APPENDIX A

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: November 12, 2020

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of appellant's brief and the supplements thereto; the motion for appointment of counsel; the motion for summary affirmance, the opposition thereto, and the reply; and the motion to strike and for sanctions, the opposition thereto, and the reply, it is

ORDERED that the motion for appointment of counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated any likelihood of success on the merits. It is

FURTHER ORDERED that the motion to strike and for sanctions be denied. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam).

The district court correctly concluded that appellant's claims are barred by either sovereign immunity, see FDIC v. Meyer, 510 U.S. 471, 475 (1994), or the statute of limitations, see 28 U.S.C. § 2401(a). The district court further correctly concluded that appellant did not show that equitable tolling was warranted, see Jackson v. Modly, 949 F.3d 763, 778 (D.C. Cir. 2020), or that he was entitled to prospective equitable relief, see NB ex rel. Peacock v. District of Columbia, 682 F.3d 77, 82 (D.C. Cir. 2012).

In addition, the district court did not abuse its discretion in denying appellant's motion for reconsideration, see Ciralsky v. CIA, 355 F.3d 661, 671 (D.C. Cir. 2004), or his

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

motion for recusal, see SEC v. Loving Spirit Found. Inc., 392 F.3d 486, 493 (D.C. Cir. 2004); see also Liteky v. United States, 510 U.S. 540, 555 (1994).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Manuel J. Castro
Deputy Clerk

APPENDIX B

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: January 15, 2021

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

BEFORE: Srinivasan, Chief Judge, and Henderson, Rogers, Tatel, Garland*, Millett, Pillard, Wilkins, Katsas, Rao, and Walker, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

* Circuit Judge Garland did not participate in this matter.

APPENDIX C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: January 15, 2021

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

BEFORE: Millett, Pillard, and Rao, Circuit Judges

ORDER

Upon consideration of the motion to publish the court's order issued on November 12, 2020, it is

ORDERED that the motion to publish be denied. See D.C. Cir. Rule 36(f) (motions to publish "are not favored and will be granted only for compelling reasons"); see also D.C. Circuit Handbook of Practice and Internal Procedures 54 (2020). Although not published under D.C. Circuit Rule 36, the order is available to the public. See D.C. Cir. Rule 36(e)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX D

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: January 26, 2021

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

ORDER

Upon consideration of appellant's amended motion to recuse, it is

ORDERED that the amended motion to recuse be dismissed as moot. This appeal was decided by order filed on November 12, 2020, and appellant's petition for rehearing en banc was denied on January 15, 2021.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

APPENDIX E

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20-5113 **September Term, 2020**

1:19-cv-00081-ABJ

Filed On: January 26, 2021 [1881797]

John Worthington,

Appellant

v.

United States Office of National Drug Control Policy, et al.,

Appellees

MANDATE

In accordance with the order of November 12, 2020, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

Link to the order filed November 12, 2020

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN WORTHINGTON, Plaintiff, v. OFFICE OF NATIONAL DRUG CONTROL POLICY, *et al.*, Defendants.	)	Civil Action No. 19-0081 (ABJ)

ORDER

Pursuant to Federal Rules of Civil Procedure 12 and 58, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED that defendants' motion to dismiss [Dkt. # 15] is **GRANTED**. It is

FURTHER ORDERED that plaintiff's first motion to take judicial notice [Dkt. # 24] and second motion to take judicial notice [Dkt. # 26] are **DENIED AS MOOT**.

This is a final, appealable order.

SO ORDERED.

Amy B Jackson

AMY BERMAN JACKSON
United States District Judge

DATE: March 30, 2020

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN WORTHINGTON, Plaintiff, v. OFFICE OF NATIONAL DRUG CONTROL POLICY, *et al.*, Defendants.	)	Civil Action No. 19-0081 (ABJ)

MEMORANDUM OPINION & ORDER

Pro se plaintiff John Worthington filed this action against the Office of National Drug Control Policy, the U.S. Department of Justice ("DOJ"), the Bureau of Justice Assistance Programs, the Department of the Treasury, and three officials within the federal government: Attorney General William P. Barr; a Grants Management Specialist at DOJ, Jeffrey Felten-Green; and former Treasurer of the United States, Jovita Carranza. Am. Compl. [Dkt. # 5]. Plaintiff alleged that defendants conspired with a "multi-jurisdictional drug task force" called the West Sound Narcotics Enforcement Team ("WestNET") to deprive plaintiff of his property through seizure of his marijuana plants. *See id.* ¶¶ 1.6–1.8.

On June 26, 2019, defendants moved to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Defs.' Mot. to Dismiss [Dkt. # 15] ("Defs.' Mot"); Defs.' Mem. of P. & A. in Supp. of Defs.' Mot. [Dkt. # 15-1] ("Defs.' Mem.") at 4–6. On March 30, 2020, the Court granted defendants' motion to dismiss. Order [Dkt. # 31]; Mem. Op. [Dkt. # 32]. On April 1, 2020, plaintiff moved for reconsideration pursuant to Federal Rule of Civil Procedure 59(e), Pl.'s Mot. for Reconsid. [Dkt. # 33] ("Pl.'s Mot."); Pl.'s Mem. of P. & A.

in Supp. of Pl.'s Mot. [Dkt. # 33-1] ("Pl.'s Mem."), and for the Court's recusal pursuant to 28 U.S.C. § 455. Pl.'s Mot. for Recusal [Dkt. # 34] ("Pl.'s Recusal Mot."). Defendants opposed both motions. Defs.' Opp. to Pl.'s Mot. and Pl.'s Recusal Mot. [Dkt. # 41] ("Defs.' Opp."). For the following reasons, both motions will be denied.

BACKGROUND

On January 7, 2007, plaintiff John Worthington was subject to a raid on his home in Washington state, Am. Compl. ¶ 5.21, conducted by WestNET, *id.* ¶ 1.13, which is comprised of various Washington state police and sheriffs' offices. Plaintiff alleges that WestNET was operating under the command and control of two federal organizations: the Office of National Drug Control Policy ("ONDCP") and the Drug Enforcement Agency ("DEA"). *Id.* ¶¶ 1.8, 5.21. During the raid, WestNET agents seized marijuana plants belonging to plaintiff that he claims were for medicinal use. *Id.* ¶ 5.26. The plants were then allegedly turned over to the DEA to be "summarily destroyed." *Id.* Plaintiff asserts that the raid was performed as part of a federal policy "to have cross designated state and local law enforcement to seize medical marijuana for the DEA and have it 'summarily' destroyed, without seizure and forfeiture process . . . ." *Id.*

Plaintiff also alleges that WestNET was an "unlawful entity" when it conducted the 2007 raid on his home. *See* Am. Compl. ¶¶ 6.2–6.3 (alleging that Washington state and local members of WestNET "had no authority to create a legal entity named WestNET" but nevertheless "created court documents that portrayed WestNET as a legal entity to which forfeitures could be unlawfully made to and to which fines, [f]ees, restitution, and court costs could be unlawfully collected for and distributed"); *id.* ¶ 6.3 ("The WestNET Policy Board then used the illegally collected WestNET money as its own private piggy bank and started hiring its own employees and spending the monies collected using the alleged illegal entity WestNET. Non-WestNET members identified herein participated and managed the monies obtained in the conspiracy.").

While WestNET is not a defendant in this case, plaintiff claims that federal agencies violated both federal and Washington state law when they used WestNET to perform the seizure and conditioned funding to WestNET on certain actions. *Id.* ¶¶ 6.7, 6.10, 6.11.

Plaintiff brought thirteen claims alleging violations of: the Washington Criminal Profiteering Act, RCW 9A.82.060, 9A.82.080; the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1962 *et seq.*; federal mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343; the Fourth, Fifth, Tenth, Thirteenth, and Fourteenth Amendments of the U.S. Constitution; federal civil rights and anti-commandeering statutes, 42 U.S.C. § 1983 and 34 U.S.C. § 10228; the Administrative Procedure Act, 5 U.S.C. § 702 *et seq.*; and the Washington Administrative Procedure Act, RCW 34.05.570 *et seq.* Am. Compl. ¶¶ 1.1–1.2, 1.6–1.7, 1.17. Plaintiff also sought injunctive, declaratory, and mandamus relief pursuant to federal and Washington state mandamus statutes. 28 U.S.C. § 1361; 28 U.S.C. § 2201 *et seq.*; RCW 7.16 *et seq.*

Defendants moved to dismiss the complaint, arguing that the Court did not have jurisdiction over the claims because they were untimely, barred by sovereign immunity, and because plaintiff lacked standing to pursue prospective injunctive relief. Defs.' Mot.; Defs.' Mem. They also argued that the claims were inadequately pleaded. Defs.' Mem. at 10–11. The Court agreed with defendants and found that the RICO and mail/wire fraud claims were barred by sovereign immunity, Mem. Op. at 8–11; the constitutional and APA claims were untimely, *id.* at 11–17; and plaintiff did not show that he was entitled to injunctive and mandamus relief. *Id.* at 17–19.

ANALYSIS

I. Plaintiff's Recusal Motion

Plaintiff filed a motion seeking the Court's recusal pursuant to 28 U.S.C. § 455(a), (b)(1). Pl.'s Recusal Mot. at 1. Section 455(a) states: "[a]ny justice, judge, or magistrate judge of the United States shall disqualify [her]self in any proceeding in which [her] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). Section 455(b)(1) states: "[s]he shall also disqualify [her]self in the following circumstances: where [s]he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." *Id.* § 455(b)(1).

The purpose of section 455(a) is "to promote [public] confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *United States v. Microsoft Corp.*, 253 F.3d 34, 114 (D.C. Cir. 2001), quoting *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). In assessing section 455(a) motions, the D.C. Circuit has applied an objective standard: "[r]ecusal is required when 'a reasonable and informed observer would question the judge's impartiality.'" *SEC v. Loving Spirit Found. Inc.*, 392 F.3d 486, 493 (D.C. Cir. 2004), quoting *Microsoft Corp.*, 253 F.3d at 114. "This standard requires that [the Court] take the perspective of a fully informed third-party observer who understand[s] all the relevant facts and has examined the record and the law." *United States v. Cordova*, 806 F.3d 1085, 1092 (D.C. Cir. 2015) (alteration in original) (internal quotation omitted). From this viewpoint, "bald allegations of bias or prejudice" do not suffice. *Karim-Panahi v. U.S. Cong., Senate & House of Representatives*, 105 F. App'x 270, 275 (D.C. Cir. 2004).

Plaintiff argues that the Court should be recused because it has demonstrated bias against him and partiality towards the government. Pl.'s Recusal Mot. at 1. His primary support for this

(D.C. Cir. 1996) (internal quotation marks omitted). A motion to reconsider under Rule 59(e) "is [neither] . . . an opportunity to reargue facts and theories upon which a court has already ruled nor a vehicle for presenting theories or arguments that could have been advanced earlier." *SEC v. Bilzerian*, 729 F. Supp. 2d 9, 14 (D.D.C. 2010) (internal quotation marks omitted), quoting *New York v. United States*, 880 F. Supp. 37, 38 (D.D.C. 1995) and *Kattan ex rel. Thomas v. District of Columbia*, 995 F.2d 274, 276 (D.C. Cir. 1993).

First, plaintiff argues that the Court erred when it stated that no federal agency was a party of the WestNET interlocal agreement, because the agreement states that the Naval Criminal Investigative Service was part of WestNET. Pl.'s Mem. at 5–7. The Court recognizes that this is a federal agency, and it erred in stating that no federal agency was a party to WestNET. However, the Court did not base its decision on that observation. Rather, it found that no federal agency had waived its sovereign immunity through statute or agreement, and thus, Counts 1–6 had to be dismissed. Mem. Op. at 8–11. The fact that a federal agency signed onto the interlocal agreement does not change that conclusion. Thus, the Court finds that reconsideration is not justified based upon this error, because it did not base its ruling upon this fact.

Second, plaintiff argues that the Court erred when it dismissed Counts 1–6, because he "filed and served a tort claim on the ONDCP[] and other federal agencies" and that the federal government "took no position" as to whether plaintiff met the requirements of 28 U.S.C. § 2401 or § 2675(a). Pl.'s Mem. at 7–8. Section 2675(a) provides that any tort claims against the government must be first presented to the appropriate federal agency, 28 U.S.C. § 2675(a), and section 2401(b) states that any tort claim shall be barred unless "it is presented in writing to the appropriate federal agency within two years after such claim accrues or unless action is begun within six months . . . of notice of final denial of the claim." *Id.* § 2401(b). But the Court did

not dismiss the claims because plaintiff failed to comply with these statutes – the claims were dismissed because they were barred by sovereign immunity. So, whether plaintiff complied with these statutes is of no moment.

Plaintiff's next few arguments are difficult to parse. He states that the Court had ruled that WestNet "could make a final agency action." Pl.'s Mem. at 8. But the Court never ruled that. He also argues that 42 U.S.C. § 1983 is "applicable under the 14th Amendment." *Id.* at 9. But the Court dismissed the constitutional challenges because they were untimely, and plaintiff does not address the statute of limitations for the alleged constitutional violations in his motion for reconsideration.

Plaintiff also argues that the Court failed to take a "legal position" on the constitutional claims against the individuals named in the complaint. Pl.'s Mem. at 10–11. To the extent he is arguing that he filed an action against the individual defendants in their personal capacity, as opposed to their official capacity, *see* Pl.'s Errata Reply in Supp. of Mot. to Reconsider [Dkt. # 48], and the Court did not address the claims against the individual defendants in their personal capacity, the Court notes that it was not clear on the face of plaintiff's complaint that the claims were brought against the individual defendants in their personal capacity. *See* Am. Compl. [Dkt. # 5] ¶ 3.7 ("Defendants are United States agencies or officers sued in their official capacities."). *But see id.* at 37 ("Count Four: . . . Brought as a private attorney general and individual action against all defendants.").

And, in any event, plaintiff does not allege that the individual defendants took any specific personal actions that would give rise to individual liability – all of the allegations in the complaint challenge actions taken in the individuals' exercise of their official duties. *Cayuga Nation v. Zinke*, 302 F. Supp. 3d 352, 359 (D.D.C. 2018) (finding that the defendant could not be

sued in his individual capacity where the allegations against him all related to his exercise of his official duties). Furthermore, the relief sought by plaintiff could only have been obtained from defendants in their official capacities.[1] Under these circumstances, courts have found that the claims are improper and should be dismissed. *Id.* at 359–60 (collecting cases). Thus, plaintiff has provided no reason to reconsider the Court's judgment.

Finally, plaintiff argues that the Court erred when it ruled that plaintiff's Counts 7–12 were untimely because there was no lawful agency that could have taken an "action" so as to start the clock on the statute of limitations. Pl.'s Mot. at 11. But whether or not WestNET was a lawful entity does not change the fact that plaintiff's actions accrued when the allegedly unlawful action took place, in 2007. And while plaintiff attempts to argue, for the second time, that equitable tolling applies, the Court already addressed that argument in its ruling, and plaintiff does not raise any new evidence or legal errors that would warrant reconsideration.

Because plaintiff has not pointed to a "change of controlling law, the availability of new evidence, or the need to correct a clear error to prevent manifest injustice," *Firestone*, 76 F.3d at 1208, plaintiff's motion for reconsideration will be denied.

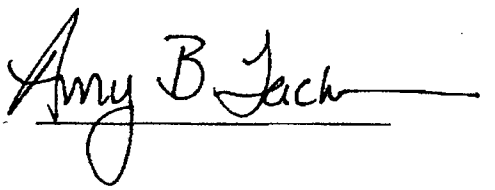
---

1 Plaintiff asked the Court for injunctive relief to enjoin defendants from "leading the illegal WestNET entity," Am. Compl. ¶ 7.4; "from collecting and using cash . . . forfeited to WestNET," *id.* ¶ 7.6; and "from acquiring or maintaining . . . any interest in or control of any RICO enterprise," *id.* ¶ 7.8. He also asks the Court to declare certain policies as unconstitutional, *id.* ¶ 7.42, order defendants to abide by the law, *id.* ¶ 7.46, and for damages related to the constitutional violations. *Id.* ¶¶ 7.35, 7.38. In short, plaintiff was asking the Court to declare unlawful and restrain certain government actions, not actions taken in any personal capacity.

CONCLUSION

For the foregoing reasons, plaintiff's motion for recusal [Dkt. # 34] and motion for reconsideration [Dkt. # 33] are **DENIED**.

SO ORDERED.



AMY BERMAN JACKSON
United States District Judge

DATE: June 12, 2020