ], and a copy of the "running record."[2] On September 21, 2016, the Assistant Secretary for Civil Rights, United States Department of Agriculture [ASCR], filed an "Agency

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[1] Mr. Lea captions his Amended Petition: "Corey Lea For Dissolved Corporations Corey Lea Inc. Start Your Dreams Inc. and Cowtown Foundation Inc." Administrative Law Judge Janice K. Bullard [ALJ] captioned Docket Nos. 11-0180 and 11-0252: "Corey Lea, Corey Lea Inc., Start Your Dream [sic] Inc., and Cowtown Foundation, Inc." *See* Lea, Docket Nos. 11-0180 & 11-0252, 2011 WL 2854039 (U.S.D.A. June 2011) (Order Den. "Motion to Review and Reconsider" and Redirecting Pet'r's Mot. to Office of Assistant Secretary for Civil Rights). I have captioned Docket Nos. 11-0180 and 11-0252 "Corey Lea" because Mr. Lea filed the Amended Petition on his own behalf only and because I infer, based on Mr. Lea's Amended Petition, the corporate charters for Corey Lea, Inc., Start Your Dream, Inc., and Cowtown Foundation, Inc., have terminated.

[2] Mr. Lea does not indicate what he means by the "running record."

Response," and, on September 23, 2016, the Hearing Clerk, Office of Administrative Law Judges, United States Department of Agriculture, transmitted the record to the Office of the Judicial Officer for consideration of Mr. Lea's Amended Petition and issuance of a decision. On October 14, 2016, Mr. Lea filed "Petitioners [sic] Response to Agency Motion to Dismiss."

DISCUSSION

Mr. Lea asserts two bases for granting his request for a hearing before the OALJ. First, Mr. Lea contends 7 C.F.R. § 2.25(a)(1)(i) authorizes the ASCR to refer this proceeding to an administrative law judge (Am. Pet. at 1). However, 7 C.F.R. § 2.25(a)(1)(i), by its terms, delegates authority from the Secretary of Agriculture to the ASCR and does not relate in any way to the OALJ:

> **§ 2.25 Assistant Secretary for Civil Rights.**
>
> (a) The following delegations of authority are made by the Secretary to the Assistant Secretary for Civil Rights:
>
> (1) Provide overall leadership, coordination, and direction for the Department's programs of civil rights, including program delivery, compliance, and equal employment opportunity, with emphasis on the following:
>
> (i) Actions to enforce Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, prohibiting discrimination in federally assisted programs.

7 C.F.R. § 2.25(a)(1)(i). Therefore, I reject Mr. Lea's contention that 7 C.F.R. § 2.25(a)(1)(i) authorizes the ASCR to refer this proceeding to the OALJ.

Second, Mr. Lea, citing the ALJ's May 26, 2011 Decision and Order Dismissing Petition,[3] contends that termination of federal assistance automatically triggers a hearing before an administrative law judge under "7 C.F.R. §§ 15.8(c), 10(f), 10(g), and Subpart C" (Am. Pet. at 1; Petitioners [sic] Resp. to Agency Mot. to Dismiss ¶ 1 at 1).[4] However, Mr. Lea misreads the ALJ's May 26, 2011 Decision and Order Dismissing Petition, in which the ALJ states that the rules that apply to discrimination in federal-assistance programs do not automatically provide Mr. Lea with the right to a hearing and that Mr. Lea has no right to a hearing before the OALJ:

> *7 C.F.R. Part 15 Subparts A and C*
>
> Some of Petitioners' allegations may be construed to fall within the auspices of USDA's regulations implementing title VI of the Civil Rights Act of 1964 . . . , as the complaints ostensibly involve guaranteed loans. Part 15 Subpart A prohibits discrimination against a participant in a USDA-assisted

[3] Lea, 70 Agric. Dec. 385 (U.S.D.A. 2011) (Decision and Order Dismissing Pet.).

[4] The ASCR correctly notes that neither 7 C.F.R. § 10(f), nor 7 C.F.R. § 10(g), nor 7 C.F.R. § Subpart C exists. *See* Sept. 21, 2016 Agency Resp. at 1 n. 1. However, based on Mr. Lea's filings, I find Mr. Lea intended to reference provisions within 7 C.F.R. pt. 15, namely, 7 C.F.R. § 15.10(f), 7 C.F.R. § 15.10(g), and 7 C.F.R. pt. 15, subpart C.

program or activity. 7 C.F.R. § 15.3. However, the rules that apply to discrimination in federal financial assistance programs do not automatically provide Petitioners with the right to a hearing. The regulations authorize the OASCR to determine the manner in which complaints under this Subpart shall be investigated, and whether remedial action is warranted. 7 C.F.R. § 15.6. The regulations specifically allow applicants or recipients to request a hearing before OALJ if the applicant or recipient is adversely affected by an Order of the Secretary suspending, terminating, or refusing to continue Federal financial assistance; and the Secretary subsequently denies a request to restore eligibility for the assistance. 7 C.F.R. §§ 15.8(c); 10(f); 10(g); Subpart C. There is no evidence of a specific Order by the Secretary suspending or terminating Federal financial assistance to Petitioners, or an Order by the Secretary refusing to continue or grant the same. Similarly, there is no evidence that Petitioners requested the Secretary to restore their eligibility for assistance, which is the event that triggers the right to a hearing. Accordingly, Petitioners are not entitled to a hearing under [7 C.F.R.] §§ 15.[]9 and 15.10.

Authority of Secretary to Delegate Responsibility for Final Determination

In addition, the regulations empower the Secretary to assign responsibilities to other agencies to effectuate the purposes of [title VI of the Civil Rights Act of 1964]. 7 C.F.R.

> § 15.2(c). As OASCR has moved for dismissal of Petitioners' complaints with OALJ, it is axiomatic that the complaints were not referred to OALJ for a hearing and Petitioners have no right to a hearing pursuant to [7 C.F.R.] § 15.12(c).

Lea, 70 Agric. Dec. 385, 390-91 (U.S.D.A. 2011) (Decision and Order Dismissing Pet.) (footnotes omitted). I agree with the ALJ's discussion regarding Mr. Lea's right to a hearing before the OALJ. Therefore, I reject Mr. Lea's contention that he is entitled to a hearing before the OALJ pursuant to 7 C.F.R. pt. 15.

For the foregoing reasons, the following Order is issued.

ORDER

Mr. Lea's Amended Petition, filed August 29, 2016, is dismissed.

Done at Washington, DC

December 1, 2016

William G. Jenson
Judicial Officer

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY

Docket No. 11-0180

In re: COREY LEA,COREY LEA INC., START YOUR DREAM INC., and COWTOWN FOUNDATION, INC.,[1]

Petitioners

DECISION AND ORDER DISMISSING PETITION

I. Procedural History

On March 31, 2011, Corey Lea (Petitioner)[2] filed a petition for a hearing before the Office of the Office of [sic] Administrative Law Judges (OALJ) for the United States Department of Agriculture (Secretary; USDA) regarding the denial of complaints of discrimination that he had filed with USDA's Office of the Assistant Secretary for Civil Rights (OASCR). In a Decision issued March 25, 2010, OASCR dismissed Petitioner's complaints, which alleged that he had been discriminated against by USDA's Farm Service Agency (FSA). Petitioner invoked the Administrative Procedures Act (APA), 5 U.S.C. §551, et seq., as authority for OALJ to conduct the requested hearing and review of the OASCR's determinations.

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[1] I have amended the original caption of this case to include the additionally named petitioning parties.

[2] Throughout this Decision and Order "Petitioner" refers to Corey Lea, whose pleadings variably identified himself as "Plaintiff", "Complainant" and "Petitioner".

In an amended petition filed on April 18, 2011, Petitioner asserted that his request for a hearing was permitted by the APA because OASCR failed to issue a final determination within 180 days of his complaint of May 1, 2008. Petitioner further asserted that as a member of the class addressed in the Consent Decree and subsequent rulings in the matter of *Pigford et al v. Dan Glickman, Secretary, United States Department of Agriculture*[3], he has standing to request a hearing in the denial of his complaints.

On April 25, 2011, OASCR filed a response asserting that OALJ had no authority to conduct a hearing or otherwise assume jurisdiction over Petitioner's complaints. OASCR moved for dismissal of Petitioner's petitions for a hearing.

On May 2, 2011, duplicated on May 9, 2011, Petitioner filed a memorandum opposing the dismissal of his request for a hearing before OALJ. In addition, Petitioner filed an administrative tort claim for property damage and personal injury, requesting relief in the amount of $10,000,000.

On May 9, 2011, Petitioner moved to supplement his statement of jurisdiction to assert that OALJ has jurisdiction to hold a hearing in the instant matter pursuant to Section 741 and 7 C.F.R. §15f et seq.

On May 19, 2011, Petitioner filed another document titled "Original Complaint", which included

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[3] 185 F.R.D. 82 (D.D.C. 1999); 206 F.3d 1212 (D.C. Cir. 2000); 127 F. Supp. 2nd 35 (2001).

additionally named "Petitioners"[4]. Additional claims of discrimination were alleged.

II. Issues

1. Whether Petitioners are entitled to a hearing before OALJ regarding the Secretary's dismissal of complaints of discrimination;
2. Whether OALJ has authority to order USDA to disclose information and provide documents to Petitioners pursuant to the Freedom Of Information Act (FOIA), 5 U.S.C.§552.
3. Whether OALJ has authority to determine whether Petitioners are entitled to damages for property damage and personal injury pursuant to the Torts Claim Act (FTCA), 28 U.S.C. §1346(b).

III. Factual History

1. Background

Two class-action lawsuits filed in 1997 and 1998 alleged that the USDA had discriminated against African-American farmers on the basis of race. The cases were consolidated and settled in 1999 by a consent decree (Decree) entered on April 14, 1999 by the Honorable Paul Friedman of the U.S. District Court for the District of Columbia. 185 F.R.D. 92 (1999). The Decree

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[4] Hereafter, all references to "Petitioners" shall be construed to include all individuals named as Complainant, Petitioner or Plaintiff in the pleadings filed with OALJ.

certified a class of individuals defined generally as all African-American farmers who farmed or attempted to farm between January 1, 1981 and December 31, 1996; who had applied to USDA for federal farm credit or benefits; and who believed that they were discriminated against and had filed a discrimination complaint on or before July 1, 1997.

To be eligible for relief under the Decree, individuals were required to comply with filing procedures, meet time limitations, and provide certain evidence. The Decree allowed individuals to choose between two separate tracks of relief, and an individual's choice of remedy was "irrevocable and exclusive". See, Decree at Paragraph 5(d). In addition, individuals who otherwise qualified for relief but failed to timely file a complete claim could petition the Court for an extension of time if extraordinary circumstances prevented compliance with the time limitations. Individuals also had the right to opt out of the class and pursue relief on an individual basis.

The Decree further provided that individuals who had not filed a discrimination complaint until after July 1, 1997 would be entitled to relief if they could establish that they had attempted to pursue a remedy but filed defective pleadings; or failed to file a timely complaint in reliance upon inducement by USDA officials; or were prevented from filing a timely complaint due to extraordinary circumstances. Under the terms of the Decree, USDA was enjoined from pursuing foreclosure actions against class members. In addition, all members who established discrimination were entitled

to priority consideration of their applications for credit for up to five years after the entry of the Decree.

Because many potentially eligible class members did not timely file their claims under the Decree, Section 14012 of the 2008 Farm Bill provided class members with a new right to sue in federal district court, or in the alternative, the right to seek an expedited review based upon the remedies set forth in the Decree. All lawsuits filed under the auspices of the 2008 Farm Bill have been consolidated into one case, *In re Black Farmers Discrimination Litigation*, 08-mc-0511 (D.D.C.), which is pending before Judge Friedman. In addition, Judge Friedman ordered USDA to establish a neutral website to provide information regarding these claims, and the address for the site is as follows:

http://www.blackfarmercase.com/index.php?option=com_content&view=article&id=52&Itemid=58. The website posts a list of all lawsuits now consolidated before Judge Friedman. The list does not include a suit filed by any of the Petitioners in the instant matter.

2. Petitioners' Allegations

In the first petition before OALJ, Petitioner asserted that he filed complaints of discrimination that charged FSA with willful and erroneous devaluation of his property on appraisal. Petitioner alleged that his property was foreclosed in violation of the Decree's

cease and desist Order[5]. Petitioner further charged FSA with violations of FOIA and requested an order directing USDA to disclose records.

In his amended complaint before OALJ, Petitioner again alleged that the appraisal method used by FSA with respect to his property and the foreclosure action taken against his property represented violations of civil rights law.

In another "Original Complaint" that identified additional Petitioners, it was alleged that FSA employees engaged in discriminatory acts concerning applications for federal financial assistance. Petitioners sought remedies in tort for property loss and personal injury.

IV. DISCUSSION

I find it appropriate to consolidate all of the petitions and causes of action for disposition in the instant Decision and Order.

1. OALJ Lacks jurisdiction to Hold a Hearing to Review Petitioners' Complaints of Discrimination

Part 15d of 7 C.F.R. sets forth the nondiscrimination policy of USDA regarding programs or activities in which agencies of USDA provide benefits directly to

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[5] Though Petitioner does not specifically refer to the Decree, I infer as much from his pleadings and references.

persons, and establishes the process for administrative review of complaints of discrimination. 7 C.F.R. §15d.1. individuals who believe that they have been subjected to discrimination on the grounds of race, color, religion, sex, age, national origin, marital status, familial status, sexual orientation, disability, or financial status may file a written complaint with the Director of the Office of Civil Rights, USDA, within 180 calendar days from the date of the discrimination. 7 C.F.R. §§15d.2, and 4 (a) and (b). The Director is authorized to investigate complaints and make final determinations as to the merits of the complaint and to order corrective actions arising from the complaints. 7 C.F.R. §15d.4 (b).

Petitioners' complaints fall within the scope of Part 15d, as their allegations of discrimination concern eligibility for farm loans and intentional discriminatory practices by FSA employees. The prevailing regulations do not provide the right to a hearing regarding the OASCR's conclusions. as the rules specifically state that the Office of Civil Rights "will make final determinations as to the merits of complaints . . . and as to the corrective actions required to resolve program complaints." 7 C.F.R. §15d.4(b). Congress may authorize agencies to promulgate such regulations deemed necessary to implement a statute. U.S. Const., Article I, Section 8, Clause 18. In the instant circumstances, USDA's regulations specifically vest the OASCR with authority to make the final determination regarding complaints of program discrimination.

Petitioners argue that the APA requires a hearing before the OALJ because their complaints were not

decided within 180 days.[6] Petitioners cite no statutory provision of the APA that supports their right to a hearing before USDA's OALJ. Moreover, the prevailing regulations concerning complaints of discrimination place no limitation on the time it takes USDA to process a complaint. 7 C.F.R. Part 15d.

Section 741

Petitioners assert that they are entitled to a hearing under Section 741, enabled by regulations set forth at 7 C.F.R. Part 15f. The regulatory scheme provides procedures for processing certain complaints of discrimination that were filed with USDA prior to July 1, 1997; and the regulations authorize OALJ to hear complaints of discrimination; however the rule states that

> if at any time the ALJ determines that your complaint is not an eligible complaint, he or she may dismiss your complaint with a final determination and USDA review of your complaint will then have been completed.

7 C.F.R.§15f.12.

Petitioners' complaints were filed, by Petitioners' admissions, on or about May 1, 2008 and involve alleged acts of discrimination occurring after July

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[6] OASCR has surmised that Petitioner relies upon rules controlling the processing of complaints of alleged employment discrimination by USDA. Since "180 days" is a hallmark period that triggers appeals and tolls the period for filing complaints of discrimination in many programs covered by USDA regulations, I decline to engage in similar speculation.

1,1997. See, all pleadings of Petitioners. Accordingly, Petitioners' complaints were not filed, either actually or constructively, with USDA prior to July 1, 1997, and they are not eligible complaints under Section 741. Therefore, OALJ's sole authority under Section 741 is to dismiss the petitions for a hearing, and OASCR's determinations in the complaints constitute the final agency determinations. 7 C.F.R. §15f.12.

7 C.F.R. Part 15 Subparts A and C

Some of Petitioners' allegations may be construed to fall within the auspices of USDA's regulations implementing title VI of the Civil Rights Act of 1964 ("the Act"), as the complaints ostensibly involve guaranteed loans.[7] Part 15 Subpart A prohibits discrimination against a participant in a USDA-assisted program or activity[8]. 7 C.F.R. § 15.3. However, the rules that apply to discrimination in federal financial assistance programs do not automatically provide Petitioners with the right to a hearing. The regulations authorize the OASCR to determine the manner in which complaints under this Subpart shall be investigated, and whether remedial action is warranted. 7 C.F.R. §15.6. The regulations specifically allow applicants or recipients to request a hearing before OALJ if the applicant or

[7] I have credited Petitioner's undocumented references to foreclosure by "a Bank" with "the permission" of USDA officials and the United States Attorney's Office.

[8] "Program" and "activity" are described at 7 C.F.R. § 15.2(k)(1)-(4) and a list of Federal Financial Assistance from USDA is set forth at Appendix A to Subpart A of Part 15.

recipient is adversely affected by an Order of the Secretary suspending, terminating, or refusing to continue Federal financial assistance; and the Secretary subsequently denies a request to restore eligibility for the assistance. 7 C.F.R. §§ 15.8(c); 10(f); 10(g); Subpart C. There is no evidence of a specific Order by the Secretary suspending or terminating Federal financial assistance to Petitioners, or an Order by the Secretary refusing to continue or grant the same. Similarly, there is no evidence that Petitioners requested the Secretary to restore their eligibility for assistance, which is the event that triggers the right to a hearing. Accordingly, Petitioners are not entitled to a hearing under §§ 15.09 and 15.10.

Authority of Secretary to Delegate Responsibility for Final Determination

In addition, the regulations empower the Secretary to assign responsibilities to other agencies to effectuate the purposes of the Act. 7 C.F.R. §15.12 (c). As OASCR has moved for dismissal of Petitioners' complaints with OALJ, it is axiomatic that the complaints were not referred to OALJ for a hearing and Petitioners have no right to a hearing pursuant to §15.12(c).

Administrative Procedures Act

Petitioners refer to the APA as the authorizing statute for OALJ's jurisdiction, but fail to state with any specificity how the APA vests OALJ with statutory or regulatory jurisdiction. The APA provides a

framework for agencies to follow to assure due process in adjudicatory proceedings, but the statute allows broad latitude to agencies to establish their own procedures within that framework. See, 5 U.S.C. §554. The right to a hearing under the APA exists only so long as another statute provides for such right. 5 U.S.C. §551 et seq. USDA has promulgated regulations governing adjudications before OALJ where prevailing statues [sic] require a hearing on the record. Petitioners' request for a hearing does not involve any of those statutes, which are enumerated at 7 C.F.R. § 1.131. Absent specific statutory authority, the APA does not vest OALJ with jurisdiction to hold a hearing in Petitioners' complaints.

Consent Decree and Section 1402 of the Farm Act of 2008

In the instant matter, Petitioner asserts that he was among the class members covered by the Consent Decree between African-American farmers and the USDA, which was further addressed by the Farm Act of 2008. However, the record does not demonstrate that Petitioner meets the criteria for class membership. The Decree provided remedies to individuals who did not file a discrimination complaint until after July 1, 1997 if they could establish the prerequisites discussed infra., supra. Petitioner admits that his complaints were filed in 2008, well past the time anticipated by the Decree, and nine years after the Decree was entered. Moreover, Petitioners cannot establish that they would have filed a complaint within the period encompassed

by the Decree, as the events underlying their allegations of discrimination also occurred years after the Decree's timeframe. In addition, since the Farm Bill of 2008 addressed additional methods for processing complaints covered by the Decree, Petitioners' complaints are not covered by that legislation.

Moreover, even if any of the Petitioners could establish membership in the class affected by the Decree and the Farm Bill of 2008, a complaint would need to be filed in federal district court, and not before the USDA OALJ. See, Section 14012 of the 2008 Farm Bill. Accordingly, the Decree and Farm Bill of 2008 do not provide OALJ with jurisdiction to hear Petitioners' complaints.

2. Tort Claims and Claims of Fraud

Petitioners seek remedies in tort for alleged actions by employees of USDA. Under the common law doctrine of sovereign immunity, "the United States cannot be sued without its consent." *Federal Housing Administration v. Burr*, 309 U.S. 242, 244 (1940). "Congress alone has the power to waive or qualify that immunity." *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 20 (1926). In 1946, Congress enacted the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b), waiving sovereign immunity for some tort suits and making the United States liable for injury to or loss of property, or personal injury or death, caused by the negligent or wrongful act or omission of any employee

of the government while acting within the scope of his office or employment. 28 U.S.C. § 1346(b); §§2671-2680.

Prior to filing suit under the FTCA, a claimant must present his claim to the federal agency out of whose activities the claim arises (28 U.S.C. § 2675) within two years after the claim accrues (28 U.S.C. § 2401). *McNeil v. United States*, 508 U.S. 106 (1993); *United States v. Kubrick*, 444 U.S. 111, 120 (1979). Petitioners have filed with OALJ what purports to be an administrative claim and complaint for damages relating to allegations of loss of property and personal injury. Pursuant to 7 C.F.R. §2.31(a), the General Counsel for the USDA is delegated the authority to consider, ascertain, adjust, determine, compromise, and settle claims brought under the FTCA. OALJ has no authority to review or adjudicate such claims, and accordingly, they shall be dismissed.

3. Requests for information under FOIA

Agencies of the Federal Government are required to disclose documents after receiving a request under FOIA, unless those documents are protected from disclosure by one of nine exemptions. 5 U.S.C. §552(a); §552(b)(1)-(9). When an agency fails to disclose requested information or fails to respond within the statutory time limitations[9] the requester may file a suit in federal district court. 5 U.S.C. 552(a)(4)(B).

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[9] See, 5 U.S.C. § 552(a)(6)(A)(i).

Petitioners request OALJ to order USDA's compliance with FOIA requests. Since the statute clearly grants jurisdiction over disputes involving requests for information to federal district court, OALJ is deprived of jurisdiction to adjudicate Petitioners' assertions regarding compliance with FOIA.

V. CONCLUSION

I find that OALJ is without jurisdiction to grant Petitioners' request for a hearing regarding the Secretary's denial of complaints of discrimination. OALJ also does not have jurisdiction to consider Petitioners' claims under the FTCA and FOIA. Accordingly, I find that Petitioners' request for a hearing should be dismissed.

ORDER

Petitioners' petitions for a hearing are hereby DISMISSED.

So ORDERED this _____ day of May, 2011 in Washington, D.C.

Janice K. Bullard
Administrative Law Judge