

APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAY 22 2020

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

MICHELE GRAY; M. G., Minor,

Plaintiffs-Appellants,

v.

UNITED STATES DEPARTMENT OF
JUSTICE,

Defendant-Appellee.

No. 20-15728

D.C. No.
2:19-cv-00854-APG-BNW
District of Nevada,
Las Vegas

ORDER

Before: SILVERMAN, NGUYEN, and COLLINS, Circuit Judges.

Upon a review of the record and the response to the court's May 12, 2020 order, we conclude this appeal is frivolous. We therefore deny appellants' motions to proceed in forma pauperis (Docket Entry Nos. 3, 5, 6), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

All other pending motions are denied as moot.

DISMISSED.

FILED

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ORDER

A review of the record reflects that this appeal may be frivolous. This court may dismiss a case at any time, if the court determines the case is frivolous. *See* 28 U.S.C. § 1915(e)(2).

Within 35 days after the date of this order, appellant Michele Gray must:

- (1) file a motion to dismiss this appeal, *see* Fed. R. App. P. 42(b), OR
- (2) file a statement explaining why the appeal is not frivolous and should go forward.

If appellant does not respond to this order, the Clerk will dismiss this appeal for failure to prosecute, without further notice. *See* 9th Cir. R. 42-1. If appellant files a motion to dismiss the appeal, the Clerk will dismiss this appeal, pursuant to Federal Rule of Appellate Procedure 42(b). If appellant submits any response to

this order other than a motion to dismiss the appeal, the court may dismiss this appeal as frivolous, without further notice.

If appellant files a statement that the appeal should go forward, appellee may file a response within 10 days after service of appellant's statement.

The briefing schedule for this appeal remains stayed. The motions to proceed in forma pauperis and for appointment of counsel will be addressed, if necessary, following resolution of this order.

The Clerk shall serve on appellant: (1) a form motion to voluntarily dismiss the appeal, and (2) a form statement that the appeal should go forward. Appellant may use the enclosed forms for any motion to dismiss this appeal or statement that the appeal should go forward.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Allison Taylor
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Michele Gray, et al.,

Plaintiff,

v.

JUDGMENT IN A CIVIL CASE

Case Number: 2:19-cv-00854-APG-BNW

Defendant

United States Department Of Justice

Defendant.

- Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.
- Decision by Court.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

pursuant to [the 50] Court's Order Dismissing this action, Judgment is entered for Defendant United States Department of Justice and against Plaintiffs. This case is now closed.

4/17/2020

Date

DEBRA K. KEMPI

Clerk



/s/ D. Reich-Smith

Deputy Clerk

1 APPENDIX B
2 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 MICHELE GRAY, M. G. (minor),

4 Plaintiffs

5 v.

6 UNITED STATES DEPARTMENT OF
7 JUSTICE,

8 Defendant

Case No.: 2:19-cv-00854-APG-BNW

Order Dismissing Case

[ECF Nos. 26, 28, 39, 43, 48]

9 Plaintiff Michele Gray and her minor child are suing the United States Department of
10 Justice (DoJ) for \$15 billion. ECF No. 38 at 4.¹ Gray alleges that the FBI and various other
11 federal, state, and local authorities have stalked and harassed her for over 15 years across at least
12 six states and Europe. The DoJ moves to dismiss this lawsuit because the plaintiffs did not
13 timely serve the DoJ and the complaint fails to state a claim upon which relief may be granted.
14 ECF No. 26. The plaintiffs' response to the motion addresses the problems with service of
15 process but not the defects with the plaintiffs' claims. For purposes of this order, I will ignore
16 the service of process defects because the plaintiffs cannot maintain their claims against the DoJ
17 as a matter of law. I therefore dismiss this case.

18 Dismissal for failure to state a claim is proper only if it is clear that the plaintiff cannot
19 prove any set of facts in support of the claim that would entitle him or her to relief. *See Morley v.*

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23 ¹ The original complaint sought \$15 billion, diplomatic immunity, and injunctive relief. ECF No.
4. After the DoJ moved to dismiss the original complaint, the plaintiffs filed an amended
complaint. ECF No. 38. The amended complaint suffers from the same fatal defects as the
original complaint, so the DoJ filed a motion to dismiss the amended complaint that largely
repeats the arguments in the original complaint. I will address the complaint and amended
complaint and both of the DoJ's motions to dismiss in this order.

1 *Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this determination, the court takes as true
2 all allegations of material fact stated in the complaint, and the court construes them in the light
3 most favorable to the plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).
4 Allegations of a *pro se* complainant are held to less stringent standards than formal pleadings
5 drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980).

6 “To survive a motion to dismiss, a complaint must contain sufficient factual matter,
7 accepted as true, to state a claim to relief that is plausible on its face. . . . A claim has facial
8 plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
9 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S.
10 662, 678, (2009) (quotation and citation omitted). “Determining whether a complaint states a
11 plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw
12 on its judicial experience and common sense.” *Id.* at 679.

13 The complaint is fatally defective for a variety of reasons. The plaintiffs refer to various
14 federal statutes, but primarily seem to base their claims upon 42 U.S.C. §§ 1983 and 1985. See
15 ECF No. 38 at 3 (referring to § 1985) and 8 (referring to § 1983). The DoJ cannot be sued under
16 either of those statutes. *Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011) (“We find no
17 evidence in either [42 U.S.C. §§ 1983 or 1985] that Congress intended to subject federal
18 agencies to § 1983 and § 1985 liability. To the contrary, §§ 1983 and 1985 impose liability upon
19 a ‘person,’ and a federal agency is not a ‘person’ within the meaning of these provisions.”).² Nor
20 can the plaintiffs maintain a *Bivens* action against the DoJ. *Teplitsky v. Dep’t of Justice*, 127 F.3d
21 1106 (9th Cir. 1997) (“A *Bivens* action cannot be maintained against a federal agency.”).

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23 ² See also *Stonecipher v. Bray*, 653 F.2d 398, 401 (9th Cir. 1981) (upholding dismissal of a
§ 1983 claim because “the IRS is a federal agency and its agents performed no acts under color
of state law”).

1 Next, the United States is immune from lawsuits except as it has expressly waived its
2 sovereign immunity. “The party who sues the United States bears the burden of pointing to . . .
3 an unequivocal waiver of immunity.” *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983).
4 The plaintiffs have not shown any waiver of immunity by the United States that would allow
5 them to sue the DoJ for these claims. Thus, dismissal is proper. *Hiramanek v. Judicial Council*
6 *of Cal.*, 754 F. App’x 580 (9th Cir. 2019) (“The district court properly dismissed Hiramanek’s
7 claims against the United States, the Department of Justice, and the Attorney General because
8 Hiramanek failed to establish that the United States had waived sovereign immunity for his
9 claims.”).

10 Finally, the complaint asserts tort claims that are barred by the Federal Tort Claims Act
11 (FTCA). “The FTCA is the exclusive remedy for tortious conduct by the United States, and it
12 only allows claims against the United States. Although such claims can arise from the acts or
13 omissions of United States agencies . . . , an agency itself cannot be sued under the FTCA.”
14 *F.D.I.C. v. Craft*, 157 F.3d 697, 706 (9th Cir. 1998). Thus, the plaintiffs’ claims against the DoJ
15 must be dismissed.³

16 Because the plaintiffs cannot maintain their claims against the DoJ as a matter of law, I
17 must dismiss the complaint. When a court dismisses a complaint, the plaintiff should be given
18 leave to amend with directions as to curing its deficiencies, unless it is clear from the face of the
19 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
20 F.3d 1103, 1106 (9th Cir. 1995). Where, as here, the plaintiffs’ claims are barred as a matter of
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22 ³ Even if the plaintiffs could bring a claim under the FTCA, they have failed to demonstrate that
23 they satisfied the prerequisite of filing an administrative claim. *Warren v. U.S. Dep’t of Interior*
Bureau of Land Mgmt., 724 F.2d 776, 778 (9th Cir. 1984) (“A plaintiff must first present notice
of a claim to the appropriate federal agency.”).

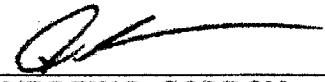
1 law, the deficiencies cannot be cured so amendment would be futile. I therefore deny the
2 plaintiffs leave to amend.

3 I THEREFORE ORDER that the defendant's motions to dismiss (ECF Nos. 26, 48) are
4 granted.

5 I FURTHER ORDER that the defendant's motion to stay discovery (ECF No. 28), the
6 plaintiffs' motion to change venue (ECF No. 39), and the plaintiffs' motion for appointment of
7 counsel (ECF No. 43) are denied as moot.

8 I FURTHER ORDER the clerk of court to enter judgment in favor of the defendant and
9 against the plaintiffs and to close this case.

10 DATED this 17th day of April, 2020.

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12 ANDREW P. GORDON
13 UNITED STATES DISTRICT JUDGE
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