

APPENDIX A

**United States Court of Appeals
For the Eighth Circuit**

No. 22-1279

Scott Louis Youngbear

Plaintiff - Appellant

v.

Attorney General Tom Miller

Defendant - Appellee

**Appeal from United States District Court
for the Northern District of Iowa - Cedar
Rapids**

Submitted: May 4, 2022

Filed: May 9, 2022

[Unpublished]

Before SHEPHERD, STRAS, and KOBES,
Circuit Judges.

PER CURIAM.

Scott Youngbear appeals the district court's¹ dismissal for lack of jurisdiction of his pro se 42 U.S.C. § 1983 complaint challenging his ongoing placement on the Iowa sex offender registry. Upon careful review, we conclude that the district court did not err in dismissing the case. See *Laclede Gas Co. v. St. Charles Cty., Mo.*, 713 F.3d 413, 417 (8th Cir. 2013) (de novo review of dismissal for lack of subject matter jurisdiction). Accordingly, we affirm, see 8th Cir. R. 47B, and we deny Youngbear's pending motion as moot.

1 The Honorable C.J. Williams, United States District Judge for the Northern District of Iowa.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA CEDAR RAPIDS DIVISION

No. 21-CV-115-CJW-MAR

SCOTT LOUIS YOUNGBEAR,
Plaintiff,

v.

ORDER

TOM MILLER,
Attorney General of Iowa,
Defendant.

This matter is before the Court for review of plaintiff Scott Louis Youngbear's Complaint filed under Title 42, United States Code, Section 1983 (Doc. 1) and defendant's motion to dismiss (Doc. 7). For reasons explained herein, the Court grants defendant's motion to dismiss the case for lack of jurisdiction.

I. PROCEDURAL AND FACTUAL HISTORY

On November 1, 2021, plaintiff initiated this pro se civil action by filing his Complaint, serving it on defendant, and paying the full \$402 filing fee. On December 29, 2021, defendant moved to dismiss the Complaint for lack

of jurisdiction or failure to state a claim. Plaintiff filed a timely response.

In the Complaint, plaintiff argues that his First and Fourteenth Amendment rights are being violated by his ongoing placement on Iowa's Sex Offender Registry ("SOR"). He argues that he should have a constitutional right under Iowa Code, Section 692A (2019) to refuse secular-based treatment and to opt for faith-based treatment. Plaintiff contends that there is an ongoing Equal Protection violation because he is being treated differently than other inmates who can utilize secular treatment and thus qualify for a change in tier status on the Iowa SOR. (Doc. 1, at 2). In support of his Equal Protection claim, plaintiff asserts that at one time there was a religious based treatment unit for sex offenders, and that although it was found unconstitutional, another similar unit should have been established to give him an opportunity for a different sort of treatment. *Id.* at 4-9. Plaintiff makes additional arguments concerning his right to refuse treatment, due process, and two types of immunity. *Id.* At 2-11.

The remainder of plaintiff's 34-page Complaint is a lengthy personal statement of his views on religion and the overlap between religion and law. Plaintiff cites to numerous sources including scholars, courts, and religious texts. *Id.* at 11-34. At the conclusion he requests only injunctive relief, specifically, "[m]ay the Court conclude that prospective relief is available and that the Court vindicate

my constitutional rights embodied in the United States Constitution and in the Bill of Rights. Also be removed from the tribal SOR.” (Doc. 1, at 34).²

II. ANALYSIS

A. Applicable Standards

Federal courts may only hear cases that fall within their limited subject matter jurisdiction. *N. Cent. F.S., Inc. v. Brown*, 951 F. Supp. 1383, 1391-92 (N.D. Iowa 1996). Title 28, United States Code, Section 1331, grants federal courts subject matter jurisdiction over “all civil actions arising under the Constitution, laws or treaties of the United States.”

Under Federal Rule of Civil Procedure 12(b)(1), a defendant may move to dismiss a complaint based on a “lack of subject-matter jurisdiction.” The plaintiff bears the burden of proving subject matter jurisdiction by a preponderance of the evidence. *W S Lt.d P’ship v. Dept. of Hous. & Urb. Dev.*, 235 F.3d 1109, 1112 (8th Cir. 2000) (citation omitted); *Thome v. Sayer Law Group, P.C.*, 2021 WL 4690829

2 Defendant’s motion to dismiss argues that Eleventh Amendment immunity bars any claim for money damages. (Doc. 7-1 at 4). To the extent plaintiff sued defendant Tom Miller in his official capacity, that is true. However, plaintiff sued Miller in both his individual and official capacities. (Doc. 1 at 3). Accordingly, a properly brought claim against Miller for damages in his individual capacity could potentially be allowed to proceed. Nevertheless, plaintiff makes clear he seeks only injunctive relief. See e.g., Doc. 1 at 10, stating, “[a]s the matter is prospective in nature, Eleventh Amendment immunity may be negated.”

at *2 (N.D. Iowa 2021). A defendant can either attack the complaint's asserted jurisdictional basis on its face or the factual basis underlying the pleadings. In a facial attack, the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6). *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990) (citations omitted). In such cases, the court must "accept as true all factual allegations in the complaint," *Jackson v. Abendroth & Russell, P.C.*, 207 F. Supp. 3d 945, 950 (S.D. Iowa 2016), and should not dismiss the complaint "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of [their] claim which would entitle [them] to relief." *Osborn*, 918 F.2d at 729 n. 6 (citation and internal quotation marks omitted). "In a factual attack, the court considers matters outside the pleadings, and the non-moving party does not have the benefit of 12(b)(6) safeguards." *Id.* (citations omitted). In such cases, "the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case" and "no presumptive truthfulness attaches to the plaintiff's allegations." *Id.* at 730 (quoting *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)).

Under Article III of the United States Constitution, federal courts have jurisdiction to hear only cases or controversies. *Hillesheim v. O.J's Café, Inc.*, 968 F.3d 866,

868 (8th Cir. 2020). As the Supreme Court reiterated in *DaimlerChrysler Corp. v. Cuno*,

A case in law or equity, Marshall remarked, was a term . . . of limited signification. It was a controversy between parties which had taken a shape for judicial decision. If the judicial power extended to every question under the constitution it would involve almost every subject proper for legislative discussion and decision; if to every question under the laws and treaties of the United States it would involve almost every subject on which the executive could act. The division of power [among the branches of government] could exist no longer, and the other departments would be swallowed up by the judiciary." 4 Papers of John Marshall 95 (C. Cullen Ed. 1984).

547 U.S. 332, 341 (2006). To establish a controversy, a plaintiff must demonstrate standing—that is, "a personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief"—and a controversy must exist through all stages of the litigation. *Id.* At 342.

The Supreme Court of the United States has established three elements of standing: (1) "the plaintiff must have suffered an 'injury in fact'" which is concrete, particularized, and actual or imminent, not conjectural or hypothetical; (2) "there must be a causal connec-

tion between the injury and the conduct complained of[;]" and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defendants of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations and internal quotation marks omitted). An injury is "concrete" when it "actually exist[s]." *Spokeo, Inc. v. Robbins*, 578 U.S. 330 (2016).

"[A] generalized grievance against allegedly illegal governmental conduct [is not] sufficient for standing to invoke the federal judicial power." *United States v. Hays*, 515 U.S. 737, 743 (1995). An injury based on a generic assertion that the government did not follow the law is not a particularized injury because it is not distinguishable from the injury to every citizen. *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013). To have standing, a plaintiff must show a concrete and particularized injury beyond the generalized grievance arising from a violation of the law. *Carney v. Adams*, 141 S.Ct. 493, 499 (2020).

If a plaintiff seeks prospective injunctive relief against future conduct from defendants who caused injury in the past, he must show that he faces "a real and immediate threat that [he] would again suffer similar injury in the future." *Frost v. Sioux City, Iowa*, 920 F.3d 1158, 1162 (8th Cir. 2019). "[S]ome day" intentions—without any description of concrete plans, or indeed even any specification of when some day will be—do not support a finding of the 'actual or imminent' injury that

our cases require.” *Id.*, citing *Lujan*, 504 U.S. at 564. An injunction cannot redress past injuries. *Frost*, 920 F.3d at 1161, citing *Harmon v. City of Kansas City, Mo.*, 197 F.3d 321, 327 (8th Cir. 1999) (a past injury does not establish standing for injunctive relief against future violations).

An additional consideration that encompasses Article III and prudential considerations is ripeness. A court must determine if the issue is ripe for judicial resolution, meaning if it is the right time for a court to issue a decision on the matter. The doctrine of ripeness is designed “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” *Nat’l Park Hosp. Ass’n v. Dep’t of Interior*, 538 U.S. 803, 807-08 (2003) (citation and internal quotation marks omitted). “Ripeness require[es] [a court] to evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.” *Texas v. United States*, 523 U.S. 296, 300-01 (1998) (first alteration in original) (citation and internal quotation marks omitted). “The fitness prong ‘safeguards against judicial review of hypothetical or speculative disagreements.’” *Parish v. Dayton*, 761 F.3d 873, 875 (8th Cir. 2014), citing *Nebraska Pub. Power Dist. V. MidAmerican Energy Co.*, 234 F.3d 1032, 1038 (8th Cir. 2000). The hardship prong asks whether delayed review “inflicts significant practical harm” on the plaintiffs. *Id.*, citing

Ohio Forestry Ass'n, Inc. v. Sierra Club, 523 U.S. 726, 733 (1998). "A claim is not ripe for adjudication if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" Texas v. United States, 523 U.S. 296, 300 (1998), quoting Thomas v. Union Carbide Agric. Prods. Co., 473 U.S. 568, 580-81 (1985.)

B. Analysis

Under Iowa law, a person on the SOR may seek to modify his or her registration by: applying for modification; completing treatment programs; completing a risk assessment; securing a stipulation in support of the modification; and, remaining out of custody. See Iowa Code, Section 692A.128. Once an individual has applied and established the above factors, an Iowa district court has discretion to approve or deny a modification request. See, e.g., *Fortune v. State*, 957 N.W.2d 696, 703-706 (Iowa 2021).

Defendant contends that plaintiff does not have a live case or controversy, he lacks standing, and his claims are not ripe. (Doc. 7, at 8-10). Plaintiff does not squarely address these contentions in his short response to the motion to dismiss. See (Doc. 9). In his Complaint, plaintiff characterized the violation of his rights as ongoing. (Doc. 1, at 1). He also characterized his claims as a question of "whether [he has] a constitutional right under Iowa Code § 692A (2019), Sex Offender Registry (SOR), to refuse secular-based treatment

and opt for faith-based treatment.”³ (Id.) In response to the motion to dismiss, plaintiff contends “the State must either accept my findings or reject them to their peril as government is not allowed to disparage religious doctrines.” (Id. at 2). The Court will discuss each of defendant’s contentions in turn.

3 The Court does not interpret plaintiff’s pleadings as posing a facial attack to the constitutionality of Iowa’s sex offender statutes because it is not clear that he intended to raise such a challenge. As relief he asks that the “Court vindicate [his] constitutional rights embodied in the United States Constitution and in the Bill of Rights. Also be removed from the tribal SOR.” (Doc. 1, at 34). Within the body of his Complaint he references Iowa’s SOR, as well as the specific provision that allows an individual to apply for modification of his or her status on the SOR, Iowa Code § 692A.128. He contends throughout the Complaint that his rights have been violated because non-secular treatment programming is not available. In recent years the Supreme Court has acknowledged that the distinction between a facial and an as-applied challenge to a statute can be difficult to discern. See *Bucklew v. Precythe*, 139 S.Ct. 1112, 1128 (2019); *City of Los Angeles, California v. Patel*, 576 U.S. 409, 415 (2009). One of the notable differences between the two types of challenges is the breadth of the remedy sought. *Bucklew*, 139 S.Ct. at 1127-28. A facial challenge is a challenge that a law is unconstitutional in all its applications, whereas an as-applied challenge is one concerning a discrete application or type of application. *Id.* A facial attack is “the most difficult [] to mount successfully.” *City of Los Angeles*, 576 U.S. at 415. In plaintiff’s case, his pleading most directly suggests that he is concerned with the treatment and modification options for himself based on his personal religious discovery. Although his contentions about the availability of non-secular treatment could have

First, as to the existence of a live case or controversy, it is not apparent that plaintiff has a current case or controversy. In his Complaint he talks about refusing sex offender treatment programming while he was incarcerated nearly 20 years ago, but he makes no mention of recent involvement with treatment. He also does not suggest that he has taken the steps to seek the treatment he desires from the state, or to apply for a modification of his status on the SOR based on completion of such treatment. Instead, plaintiff argues in his response to the motion to dismiss that he has come to his own realizations and understanding about his past conduct based on his personal study of religion, and the state must either accept his findings or reject them to their peril because they are not allowed to disparage religious doctrines. (Doc. 9, at 2). Plaintiff's statement does not make it apparent that he has a live case or controversy. Quite the opposite, plaintiff's statement makes it clear that he has not yet asked the state to assess his preferred path of treatment and to consider the implications for modification to his status.

Furthermore, plaintiff's allegations do not establish standing. He either alleges that he was injured in the past because while he was incarcerated he did not have access to non-secular treatment, or he argues he might be

broader implications, the Court does not interpret his current pleadings as raising claims in those terms.

harmed because Iowa does not offer non-secular treatment. A past but not ongoing injury is not sufficient to create standing for prospective injunctive relief, so his first contention does not give him an adequate jurisdictional basis. See *Frost*, 920 F.3d at 1161. As for plaintiff's potential future injury, a generalized claim about the invalidity of Iowa's sex offender statutes is not concrete and particularized enough to create standing. See *Carney*, 141 S.C. at 499. Plaintiff's contentions are simply too broad and generic to establish a well-defined present injury that is subject to review and resolution by a federal court.

The issues surrounding standing also factor into a finding that plaintiff's claims are not ripe for resolution by a federal court. An issue is not ripe if it calls for a court to pass on a hypothetical scenario. See *Texas*, 523 U.S. at 300. Plaintiff's contentions to the Court are entirely hypothetical because he asserts that the state must either choose to accept his religious and intellectual discoveries about his past offenses, or to reject them thereby creating a dispute. The potential dispute has yet to arise, so plaintiff's case is not ripe for judicial review. See *Parrish*, 761 F.3d at 875. Plaintiff will not be unduly burdened by the Court refusing to hear his case at this time because there is no apparent barrier to his ability raise his issues at the state level.

The Court notes that this civil filing is not plaintiff's first attempt to attack his place-

ment or status on the SOR.⁴ Last year plaintiff filed a petition for a writ of habeas corpus seeking his immediate release from the SOR, and a declaration that the state was liable for civil rights violations. *Youngbear v. Tom Miller*, 20-cv-0113-CJW-MAR (N.D. Iowa 2020). The Court denied the petition because the precise source of plaintiff's alleged restriction on his liberty was unclear, he had not given the state courts an opportunity to review his arguments, and his pleading did not comply with the requirements of the relevant rules and statutes. *Id.*, Doc. 9 (Sept. 13, 2021). The present suit contains many of the same claims as the earlier petition, repackaged in a civil rights suit as opposed to a habeas petition. Due to the similar nature of the two cases, the Court suspects plaintiff may continue to attempt to file litigation concerning the same topic. Before incurring the costs of further federal litigation, plaintiff should be aware that in almost all scenarios, a federal court will refrain from deciding the constitutionality of a state laws implications for an individual if and until the state courts or state agency have had an opportunity to consider the issue.⁵ If plaintiff continues to pursue fed-

4 Plaintiff also filed a civil suit on October 1, 2021, but he voluntarily dismissed it before the Court reviewed the pleading. *Youngbear v. Tom Miller*, 21-cv-0091-CJW-MAR (N.D. Iowa 2021).

5 In this case, that would be the state system rejecting plaintiff's request to be removed from the SOR based on religious treatment or the other individualistic discoveries

eral litigation on this topic without attempting to resolve his issues at the state level, he will likely continue to face the same or similar outcomes.

Thus, the Court finds it appropriate to grant defendant's motion to dismiss (Doc. 7) because plaintiff has not met his initial burden to demonstrate that there is jurisdiction over the issues he presents.

III. CONCLUSION

For the reasons set out above:

1. The Court **grants** defendant's Motion to Dismiss (Doc. 7) and plaintiff's Complaint is **dismissed without prejudice** for lack of jurisdiction.
2. The Clerk of Court is directed to close this case.

IT IS SO ORDERED this 18th day of January, 2022.

____s/____
C.J. Williams
United States District Judge
Northern District of Iowa

about himself he has made.

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