

D. Conn.
18-cv-343
Covello, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 12th day of July, two thousand eighteen.

Present:

Reena Raggi,
Peter W. Hall,
Debra Ann Livingston,
Circuit Judges.

Jose Luis Mattes Baez Carmona Lopez Cordero,

Plaintiff-Appellant,

v.

18-775

United States Census Bureau, Department of Correction, Connecticut,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis*, to “have [his] actual identification restored,” and “to have [his] liberty interests . . . enforced by the Court, pursuant to 5 & 14 Amendments due process clause(s).” Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSE LUIS MATTOS BAEZ :
CARMONA LOPEZ CORDERO, :
plaintiff, :
: CASE NO. 3:18-cv-343 (AVC)
v. :
: DEPARTMENT OF CORRECTION, ET :
AL., :
defendants. :
:

RULING AND ORDER

The plaintiff, Jose Luis Mattos Baez Carmona Lopez Cordero, filed this case pro se under 42 U.S.C. § 1983. His complaint was received on February 27, 2018, and on March 7, 2018, the court granted his motion to proceed in forma pauperis. On March 6, 2018, Cordero filed an amended complaint naming two defendants, the Department of Correction and the Bureau of the Census. Cordero challenges his designation as Hispanic on his prison identification card. He seeks damages as well as declaratory and injunctive relief.

Under section 1915A of title 28 of the United States Code, the court must review prisoner civil complaints and dismiss any portion of the complaint that is frivolous or malicious, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such

relief. Id. In reviewing a pro se complaint, the court must assume the truth of the allegations, and interpret them liberally to "raise the strongest arguments [they] suggest[]." Abbas v. Dixon, 480 F.3d 636, 639 (2d Cir. 2007).

Although detailed allegations are not required, the complaint must include sufficient facts to afford the defendants fair notice of the claims and the grounds upon which they are based and to demonstrate a right to relief. Bell Atlantic v. Twombly, 550 U.S. 544, 555-56 (2007). Conclusory allegations are not sufficient. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. Nevertheless, it is well-established that "[p]ro se complaints 'must be construed liberally and interpreted to raise the strongest arguments that they suggest.'" Sykes v. Bank of Am., 723 F.3d 399, 403 (2d Cir. 2013) (quoting Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006)); see also Tracy v. Freshwater, 623 F.3d 90, 101-02 (2d Cir. 2010) (discussing special rules of solicitude for pro se litigants)).

FACTS

The amended complaint alleges the following facts. Cordero describes himself as "a miscegenized Americanized Hispanic-

Puerto Rican-Spanish-Latino-Boriqua-Taino-American person of color." Cordero was born in Puerto Rico in September 1962. His father, Encarnacion Mattos, is a member of the Native American Taino tribe. Cordero's birth name is Jose Luis Mattos.

Upon admission to the Department of Correction, Cordero was identified as Hispanic. His identification card includes an H for Hispanic in the space for racial designation. Correctional officials did not obtain his consent before so designating him.

Cordero filed a grievance to have the designation changed because Hispanic is an ethnic, not a racial, designation. The grievance and appeal were denied. Cordero was informed that the Department of Correction's practice is to use racial/ethnic codes consistent with other criminal justice agencies and that the practice would not change.

ANALYSIS

Cordero argues that the unconsented classification has deprived him of "access to any existing rights, privileges, or immunities without notice or review, when and if attached to present or prospective work, education, identification, *inter alia*, when attached to specific race identification and classification." He seeks an injunction directing the defendants to use his DNA to identify his race; declaratory

relief to have that race noted in all of his records, including on his identification card, or to assign him his father's race; and compensatory damages in the form of \$25,000,000.00 or a scholarship for a correspondence law school education.

The court first notes that Cordero has not named proper defendants. He brings this action pursuant to 42 U.S.C. § 1983, and names two defendants, the Department of Correction, a state agency, and the Census Bureau, a federal agency.

To state a section 1983 claim, Cordero must allege facts showing that a person acting under color of state law deprived him of a right, privilege or immunity secured by the United States Constitution or federal law. State agencies are not persons within the meaning of section 1983. See Bhatia v. Connecticut Dep't of Children & Families, 317 F. App'x 51, 52 (2d Cir. 2009) (citing Will v. Michigan Dep't of State Police, 491 U.S. 58, 70-71 (1989)); Angileri v. Wu, No. 3:16-cv-352(SRU), 2016 WL 3579073, at *3 (D. Conn. June 28, 2016) (as a state agency, Department of Correction is not a person within the meaning of section 1983). In addition, even if the amended complaint could be construed to assert a state law claim, the state cannot be sued without its consent. Mercer v. Champion, 139 Conn. App. 216, 224 (2012). (citing Horton v. Meskill, 172

Conn. 615, 623 (1977)). Cordero alleges no facts suggesting that the state has consented to suit in this case.

The Census Bureau is a federal agency. Thus, it does not act under color of state law and is not a proper defendant in a section 1983 action. Further, sovereign immunity protects federal agencies from suit absent a waiver. F.D.I.C. v. Meyer, 510 U.S. 471, 475 (1994). For claims against federal agencies seeking non-monetary relief, the Administrative Procedure Act ("APA") waives sovereign immunity. See 5 U.S.C. § 702. The waiver applies even if the lawsuit is not filed pursuant to the APA. See Gupta v. S.E.C., 796 F. Supp. 2d 503, 509 (S.D.N.Y. 2011) (quoting Trudeau v. Fed. Trade Comm'n, 456 F.3d 178, 186 (D.C. Cir. 2006)); see also Sharkey v. Quarantillo, 541 F.3d 75, 91 (2d Cir. 2008) ("Section 702 of the APA 'waives the federal government's sovereign immunity in actions [for non-monetary relief against an agency or officer thereof] brought under the general federal question jurisdiction statute.'" (quoting Lunney v. United States, 319 F.3d 550, 557-58 (2d Cir. 2003))).

In this case, although Cordero seeks injunctive relief, he seeks that relief only from the Department of Correction. He does not direct any request for relief to the Census Bureau and, in fact, alleges no facts pertaining to the Census Bureau. Any

claim against the Census Bureau is barred by sovereign immunity.

Further, even if Cordero had named proper defendants, the amended complaint must be dismissed. Cordero states that he brings this action to redress the violation of his rights under the Eighth Amendment, which protects inmates from cruel and unusual punishment. When a court considers whether a punishment is cruel and unusual, it considers "the evolving standards of decency that mark the progress of a maturing society." Graham v. Florida, 560 U.S. 48, 58 (2010) (citation and internal quotation marks omitted). Cordero alleges that he is designated as Hispanic on his identification card. Research reveals no cases holding that an alleged incorrect designation constitutes punishment or violates current standards of decency. Thus, the allegations do not support an Eighth Amendment claim.

Cordero generally states that this designation deprives him of rights and privileges. He has not, however, identified even one right denied to him because of the classification. Although he correctly argues that Hispanic is an ethnic designation, not a racial one, Cordero was informed that the Department of Correction uses racial/ethnic codes consistent with other criminal justice agencies. Research reveals no constitutionally protected right to have a different designation on his

identification card. See Houston v. Sheahan, No. 13-CV-6594-FPG, 2017 WL 3425271, at *4-5 (W.D.N.Y. Aug. 9, 2017) (motion to dismiss granted regarding inmate's claim for false records because inmate failed establish that any false statements were or would be relied upon in an unconstitutionally significant manner) (citing Paine v. Baker, 595 F.2d 197, 201 (4th Cir. 1979)). Cordero has not alleged any facts showing that correctional officials have relied, or would rely, on the designation to his detriment in a constitutionally significant way. Thus, his allegations do not support a due process claim. See Pugliese v. Nelson, 617 F.2d 916, 923-24 (2d Cir. 1980) (holding that inmates have no due process interest in avoiding classification that might preclude or delay benefits).

Further, in the amended complaint, Cordero describes himself as Hispanic, Latino, Spanish and Puerto Rican. Thus, he has conceded that the designation, although not a racial designation, is accurate.

Finally, the court questions the timeliness of Cordero's complaint. Although he alleges that he questioned correctional officials regarding his designation in March 2017, the Department of Correction website indicates that Cordero has been confined since September 1988. The limitations period for

filing a section 1983 action is three years. Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994). There is no indication that Cordero's designation has changed since his admission. If that is correct, Cordero has been on notice of the designation for nearly thirty years and the complaint would have been filed over twenty-six years too late.

CONCLUSION

The complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A(b)(1), for failure to state a cognizable claim. The clerk is directed to enter judgment and close this case.

SO ORDERED this 14th day of March 2018 at Hartford, Connecticut.

/s/
Alfred V. Covello
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOSE LUIS MATTOS BAEZ :
CARMONA LOPEZ CORDERO, :
plaintiff, :
CASE NO. 3:18-cv-343 (AVC)
v. :
: :
CONNECTICUT DEPARTMENT OF :
CORRECTION AND BUREAU OF :
THE CENSUS :
defendants.

JUDGMENT

This action having come before the Court for consideration
of the plaintiff's complaint and,

The Court having considered the complaint in this case and
having issued a ruling and order on March 14, 2018 pursuant to
28 U.S.C. section 1915A(b)(1), for failure to state a cognizable
claim, it is hereby,

ORDERED, ADJUDGED and DECREED that judgment be and is
hereby entered dismissing the complaint.

Dated at Hartford, Connecticut, this 16th day of March,
2018.

ROBIN TABORA, Clerk

By: /s/ Michael Bozek
Michael Bozek
Deputy Clerk

Entered on date: 3/16/2018

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