

No. 19225 SUPREME COURT OF THE UNITED STATES - ON PETITION
FOR WRIT OF CERTIORARI - TO THE UNITED COURT OF APPEALS FOR
THE NINTH CIRCUIT FOR CASE No. 18-55950.

APPX A

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MAR 19 2019

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

FOR THE NINTH CIRCUIT

JEAN CRUMP,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 18-55950

D.C. No. 2:18-cv-04760-RGK-PLA

MEMORANDUM*

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479
3000

Appeal from the United States District Court
for the Central District of California
R. Gary Klausner, District Judge, Presiding

Submitted March 12, 2019**

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Jean Crump appeals pro se from the district court's judgment dismissing her
42 U.S.C. § 1983 action alleging federal and state law claims. We have
jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28
U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. *Barren v. Harrington*, 152

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision
without oral argument. See Fed. R. App. P. 34(a)(2).

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No. 19A215 SUPREME COURT OF THE UNITED STATES - ON PETITION
FOR WRIT OF CERTIORARI - TO THE UNITED COURT OF APPEALS FOR
THE NINTH CIRCUIT FOR CASE No. 18-55950.

APPENDIX
A

F.3d 1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Crump's action because Crump failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, plaintiff must present factual allegations sufficient to state a plausible claim for relief); *see also FDIC v. Meyer*, 510 U.S. 471, 476-78, 484-86 (1994) (the United States has not waived its sovereign immunity for constitutional torts; a *Bivens* cause of action may not be brought against a government agency); *West v. Atkins*, 487 U.S. 42, 48 (1988) (elements of a § 1983 claim); *Garmon v. County of Los Angeles*, 828 F.3d 837, 842-43 (9th Cir. 2016) (application of absolute prosecutorial immunity); *Duvall v. County of Kitsap*, 260 F.3d 1124, 1133 (9th Cir. 2001) (application of judicial immunity).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

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No. 19-215 SUPREME COURT OF THE UNITED STATES - ON PETITION
FOR WRIT OF CERTIORARI - TO THE UNITED COURT OF APPEALS FOR
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUN 03 2019

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

JEAN CRUMP,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; et
al.,

Defendants - Appellees.

No. 18-55950

D.C. No. 2:18-cv-04760-RGK-PLA
U.S. District Court for Central
California, Los Angeles

MANDATE

Appendix A

The judgment of this Court, entered March 19, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rebecca Lopez
Deputy Clerk
Ninth Circuit Rule 27-7

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Supreme Court
No. 19A215

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

MAY 24 2019

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

JEAN CRUMP,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 18-55950

D.C. No. 2:18-cv-04760-RGK-PLA
Central District of California,
Los Angeles

ORDER

Appendix
B

Before: LEAVY, BEA, and N.R. SMITH, Circuit Judges.

Crump's petition for panel rehearing (Docket Entry No. 10) is denied.

No further filings will be entertained in this closed case.

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Crump v NSA

JS-6

APPENDIX D
(2)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JEAN CRUMP,

v.

PLAINTIFF(S)

UNITED STATES OF AMERICA, et al.,

DEFENDANT(S)

CASE NUMBER

CV 18-4760-RGK (PLAx)

ORDER RE REQUEST TO PROCEED
IN FORMA PAUPERIS (Judge of this Court)

MAGISTRATE JUDGE RECOMMENDATION:

- ☐ The Request to Proceed *In Forma Pauperis* is not supported by an adequate showing of indigency. It is therefore recommended that the Request to Proceed *In Forma Pauperis* be denied on this basis. **This recommendation is not intended to preclude the district judge from reviewing additional reasons to deny or grant the request.**
- ☐ The Request to Proceed *In Forma Pauperis* is supported by an adequate showing of indigency.
- ☐ Comments: _____

Date _____

United States Magistrate Judge

FOR DISTRICT JUDGE USE ONLY:

- ☐ IT IS ORDERED that the Request to Proceed *In Forma Pauperis* be GRANTED.

Date _____

United States District Judge

- ☒ IT IS ORDERED that the Request to Proceed *In Forma Pauperis* be DENIED for the following reason(s):

- ☐ Inadequate showing of indigency
- ☒ Legally and/or factually patently frivolous
- ☐ Other: _____

- ☒ District Court lacks jurisdiction
- ☐ Immunity as to _____

Comments: See attached

- ☒ IT IS FURTHER ORDERED that:

- ☐ Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
- ☒ This case is hereby DISMISSED immediately.
- ☐ This case is hereby REMANDED to state court.

June 12, 2018

Date

United States District Judge

Jay Klawns

PAge

PAge 14A

Supreme COURT 19A215

MIME-Version:1.0 From:cacd_ecfmail@cacd.uscourts.gov To:ecfnef@cacd.uscourts.gov
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Crump v. United States of America et al Order on Request to Proceed In Forma Pauperis with
Declaration in Support (CV-60) Content-Type: text/html

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Notice of Electronic Filing

The following transaction was entered on 6/13/2018 at 10:15 AM PDT and filed on 6/12/2018

Case Name: Jean Crump v. United States of America et al

Case Number: 2:18-cv-04760-RGK-PLA

Filer:

WARNING: CASE CLOSED on 06/12/2018

Document Number: 6

Docket Text:

ORDER RE REQUEST TO PROCEED IN FORMA PAUPERIS by Judge R. Gary Klausner:
DENIED[3]; District Court lacks jurisdiction; Legally and or factually patently frivolous. MD
JS-6, Case Terminated. [SEE ORDER FOR SPECIFICS]. (et)

2:18-cv-04760-RGK-PLA Notice has been electronically mailed to:

2:18-cv-04760-RGK-PLA Notice has been delivered by First Class U. S. Mail or by other means
BY THE FILER to :

Jean Crump
1423 West 69th Street
Los Angeles CA 90047

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Supreme Court 19A215-
Crump v. USA

APPX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JEAN CRUMP,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

No. CV 18-4760-RGK (PLAx)

**ATTACHMENT TO ORDER DENYING
PLAINTIFF'S REQUEST TO PROCEED IN
FORMA PAUPERIS**

Because plaintiff seeks to proceed in this action *in forma pauperis* ("IFP"), the Court has screened the Complaint pursuant to 28 U.S.C. § 1915(e)(2) prior to ordering service for the purpose of determining whether the action is frivolous or malicious; or fails to state a claim on which relief may be granted; or seeks monetary relief against a defendant who is immune from such relief. Section 1915(e)(2) applies to any action by a litigant who is proceeding IFP. See, e.g., Shirley v. Univ. of Idaho, 800 F.3d 1193 (9th Cir. 2015) (citing 28 U.S.C. § 1915(e)(2)(B) and noting that a "district court shall screen and dismiss an action filed by a plaintiff proceeding *in forma pauperis*"; Lopez v. Smith, 203 F.3d 1122, 1127 n.7 (9th Cir. 2000) ("section 1915(e) applies to all *in forma pauperis* complaints" and district courts should "dismiss a complaint that fails to state a claim upon which relief may be granted") (en banc). After careful review of the Complaint, the Court finds that it lacks an arguable basis in either fact or law, is frivolous, and fails

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1 to state a federal claim on which relief may be granted against any named defendant. See
 2 Denton v. Hernandez, 504 U.S. 25, 32-33, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992) (a claim
 3 lacks an arguable basis in fact "when the facts alleged rise to the level of the irrational or the
 4 wholly incredible"). "Absent a substantial federal question," a district court lacks subject matter
 5 jurisdiction, and claims that are "wholly insubstantial," or "obviously frivolous," are insufficient to
 6 "raise a substantial federal question for jurisdictional purposes." Shapiro v. McManus, 136 S. Ct.
 7 450, 455-56, 193 L. Ed. 2d 279 (2015).

8 Here, plaintiff's factual allegations fall far short of raising a purported right to relief on any
 9 federal claim beyond the speculative level and are "wholly insubstantial." See, e.g., Bell Atlantic
 10 Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (the Supreme
 11 Court has held that: "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief'
 12 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause
 13 of action will not do. ... Factual allegations must be enough to raise a right to relief above the
 14 speculative level.").

15 First, plaintiff purports to be raising this action, at least in part, as a civil rights case (see
 16 ECF No. 1-1 at 1), but plaintiff does not appear to be raising any federal civil rights claim against
 17 any defendant who is not immune from relief. Further, plaintiff lists several legal grounds, such
 18 as defamation, slander, "deceit," medical "malpractice," and "bribery" (ECF No. 1 at 1, 8, 11-12),
 19 that appear to arise under state law. In order to state a federal civil rights claim against a
 20 particular defendant, plaintiff must allege that a specific defendant, while acting under color of
 21 state law, deprived her of a right guaranteed under the Constitution or a federal statute. See
 22 West v. Atkins, 487 U.S. 42, 48, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988). "A person deprives
 23 another 'of a constitutional right, within the meaning of section 1983, if he does an affirmative act,
 24 participates in another's affirmative acts, or omits to perform an act which he is legally required
 25 to do that **causes** the deprivation of which [the plaintiff complains]." Leer v. Murphy, 844 F.2d
 26 628, 633 (9th Cir. 1988) (quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis
 27 and alteration in original)). In addition, this Court does not have original jurisdiction of any claim
 28 that does not arise under the Constitution, laws, or treaties of the United States. "Federal courts

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are courts of limited jurisdiction,' possessing 'only that power authorized by Constitution and statute.'" Gunn v. Minton, 568 U.S. 251, 133 S. Ct. 1059, 1064, 185 L. Ed. 2d 72 (2013) (quoting Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)). "A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." Stevedoring Servs. of Am. v. Eggert, 953 F.2d 552, 554 (9th Cir. 1992). Finally, a plaintiff must present a federal question on the face of a complaint. See Rivet v. Regions Bank, 522 U.S. 470, 475, 118 S. Ct. 921, 139 L. Ed. 2d 912 (1998); Provincial Gov't of Marinduque v. Placer Dome, Inc., 582 F.3d 1083, 1086 (9th Cir. 2009) (in order for a federal court to exercise federal question jurisdiction under § 1331, "the federal question must be disclosed upon the face of the complaint" (internal quotation marks omitted)). A "plaintiff bears the burden of proving" the existence of subject matter jurisdiction and "must allege facts, not mere legal conclusions" to support the court's jurisdiction. Leite v. Crane Co., 749 F.3d 1117, 1121 (9th Cir. 2014).

In addition, plaintiff lists as defendants the United States of America and several federal agencies, including the United States Attorney's office, the United States Veterans' Administration, and the Social Security Administration. (ECF No. 1 at 1-2). As a general rule, however, the United States enjoys sovereign immunity, and this immunity extends to federal agencies and officers acting in their official capacities. Absent a waiver, sovereign immunity shields the federal government and its agencies from suit, and absent that waiver, courts lack jurisdiction to hear claims against the United States. Accordingly, this Court lacks subject matter jurisdiction to hear any constitutional tort claims against the United States and its agencies, because the United States has not waived sovereign immunity with respect to such claims. See, e.g., Jachetta v. United States, 653 F.3d 898, 904 (9th Cir. 2011) (citing FDIC v. Meyer, 510 U.S. 471, 478, 114 S. Ct. 996, 127 L. Ed. 2d 308 (1994)); Clemente v. United States, 766 F.2d 1358, 1363 (9th Cir. 1985); Gilbert v. DaGrossa, 756 F.2d 1455, 1460 n.6 (9th Cir. 1985). Further, the "bar of sovereign immunity cannot be avoided by naming officers and employees of the United States as defendants." Gilbert, 756 F.2d at 1458.

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Plaintiff also purports to name as a defendant a federal judge (ECF No. 1 at 2), but judges are entitled to absolute judicial immunity for claims arising from judicial acts taken within the jurisdiction of their courts. See Mireles v. Waco, 502 U.S. 9, 11-12, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991) ("judicial immunity is not overcome by allegations of bad faith or malice"); Stump v. Sparkman, 435 U.S. 349, 355-56, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). A judge does not lose absolute immunity merely because the action he or she took was in error, was done maliciously, or was in excess of his or her authority. See Stump, 435 U.S. at 356. Only judicial actions that are taken in "clear absence of all jurisdiction" may circumvent judicial immunity. Sadoski v. Mosley, 435 F.3d 1076, 1079 (9th Cir. 2006). Further, "[j]urisdiction should be broadly construed to effectuate the policies supporting immunity." Ashelman v. Pope, 793 F.2d 1072, 1076 (9th Cir. 1986) (*en banc*). Here, plaintiff's factual allegations concerning the named judge all appear to pertain to judicial actions that the judge took in connection with a trial. (*Id.* at 4-5, 13). Accordingly, plaintiff may not proceed with any federal civil rights claim against the named federal judge because such claims are barred by absolute immunity.

Further, plaintiff names as a defendant a (former) United States Attorney, Andre Birotte, Jr., and raises claims arising from false "stories" that Birotte allegedly told to a grand jury. (ECF No. 1 at 2, 4). The only factual allegations in the Complaint concerning this defendant are that unnamed individuals with the "Federal Attorney [sic]" assigned plaintiff an attorney who "who was afraid" to defend her, that the "US Attorneys [sic]" arrested the "wrong person," and that Birotte testified falsely. (*Id.* at 4, 10-11). Prosecutors, however, are entitled to absolute immunity from federal civil rights suits when they engage in activities "intimately associated with the judicial phase of the criminal process." See Imbler v. Pachtman, 424 U.S. 409, 427, 430, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976); Ashelman, 793 F.2d at 1075. This immunity applies even if it "does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty." See Imbler, 424 U.S. at 427. It is the nature of the function performed, not the role or identity of the actor, that determines the scope of absolute immunity. See Engebretson v. Mahoney, 724 F.3d 1034, 1039 (9th Cir. 2013) ("the Supreme Court has emphasized this functional approach for determining when public officials may claim

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1 absolute immunity under § 1983"). Functions that are prosecutorial in nature are entitled to
2 absolute immunity "when they are intimately associated with the judicial phase of the criminal
3 process." Slater v. Clarke, 700 F.3d 1200, 1203 (9th Cir. 2012) (internal quotation marks omitted)
4 (citing Van de Kamp v. Goldstein, 555 U.S. 335, 342, 129 S. Ct. 855, 172 L. Ed. 2d 706 (2009)).
5 Accordingly, absolute immunity applies to actions "initiating a prosecution" and "presenting the
6 State's case." Here, to the extent that plaintiff sets forth any factual allegations concerning
7 (former) United States Attorney Birotte, those allegations pertain solely to actions that are
8 intimately associated with the judicial phase of the criminal process. Accordingly, plaintiff does
9 not state any plausible claim against Birotte that is not barred by absolute immunity.

10 Plaintiff also names as defendants attorneys who were appointed to represent her in
11 connection with a criminal trial or appeal. To the extent that plaintiff is purporting to raise a federal
12 civil rights claim against any appointed public defender, plaintiff may not pursue a federal civil
13 rights action against a public defender on any claim arising from his or her allegedly inadequate
14 representation in a criminal proceeding. See Cox v. Hellerstein, 685 F.2d 1098, 1099 (9th Cir.
15 1982). Moreover, an attorney, even if appointed and paid for by a government agency, is a
16 private party who does not act under color of federal law. See Polk County v. Dodson, 454 U.S.
17 312, 317-18, 325, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). Therefore, to the extent that plaintiff
18 is purporting to raise any federal civil rights claims against an attorney arising from his or her
19 actions in representing plaintiff in a criminal proceeding, such claims essentially are state-law legal
20 malpractice claims, over which the Court does not have jurisdiction.

21 Further, plaintiff names the Warden of Victorville Prison as a defendant, and she purports
22 to raise a claim for "cruelty and neglect" (ECF No. 1, at 1-2, 5, 12), but plaintiff does not set forth
23 any factual allegations showing that the Warden took any action, participated in the action of
24 another, or failed to take any action that he or she was required to do that deprived plaintiff of any
25 right guaranteed under the Constitution or a federal statute. "A person deprives another 'of a
26 constitutional right, within the meaning of section 1983, if he does an affirmative act, participates
27 in another's affirmative acts, or omits to perform an act which he is legally required to do that
28 causes the deprivation of which [the plaintiff complains]." Leer v. Murphy, 844 F.2d 628, 633 (9th

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1 Cir. 1988), quoting Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (emphasis and alteration
2 in original). Further, supervisory personnel such as a warden are not liable under § 1983 on a
3 theory of respondeat superior. See, e.g., Redman v. County of San Diego, 942 F.2d 1435, 1446
4 (9th Cir. 1991) (en banc). In addition, as the Supreme Court has made clear, plaintiff must plead
5 "more than labels and conclusions." Twombly, 550 U.S. at 555. Here, plaintiff altogether fails to
6 set forth any factual allegations showing that the Warden took, or failed to take, any actions that
7 caused any federal constitutional deprivation.

8 Additionally, plaintiff names as defendants a mortuary and an insurance company, both of
9 which are private entities. (ECF No. 1 at 1-2, 5-6). To the extent that plaintiff is purporting to state
10 a federal civil rights claim against a private individual or entity, plaintiff may raise a claim pursuant
11 to § 1983 against a private party for an alleged violation of a constitutional right in only very limited
12 circumstances. "Section 1983 liability extends to a private party where the private party engaged
13 in state action under color of law and thereby deprived a plaintiff of some right, privilege, or
14 immunity protected by the Constitution or the laws of the United States." Brunette v. Humane
15 Society of Ventura County, 294 F.3d 1205, 1209 (9th Cir. 2002). In addition, the "color of law"
16 requirement excludes from the reach of § 1983 all "merely private conduct, no matter how
17 discriminatory or wrongful." American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40, 50, 143 L. Ed.
18 2d 130, 119 S. Ct. 977 (1999) (internal quotation marks omitted). Thus, the ultimate issue in
19 determining whether a person is subject to suit under § 1983 is whether the alleged infringement
20 of federal rights is "fairly attributable" to the government. Rendell-Baker v. Kohn, 457 U.S. 830,
21 838, 102 S. Ct. 2764, 73 L. Ed. 2d 418 (1982); see also Franklin v. Fox, 312 F.3d 423, 444 (9th
22 Cir. 2002) ("Section 1983 liability attaches only to individuals who carry a badge of authority of a
23 State and represent it in some capacity." (internal quotation marks omitted)). Here, plaintiff does
24 not set forth any factual allegations raising a reasonable inference that the private entities named
25 as defendants took any action that was fairly attributable to the government.

26 The Court finds that the Complaint does not set forth any factual allegations giving rise to
27 a reasonable inference that any defendant who is not immune from plaintiff's federal civil rights
28 claims is liable for a violation of a federal law or the United States Constitution. Accordingly,

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1 plaintiff has not met her burden of alleging facts, not mere legal conclusions, to support the
2 Court's jurisdiction. The Court therefore lacks subject matter jurisdiction over plaintiff's action
3 because plaintiff fails to allege a federal claim that is not "wholly insubstantial" or "obviously
4 frivolous." Shapiro, 136 S. Ct. at 455-56.

5 Plaintiff is advised that on Mondays, Wednesdays, and Fridays in the Edward Roybal
6 Federal Building and United States Courthouse at 255 E. Temple Street, Suite 170, in Los
7 Angeles, there is a pro se clinic that offers information and guidance to individuals who are
8 representing themselves in federal civil actions. Plaintiff can obtain more information about the
9 clinic by calling (213) 385-2977, Ext. 270, or by visiting the clinic website at
10 <http://prose.cacd.uscourts.gov/los-angeles>.

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