

No. 16-2408

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REFAAT F. ABUL HOSN,

Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF STATE,
SECRETARY OF STATE, Colin Powell, et al.,

Defendants-Appellees.

FILED

Oct 10, 2017

DEBORAH S. HUNT, Clerk

ORDER

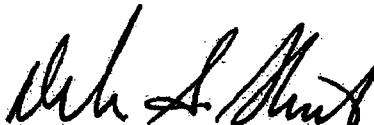
Before: GRIFFIN and DONALD, Circuit Judges; HOOD, District Judge.*

Refaat F. Abul Hosn petitions for rehearing of this court's order of August 21, 2017, affirming the district court's order dismissing his complaint pursuant to 28 U.S.C. § 1915(e)(2).

Upon careful consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2).

The petition for rehearing is **DENIED**.

ENTERED BY ORDER OF THE COURT


Deborah S. Hunt, Clerk

* The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

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ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
MICHIGAN

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FILED
Aug 21, 2017
DEBORAH S. HUNT, Clerk

O R D E R

Before: GRIFFIN and DONALD, Circuit Judges; HOOD, District Judge.*

Refaat F. Abul Hosn, a Michigan resident proceeding pro se, appeals a district court judgment that dismissed his complaint pursuant to 28 U.S.C. § 1915(e) for failure to state a claim. 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).

Hosn brought this action against Colin Powell as former United States Secretary of Defense and Paul Bremer as former administrator for the Coalition Provisional Authority within the Department of Defense. Hosn alleged that these defendants interfered with and caused the breach of a contract between his company, CIF International ("CIF"), and Ibrahim al-Jaafari Acikr who, at the time in question, was a member of the Supreme Haji Committee and President of the Iraq Government Council.

*The Honorable Joseph M. Hood, United States District Judge for the Eastern District of Kentucky, sitting by designation.

Hosn attached to his complaint evidence of his January 2004 contract with the Iraq Government Council, which obligated CIF to transport 30,000 Iraqi pilgrims from the international airports in Baghdad and Kuwait to airports in Jeddah or Medina, Saudi Arabia, beginning that month. To facilitate this, CIF was to provide bus transportation as necessary, all aircraft and necessary spare parts and maintenance for the aircraft, and all necessary passports, arrange for the transportation of the pilgrims' luggage, and provide snacks for each pilgrim during the flight. Hosn was to be paid \$249 to \$287 per pilgrim. It appears that CIF at least partially satisfied the contract when it transported 10,000 pilgrims in 2004.

Hosn named Powell on the theory that Powell had planned and sanctioned the United States' 2003 invasion of Iraq, causing interference with Hosn's contract prior to the invasion and prompting Bremer to direct the Coalition Provisional Authority to cancel contracts between the United States and the Iraqi government. The district court determined that it had no jurisdiction over Hosn's claims against Powell and Bremer under the "political question" doctrine, citing *Haig v. Agee*, 453 U.S. 280, 292 (1981). Hosn now urges the court to reject the district court's determination that his claim involves a political question that is not appropriate for judicial review and, instead, to view his claim as one involving the breach of a commercial contract.

We review de novo a district court's *sua sponte* dismissal under 28 U.S.C. § 1915(e)(2). *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010). This statute requires a district court to screen and dismiss complaints that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief against a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2).

In order to state a claim upon which relief may be granted, a complaint 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). Although a pro se litigant is entitled to a liberal construction of his pleadings and filings, 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)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678.

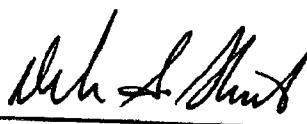
“The nonjusticiability of a political question is primarily a function of the separation of powers.” *Baker v. Carr*, 369 U.S. 186, 210 (1962). As the district court recognized, “[m]atters related to foreign policy and national security are rarely subjects for judicial intervention.” *Haig*, 453 U.S. at 292. However, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” *Baker*, 369 U.S. at 211.

It is unclear whether Hosn’s claim is based on a declaration of foreign policy or if it is based on actions taken by government officials that allegedly interfered with a private commercial contract between Hosn’s company and a representative of an authorized coalition. It is arguable that Hosn’s claims are not necessarily intertwined with “conduct of foreign relations . . . exclusively entrusted to the political branches of government.” *Haig*, 453 U.S. at 292 (quoting *Harisiades v. Shaughnessy*, 342 U.S. 580, 589 (1952)). Therefore, it is debatable whether the district court properly dismissed the case under the political question doctrine.

Nevertheless, we dismiss this case on another ground. *See City Mgmt. Corp. v. U.S. Chem. Co.*, 43 F.3d 244, 255 (6th Cir. 1994). Hosn accuses Powell and Bremer of interfering with his contract merely by authorizing and assisting with the invasion of Iraq, which, according to his complaint, eventually led to the termination of his agreement in favor of other entities. However, Hosn failed to articulate how Powell’s or Bremer’s actions led to the cancellation of his particular contract with Iraqi’s High Commission. His claims fail to plead factual content that allows us to draw a reasonable inference that the defendants are liable for the misconduct alleged. *See Iqbal*, 556 U.S. at 678. Therefore, we affirm the district court’s dismissal of Hosn’s claims against Bremer and Powell, albeit on a ground different from that identified by the district court.

For the above reason, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

REFAAT ABUL HOSN,

Plaintiff,

v.

COLIN POWELL, U.S. SECRETARY OF
DEFENSE, and PAUL BREMER,
COALITION PROVISIONAL AUTHORITY
DIRECTOR,

Defendants.

Case No. 16-11651

Honorable Nancy G. Edmunds

I hereby certify that the foregoing is
a true copy of the original on file in this
Office.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

BY: Dawn Allen

Deputy

**ORDER GRANTING PLAINTIFF'S APPLICATION TO PROCEED IN FORMA
PAUPERIS [2] AND DISMISSING THE COMPLAINT**

Plaintiff Refaat Abul Hosn, proceeding without the benefit of counsel, filed this action against the former United States Secretary of Defense Colin Powell, and the former Coalition Provisional Authority Director Paul Bremer. According to the complaint, in or around January 2004, Plaintiff entered into a contract with the Iraqi Governing Council "to transport [] 3000 Iraqi pilgrims [f]rom Baghdad or Kuwait to Jeddah or Al Madina by aircraft." (Compl. ¶ 6). After performing under the agreement, Plaintiff maintains that Defendants "used political influence and coercion over the Iraqi officials" to persuade them to "unilaterally terminate" the contract. (Compl. ¶ 42). Plaintiff maintains that he suffered over \$30 million in economic damages as a result of Defendants' nefarious behavior.

This is not the first time Plaintiff has attempted to initiate litigation against Defendants. In fact, Plaintiff filed suit against Bremer and Powell in 2007 and again in 2016. See *Hosn v. Bremer*, Case No. 07-10077 (E.D. Mich. Jan 3, 2007); *Hosn v. Powell*, Case No. 16-

11652 (E.D. Mich. May 3, 2016). Both cases, which appear to be based on substantially the same facts as those here, were dismissed on the court's own motion at the screening stage. Because Plaintiff has failed to assert a legally cognizable claim for relief, this Court must likewise dismiss his most recent complaint.

The Prison Litigation Reform Act ("PLRA") requires district courts to screen and dismiss, *inter alia*, complaints that fail to state a claim upon which relief may be granted. *Gunther v. Castineta*, 561 F. App'x 497, 498 (6th Cir. 2014) (citing 28 U.S.C. § 1915A(b)). "In reviewing a dismissal of a complaint for failure to state a claim, [the court] must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true." *Id.* (citing *Bennett v. McBride*, 67 Fed.Appx. 850, 853 (6th Cir. 2003)). While the Court is mindful that a *pro se* litigant's complaint is held to "less stringent standards" than a complaint drafted by counsel, it must contain facts sufficient to show that a redressable legal wrong has been committed. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972); see also Fed. R. Civ. P. 12(b). Dismissal is appropriate where "the claim is based on an indisputably meritless legal theory[.]" *Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir. 1998).

Here, the trouble for Plaintiff lies in the subject matter of his complaint. This Court is prohibited from adjudicating disputes involving so-called "political questions." As the Supreme Court has explained, the "political question" doctrine "speaks to an amalgam of circumstances in which courts properly examine whether a particular suit is justiciable—that is, whether the dispute is appropriate for resolution by courts." *Zivotofsky ex rel. Zivotofsky v. Clinton*, — U.S. —, —, 132 S.Ct. 1421, 1431, 182 L.Ed.2d 423 (2012) (Sotomayor, J., concurring). The doctrine is "essentially a function of the separation of

powers, . . . which recognizes the limits that Article III imposes upon courts and accords appropriate respect to the other branches' exercise of their own constitutional powers." *Id.* (citation omitted). For example, "[m]atters intimately related to foreign policy and national security are rarely proper subjects for judicial [review]." *Haig v. Agee*, 453 U.S. 280, 292 (1981). This is so because the "conduct of the foreign relations of our government is committed by the Constitution to the executive and legislative-the 'political'-departments of the government." *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918).

Intervening in the matters precipitating Plaintiff's complaint would run afoul of *Haig* and its progeny. Indeed, Plaintiff is clear that "during the invasion of Iraq . . . Mr. Colin Powell . . . harmed . . . business men like me." (Compl. ¶ 12). Similarly, Plaintiff states that Bremer "ratified the [unlawful] conduct of said Iraqi officials." (Compl. ¶ 41). In other words, Plaintiff's complaint is tethered to the foreign relations between our government and the Iraqi authorities. And the "propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oetjen*, 246 U.S. at 302. For this reason, the Court must, and does, dismiss Plaintiff's complaint.

It is hereby ORDERED that Plaintiff's application to proceed in forma pauperis (Dkt. 2) is GRANTED and the case is DISMISSED.

SO ORDERED.

S/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: August 16, 2016

I hereby certify that a copy of the foregoing document was served upon counsel of record on August 16, 2016, by electronic and/or ordinary mail.

S/Carol J. Bethel
Case Manager

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