

EXHIBIT "A"
RULING FROM FEDERAL COURT

Case 4:20-cv-00714-SDJ-CAN Document 24

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

LAMON SANDEL DEWAYNE	§	
DONNELL,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO.
	§	4:20-CV-00714-SDJ
v.	§	-CAN
	§	
UNITED STATES OF AMERICA,	§	
	§	
Defendant.	§	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court are the United States' Second Motion to Dismiss [Dkt. 22] and Statement of Interest and Suggestion of Dismissal [Dkt. 17]. After considering the United States' Second Motion to Dismiss, Statement of Interest, and all other relevant filings, the Court recommends

the United States' Second Motion to Dismiss [Dkt. 22] be **GRANTED**, Statement of Interest [Dkt. 17] be **DENIED AS MOOT**, and Plaintiff's claims be **DISMISSED** as set forth herein.

BACKGROUND

Relevant Procedural History

In 2011, Plaintiff Lamon Sandel Dewayne Donnell (“Plaintiff”) pleaded guilty to conspiracy to possess with intent to distribute MDMA in violation of 21 U.S.C. § 846. He was sentenced on April 30, 2013, to a 240-month term of imprisonment. *United States v. Donnell*, No. 4: 10-cr-00065-SDJ-CAN-6 (E.D. Tex. Apr. 30, 2013), ECF No. 504. Assistant United States Attorney Ernest Gonzalez (“AUSA Gonzalez”) was the lead prosecutor in Plaintiff's criminal matter. Plaintiff filed a direct appeal of his conviction, arguing in part that the District

Court was without subject matter jurisdiction; the Fifth Circuit denied the appeal in 2014, affirming the judgment of the District Court. *Id.* ECF No. 530; *United States v. Donnell*, 557 F. App'x 335 (5th Cir. 2014). To date, Plaintiff's conviction has not been reversed, invalidated, expunged, or otherwise called into question.

On September 21, 2020, over six years following his appeal and seven and a half years following sentencing, Plaintiff filed the original Complaint in this cause [Dkt. 1]. The Complaint on its face states a "tort action" for "breach of fiduciary duty" [Dkt. 1 at 9-12, 17-18]. Broadly construed, Plaintiff alleges a claim against AUSA Gonzalez for malicious prosecution stemming from Plaintiff's belief that his conviction is illegitimate because the United States "never put" evidence on

the record that it has “both Personal and Subject-Matter Jurisdiction” over him [Dkt. 1 at 9, 18]. Plaintiff claims he is not citizen of any nation, and that he is, in fact, a “corporate fiction” [Dkt. 1 at 6].

Notwithstanding that Plaintiff’s Complaint references the word “tort” on at least nine occasions, Plaintiff’s subsequent response to the United States’ First Motion to Substitute as Defendant expressly disclaimed assertion of any tort claim, including specifically any malicious prosecution and/or Federal Tort Claims Act (“FTCA”) claim [Dkt. 10 at 3-5]. Plaintiff alleged “[t]he matter before this court is criminal in nature,” and he “challenges the jurisdiction of the trial court” for the “negligent act of a federal employee” [Dkt. 10 at 3]. Given the irreconcilable inconsistencies in his pleadings, the Court ordered Plaintiff to file an amended complaint [Dkt. 13].

Specifically, the Court ordered Plaintiff to replead and state: “(1) [t]he specific claim or claims asserted in this cause; and (2) [t]he factual allegations supporting the claim or claims asserted; and (3) [a]ny document or documents demonstrating exhaustion of administrative remedies, if applicable” [Dkt. 13 at 3-4]. Plaintiff failed to comply with the Court’s Order, instead filing a two-page “Notice of Special Appearance,” along with a 125-page attachment containing blank court forms and photocopies of Plaintiff’s previous filings in this cause [Dkts. 15; 15-1]. As such, Plaintiff’s original Complaint remains the live pleading [Dkt. 1]. Given Plaintiff’s failure to amend, it remains unclear what claim or claims Plaintiff truly intends to assert. Holding the Complaint to its plain language, Plaintiff seeks to assert a tort claim against the United States.

United States' Second Motion to Dismiss

On June 29, 2021, the United States filed its Second Motion to Dismiss, requesting the Court dismiss all of Plaintiff's claims with prejudice [Dkt. 22]. The United States asserts Plaintiff's claims are subject to dismissal under both Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6) because: (1) Plaintiff failed to exhaust his administrative remedies necessary to bring a tort claim against the federal government; (2) the United States has not waived sovereign immunity for the tort of malicious prosecution; and (3) Plaintiff's complaint "fail[s] to articulate a cognizable cause of action" as courts generally reject "sovereign citizen" challenges and have specifically dismissed Plaintiff's previous challenges to his conviction based on the same [Dkt. 22 at 1-2]. Plaintiff has filed no response to the pending Motion to Dismiss.

LEGAL STANDARD

Rule 12(b)(1)

A Rule 12(b)(1) motion to dismiss allows a party to challenge the exercise of the Court's subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). The party asserting jurisdiction bears the burden of proof for a 12(b)(1) motion to dismiss.

Ramming v. United States, 281 F.3d 158, 161 (5th Cir. 2001). The Court generally will accept all well-pleaded allegations in the complaint as true and construe those allegations in a light most favorable to Plaintiff. *Kumar v. Frisco Indep. Sch. Dist.*, 443 F. Supp. 3d 771, 777-78 (E.D. Tex. 2020) (citing *Truman v. United States*, 26 F.3d 592, 594 (5th Cir. 1994)). Whether a federal court has jurisdiction must "be established as a threshold matter" and "is inflexible and without exception." *Webb v. Davis*,

940 F.3d 892, 896 (5th Cir. 2019) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94-95 (1998)).

Rule 12(b)(6)

A Rule 12(b)(6) motion to dismiss argues that, irrespective of jurisdiction, the complaint fails to assert facts that give rise to legal liability of the defendant. FED. R. CIV. P. 12(b)(6). The claims stated must include enough factual allegations “to raise a right to relief above the speculative level.”

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).

Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “[C]ourts ‘are not bound to accept as true a legal conclusion

couched as a factual allegation.” *Twombly*, 550 U.S. at 555. When evaluating a 12(b)(6) motion, the Court may consider “the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint.” *Lone Star Fund V (US.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citation omitted).

ANALYSIS

Sovereign Immunity Not Waived for Malicious Prosecution

“Sovereign immunity implicates a federal court’s subject matter jurisdiction.” *Joiner v. United States*, 955 F.3d 399, 403 (5th Cir. 2020). “A plaintiff may only sue the United States if its sovereign immunity is explicitly waived in a federal statute[.]” *Ellis v. Dep’t of Veterans Affairs*,

No. 1:15-CV-00227-RC, 2016 WL 11190108, at *2 (E.D. Tex. Dec. 1, 2016) (citing *Farmer v. La. Elec. & Fin. Crimes Task Force*, 553 F. App'x 386, 388 (5th Cir. 2014) (per curiam)), *report and recommendation adopted*, No. 1:15-CV-227, 2017 WL 603322 (E.D. Tex. Feb. 14, 2017). “The FTCA is a limited waiver of sovereign immunity that allows plaintiffs to bring state law tort actions against the federal government.” *Tsolmon v. United States*, 841 F.3d 378, 382 (5th Cir. 2016) (citing 28 U.S.C. § 2674). Stated differently, the FTCA is the vehicle by which the United States has waived sovereign immunity for tort claims that allege wrongful or negligent acts committed by federal employees. See *Dickson v. United States*, No. 19-40932, 2021 WL 3721771, at *2 (5th Cir. Aug. 23, 2021) (citing *Spotts v. United States*, 613 F.3d 559, 566 (5th Cir. 2010); 28 U.S.C. § 2674)).

Here, the United States urges that “the actual words of his Complaint make clear that [Plaintiff] is alleging that Gonzalez engaged in malicious prosecution by purportedly failing to prove subject matter jurisdiction existed for his criminal conduct in the underlying criminal case” [Dkt. 22 at 8]. The United States moves to dismiss any claim for malicious prosecution as it is explicitly exempted from the FTCA’s waiver of sovereign immunity. *See* 28 U.S.C. §2860(h).

Plaintiff has no available relief under the FTCA; the conduct Plaintiff complains of – malicious prosecution – is, as the United States advances, an excluded tort that this Court has no jurisdiction to hear. *Truman v. United States*, 26 F.3d 592, 594 (5th Cir. 1994) (quoting 28 U.S.C. § 2680(h)) (“This exception retains the government’s

sovereign immunity for ‘[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.”); *Saunders v. Bush*, 15 F.3d 64, 66 (5th Cir. 1994) (citing 28 U.S.C. § 2860(h)) (“The tort of malicious prosecution, however, is ~~not~~ cognizable under the FTCA.”). Although the FTCA does waive sovereign immunity for certain actions taken by investigative or law enforcement officers, “prosecuting attorneys are not ‘law enforcement officers’ within the meaning of this section.” See *Vander Zee v. Reno*, 100 F.3d 952, *4 n.2 (5th Cir. 1996). Thus, Plaintiff’s suit is subject to dismissal because the FTCA does not waive sovereign immunity for any claim arising out of malicious prosecution.

***Failure to Exhaust Administrative Remedies -
Presentment and Limitations***

The United States further urges dismissal is appropriate because Plaintiff has failed to exhaust his administrative remedies as necessary to bring a tort claim against the federal government.

The FTCA notably contains two distinct timing requirements that implicate different grounds for dismissal argued for by the United States – the first is presentment of a claim to the proper administrative agency, and the second is the statute of limitations. See 28 U.S.C. §§ 2401(b), 2675(a).

Presentment is a prerequisite to filing a lawsuit – a claimant must present a written claim to the agency before filing in federal court. 28 U.S.C. § 2675(a). If a plaintiff has not yet presented a claim to a federal agency, the Court

lacks subject matter jurisdiction to hear a claim.

Mendoza v. United States, No. 4:20-CV-154-O, 2020 WL 6737871, at *3 (N.D. Tex. Nov. 17, 2020) (“This Court’s subject-matter jurisdiction over an action against the United States under the FTCA is thus expressly conditioned upon compliance with the language of 28 U.S.C. § 2675(a), which requires that a claimant ‘shall have first presented the claim to the appropriate federal agency,’ and either obtain a written denial of the claim or wait six months after its filing at the appropriate agency to deem the agency decision as a final denial.”).

On the other hand, the FTCA’s statute of limitations is a second, distinct time bar on a plaintiff’s cause of action. The statute of limitations in § 2401(b) contains two components – a tort

claim is barred unless the claim is presented to the agency within two years of the date the claim accrued (no presentment within two years); and a claim is also barred if the plaintiff does not file suit within six months of a final agency determination on such administrative claim (plaintiff presented but did not subsequently timely file suit). 28 U.S.C. § 2401(b).

While presentment under § 2675(a) is a jurisdictional question, limitations under§ 2401 (b) are not – a critical difference between the FTCA's time bars and their distinct functions. This distinction was made clear by the Supreme Court in *Wong*, where in 2016, it clarified that the time bar found in§ 2401 (b) is not jurisdictional, stating plainly: “[s]ection 2401 (b) is not a jurisdictional requirement. The time limits in the FTCA are

just time limits, nothing more.” *United States v. Wong*, 575 U.S. 402, 412 (2015). The *Wong* Court specifically addressed the divergent interpretations in the courts of appeal on this issue, finding the § 2401 (b) statute of limitations is not jurisdictional, and rejecting the rule followed by the Fifth Circuit that *all* timing requirements for FTCA claims are jurisdictional.

Since *Wong*, the Fifth Circuit has acknowledged the jurisdictional differences between the presentment requirement and the statute of limitations. *See, e.g., Barber v. United States*, 642 F. App’x 411,415 n.3 (5th Cir. 2016) (deciding whether § 2401(b) was about equitable tolling, the opinion directs that “*Wong* held that the FTCA’s statute of limitations was ‘non-jurisdictional and subject to equitable tolling.’”).

Courts in the Fifth Circuit have struggled since *Wong* to disentangle the timing requirements; a court in the Southern District of Texas recently opined, albeit in the context of § 2401 (b)'s six-month post-presentment limitation:

... In order to sue the United States for a FTCA claim, a plaintiff must present, in writing, a claim to the appropriate federal agency no more than two years after the event giving rise to the claim occurred. 28 U.S.C. § 2401(b). The Court *lacks subject matter jurisdiction over FTCA claims that a plaintiff has not first presented* to the appropriate federal agency. 28 U.S.C. § 2675(a).

A plaintiff has six months, after the federal agency sends its final denial of the claim, to file suit in district court. 28 U.S.C. § 2401(b). If the federal agency fails to make a final disposition of a claim within six months of receiving the claim, the plaintiff has the option “any time thereafter” to deem the failure as a final denial. 28 U.S.C. § 2675(a).

The FTCA six-month limitations period is a *non-jurisdictional, claim processing rule* subject to equitable tolling. *U.S. v. Kwai Fun Wong*, 575

U.S. 402, 135 S. Ct. 1625, 1633, 191 L.Ed.2d 533 (2015). This is because the statutory text of the FTCA speaks only to the timeliness of claims and *not to the powers or jurisdiction of courts to hear untimely tort claims. Id.* The statutory text also goes further than most statutes in waiving sovereign immunity, such that *it allows courts to hear late claims. Id.* at 1638.

Ramirez v. United States, 410 F. Supp. 3d 824, 832 (S.D. Tex. 2019) (emphasis added). The United States in its Motion argues that Plaintiff's suit is barred due to failure to present under § 2675(a) and also the statute of limitations under § 2401(b) [Dkt. 22 at 7].

Rule 12(b)(1) – Failure to Present

The United States contends Plaintiff has not presented a claim to the appropriate agency within two years of accrual [Dkt. 22 at 7]. More specifically, the United States argues that the Complaint does not state on its face that Plaintiff timely

filed an administrative claim, and it may indicate the opposite – as Plaintiff seemingly alleges the Complaint itself is “Notice” of his claim [Dkt. 22 at 7]. To properly allege presentment, the United States contends Plaintiff would have needed to plead that he presented an administrative claim to the Department of Justice concerning AUSA Gonzalez within the time required by the FTCA, but he did not [Dkt. 22 at 6-8].

The United States is correct that presentment must be pleaded and proven by the FTCA claimant. *See Barber*, 642 F. App’x at 413; *Bustos v. United Parcel Serv., Inc.*, No. H-19-2979, 2020 WL 3965991, at *2 (S.D. Tex. June 30, 2020), *report and recommendation adopted*, No. H-19-2979, 2020 WL 3963761 (S.D. Tex. July 13, 2020). A *pro se* litigant is not excused “from meeting

this threshold requirement.” *Mendoza*, 2020 WL 6737871, at *4 (citing *Gregory v. Mitchell*, 634 F.2d 199, 204 (5th Cir. 1981)). Here, Plaintiff’s Complaint states the following related to presentment:

4. Ernest Gonzalez was sent an Administrative Proof of Claim by the Secured Party, Lamon-Sandel-Dewayne:Donnell© via Certified mail pertaining to the claims being presented before this honorable court in an attempt to resolve these matters. To this date Ernest Gonzalez and/or any successor(s) has chosen tacit admission by and through his silence.

[Dkt. 1 at 10]. Plaintiff provides no evidence of any such presentment. Moreover, Plaintiff’s alleged presentment was not to the appropriate agency, the Department of Justice. Buttressing these conclusions, Plaintiff’s Complaint contains five attachments, none of which meet the requirement for presentment or otherwise indicate in any manner

that Plaintiff provided notice to the Department of Justice. In sum, no proof of presentment is in the record before the Court. *See Matz v. Fed. Bureau of Prisons*, No. EP-05-CA-408-DB, 2007 WL 496713, at *5 (W.D. Tex. Jan. 12, 2007) (concluding the plaintiff had not “provided the Court with evidence that he has exhausted his administrative remedies under the FTCA”). Plaintiff has not shown that he has satisfied the FTCA’s presentment requirement.

Rule 12(b)(6) - Statute of Limitations

The United States further urges that the two-year window for Plaintiff to present his claim has long since passed [Dkt. 22 at 1 0]. The statute of limitations in § 2401 (b) states that a tort claim is forever barred if not presented to the appropriate agency within two years of accrual of the claim. 28 U.S.C. § 2401(b). *Post Wong*, the

FTCA's statute of limitations is an affirmative defense to be considered under Rule 12(b)(6), for which the United States has the burden of proof.

Trinity Marine Prod., Inc. v. United States, 812 F.3d 481, 486 (5th Cir. 2016) (internal citations omitted) (citing *Sec. Indus. Ins. Co. v. United States*, 702 F.2d 1234, 1251 (5th Cir. 1983)); *Rodriguez v. Melendez*, No. 7:19-CV-116, 2019 WL 8399786, at *3 (S.D. Tex. Oct. 21, 2019) (“With respect to Plaintiffs’ FTCA action against the United States . . . the Motion also seeks dismissal under Rule 12(b)(6) on the asserted basis that the action is barred by limitations. As the Motion observes, a non-jurisdictional statute of limitations applies to claims under the FTCA”). “A cause of action under federal law accrues within the meaning of § 2401 (b) ‘when the plaintiff knows or has reason to know of the injury which is the basis

of the action.” *Ramming*, 281 F.3d at 162 (quoting *Brown v. Nations bank Corp.*, 188 F.3d 579, 589-90 (5th Cir. 1999)). Though the elements of a tort cause of action are governed by the applicable substantive state law, the time that a cause of action accrues is controlled by federal law. *See Roe v. United States*, 839 F. App’x 836, 843 (5th Cir. 2020) (“When an FTCA claim accrues is a question of federal law.”). “In cases of alleged malicious prosecution, numerous federal courts, including [the Fifth Circuit], have uniformly concluded that a claim accrues with the termination of the criminal proceeding against the plaintiff.” *Trinity Marine Prods., Inc.* , 812 F.3d at 488. The United States argues that Plaintiff’s tort claim for malicious prosecution accrued when his sentence became final on April 30, 2013, and consequently, he had two years to present his

claim to the Department of Justice, or until April 30, 2015 [Dkt. 22 at 10]. Plaintiff has put forth no plausible factual allegation that he presented his claim within two years of accrual. Even if the Court were to construe Plaintiff's Complaint itself as presentment, Plaintiff would remain barred by the two-year statute of limitations, as he initiated this suit in 2020. And no arguments have been presented that implicate equitable tolling. Because the two-year statute of limitations clock has run for Plaintiff to be able to present his claim, his FTCA claims are forever barred and should be dismissed with prejudice. *See Barber*, 642 F. App'x at 415; *Trinity Marine Prod., Inc.*, 812 F.3d at 486; *Rodriguez*, 2019 WL 8399786, at *3.

***Plaintiff’s “Sovereign Citizen” Allegations
Are Meritless and Frivolous***

The United States further moves to dismiss the “sovereign citizen” allegations in Plaintiff’s pleadings for failure to state a claim for relief under Rule 12(b)(6) [Dkt. 22 at 9-1 OJ]. Specifically, the United States advances that courts generally reject the sovereign citizen challenges Plaintiff raises as meritless [Dkt. 22 at 5-6]. The Court agrees that Plaintiff’s Complaint is meritless to the extent it relies on theories that the United States does not have jurisdiction over him as a “stateless person” or a sovereign citizen.

“The sovereign citizen movement is a loose grouping of litigants, commentators, and tax protesters who often take the position that they are not subject to state or federal statutes and proceedings.” *Porter v. Texas*, 729 F. App’x 358 (5th

Cir. 2018) (per curiam) (quoting *United States v. Weast*, 811 F.3d 743, 746 n.5 (5th Cir.), cert. denied, 137 S.Ct. 126 (2016)). Sovereign citizen claims “are generally founded on misunderstandings of the Uniform Commercial Code, maritime and admiralty law, and trust law, among other things, [and] have been unanimously rejected by the courts.” *Bradford v. Kummerfeld*, No. 5:19CV143, 2020 WL 6482980, at *3 (E.D. Tex. May 13, 2020) (citing *West v. Bornunda*, 698 F. App’x 224 (5th Cir. 2017)), *report and recommendation adopted*, No. 5:19-CV-00143-RWS, 2020 WL 5670013 (E.D. Tex. Sept. 24, 2020); *Berman v. Stephens*, No. 4:14-CV-860-A, 2015 WL 3622694, at *2 (N.D. Tex. June 10, 2015) (“[Plaintiff’s] reliance on the UCC or a so-called ‘sovereign citizen’ theory that he is exempt from prosecution and beyond the jurisdiction of the state or federal courts is frivolous.”). The

allegation that sovereign citizens are not subject to jurisdiction “has no conceivable validity in American law.” *United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990); *Wirsche v. Bank of Am.*, NA., No. 7:13-CV-528, 2013 WL 6564657, at *2 (S.D. Tex. Dec. 13, 2013) (rejecting demands for proof of authority by a plaintiff who “may believe she can opt out” of the law based on “arcane and misguided teachings” that “have never worked in a court of law—not a single time”). A bare allegation of sovereign citizen status does not state a claim for relief which the Court can grant. *See Berman*, 2015 WL 3622694, at *2.

Plaintiff was prosecuted and convicted for violations of the laws of the United States. Plaintiff asserts that he is a stateless person who has relinquished his birth certificate, which he believes means he is no longer subject to the

laws of the United States [Dkt. 1 at 6-9]. Plaintiff's sovereign citizen beliefs, even if sincerely held, do not place him beyond the jurisdiction of the Court. *See El-Bey v. Davis*, No. 4:18-CV-704-A, 2019 WL 2870066, at *1 (N.D. Tex. 2019) (quoting *United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011)) ("[r]egardless of an individual's claimed status of descent, be it as a 'sovereign citizen,' a 'secured-party creditor,' or a 'flesh-and-blood human being,' that person is not beyond the jurisdiction of the courts"). Even if Plaintiff "were a 'stateless person,' which he is not, the court nonetheless has jurisdiction because he committed an offense against United States law." *See Bradford*, 2020 WL 6482980, at *2; *United States v. White*, 480 F. App'x 193, 194 (4th Cir. 2012) ("[n]either the citizenship nor the heritage of a defendant constitutes a key ingredient to a district court's jurisdiction in

criminal prosecutions"). Plaintiff's claims here are nearly identical to those alleged in *Bradford*, which the court described as follows:

Plaintiff again refers to himself as a transient foreigner without legal domicile, which he says exempts him from the jurisdiction of the courts. He refers to the Accardi Doctrine, which he says means that government agencies must follow their own procedures, and contends that his lawsuit is not brought under the Federal Tort Claims Act, but is instead a "jurisdictional complaint" under 28 U.S.C. § 1331. He states he does not believe the Court had jurisdiction over persons or subject matter in cause no. 5:12cr11-1.

Bradford, 2020 WL 6482980, at *2. Plaintiff has thus failed to state a claim, and his Complaint should be dismissed as frivolous and meritless. *See id.* (dismissing a case with nearly identical factual allegations for failure to state a claim); *see also United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992) (finding a defendant's claim that he was

outside the jurisdiction of the United States to be “completely without merit” and “patently frivolous,” rejecting it “without expending any more of this Court’s resources on their discussion”).

Notably, this is not the first time Plaintiff has sought to challenge his conviction based on the “mantle of sovereign citizen” [Dkt. 22 at 5]; the Eastern District of Texas has already dismissed Plaintiff’s previous challenges to his conviction based upon his sovereign citizen and other jurisdictional theories. Consider the pleadings in Plaintiff’s underlying criminal case, where Plaintiff filed numerous post-conviction “notices” challenging the jurisdiction of the Court, specifically that the Court had no personal or subject matter jurisdiction over him and that he is not a citizen subject to the laws of the United

States. *See United States v. Donnell*, No. 4: 10-cr-00065-SDJ-CAN-6 (E.D. Tex. Apr. 30, 2013), ECF Nos. 403, 404. Plaintiff filed two motions seeking his case be dismissed on these bases. *See id.* ECF Nos. 405, 409. The Court denied these motions and warned Plaintiff against continuing to file challenges to the Court's jurisdiction:

The court has reviewed all four motions; however, none of the motions make any sense. In all of his motions, the Defendant appears to question the authority of this court and the jurisdiction of the United States courts. In doing so, the Defendant quotes from random court cases and statutes. However, the string of quotations is random nonsense. Accordingly, the court declines the Defendant's invitation to consider the same. The above-referenced motions are hereby DENIED.

Id. ECF No. 410 at 1-2. Plaintiff was sentenced on April 29, 2013, to a term of imprisonment of 240 months, which he immediately appealed to

the Fifth Circuit. *See id.* ECF Nos. 504, 505, 506.

Plaintiff appealed in part on the grounds that the Court lacked subject matter and personal jurisdiction over him, and that the United States' Attorney did not have authority to prosecute him.

See United States v. Donnell, No. 13-40495 (5th Cir. dismissed Feb. 26, 2014). The Fifth Circuit reviewed Plaintiff's jurisdictional challenges *de novo* and rejected each as baseless:

The language in the superseding indictment returned against Donnell tracked the language in § 846 and § 841(a)(1) by stating that Donnell and his codefendants violated § 846 when they knowingly and intentionally conspired to possess with the intent to distribute ecstasy in violation of § 841 (a)(1). Accordingly, the indictment was sufficient to confer subject matter jurisdiction on the district court.

Donnell's personal appearance before the district court during his initial appearance secured the district court's personal jurisdiction over him.

Id. at 2 (internal citations omitted). The Fifth Circuit also held the United States' Attorney had authority to prosecute Plaintiff under 28 U.S.C. § 547(1). *Id.* at 2-3. In 2016, Plaintiff filed a civil suit that this Court construed as a motion pursuant to 28 U.S.C. § 2255. *See Donnell v. United States*, No. 4:16-cv-370-ALM-CAN (E.D. Tex. dismissed Sept. 7, 2016). There too, Plaintiff attempted to challenge his conviction via a tort claim. The Court allowed Plaintiff an opportunity to challenge his conviction in the appropriate manner, but he declined to do so. Ultimately, the Court recommended Plaintiffs civil suit be dismissed without prejudice, after explaining that Plaintiff could not challenge his conviction by bringing a tort suit until he proved that his conviction had been reversed, invalidated, expunged, or otherwise called into question based on *Heck v. Humphrey*, which he had not done.

Id. ECF No. 12 at 1-2. Plaintiff again appealed, and the Fifth Circuit dismissed and denied Plaintiff's request for a certificate of appealability. *See United States v. Donnell*, No. 16-41372, at 1-2 (5th Cir. dismissed May 5, 2017). Plaintiff's challenges to his conviction and sentence have been reviewed and denied repeatedly, on varying applicable legal grounds, yet he continues to submit meritless filings. *See Bradford v. Kummerfeld*, No. 5:19-CV-00143-RWS, 2020 WL 5670013, at *1 (E.D. Tex. Sept. 24, 2020) (dismissing with prejudice for failure to state a claim where the plaintiff's civil action, purportedly filed under 28 U.S.C. § 1331 challenged his criminal conviction for "lack of jurisdiction").

The Court recommends Plaintiff's Complaint be dismissed with prejudice under Rule 12(b)(6) because his tort claim against the United States

is barred by limitations under the FTCA. To the extent Plaintiff's Complaint contains a non-FTCA claim, the Court recommends those claims be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

CONCLUSION AND RECOMMENDATION

The Court recommends that the United States' Second Motion to Dismiss be **GRANTED** [Dkt. 22], and Plaintiff Lamon Sandel Dewayne Donnell's claims be **DISMISSED WITH PREJUDICE** for the reasons stated herein. The Court further recommends the United States' Statement of Interest and Suggestion of Dismissal [Dkt. 17] be **DENIED AS MOOT** considering the recommendation for granting the Second Motion to Dismiss.

Within fourteen (14) days after service of the magistrate judge's report, any party may

serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific, written objections will bar the party from appealing the un-objected to factual findings and legal conclusions of the magistrate judge that are accepted by the district court, except upon grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object.

See Douglass v. United Services Automobile Ass'n,
79 F.3d 1415, 1417 (5th Cir. 1996) (en banc),
superseded by statute on other grounds, 28 U.S.C.
§ 636(b)(1) (extending the time to file objections
from ten to fourteen days).

**SIGNED this 15th day of December,
2021.**

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LAMON SANDEL DEWAYNE §
DONNELL §
§
v. § CIVIL
§ CASE NO.
§ 4:20-CV-
§ 714-SDJ
§
UNITED STATES OF AMERICA §

**MEMORANDUM ADOPTING THE REPORT
AND RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE**

Came on for consideration the Report and
Recommendation of the United States Magistrate
Judge (“Report”), this matter having been referred
to the Magistrate Judge pursuant to 28 U.S.C. § 636.
On December 15, 2021, the Report of the Magistrate
Judge, (Dkt. #24), was entered containing proposed

findings of fact and recommendation that the United States' Second Motion to Dismiss, (Dkt. #22), be granted and *pro se* Plaintiff Lamon Sandel Dewayne Donnell's claims be dismissed. Having assessed the Report, the record in this case, and considered Donnell's construed objections and the Government's response, the Court determines that the Magistrate Judge's Report should be adopted.

In Donnell's largely nonsensical construed objection, he appears to argue that he sent a "Private Administrative Remedy" to Assistant United States Attorney Ernest Gonzalez, which created an agreement discharging his underlying conviction. As the Government correctly notes in response, this argument is meritless and raises no issue that is relevant to the Magistrate Judge's Report.

Accordingly, such objection shall be overruled.

It is therefore **ORDERED** that the United States' Second Motion to Dismiss, (Dkt. #22), is **GRANTED**. Plaintiff Lamon Sandel Dewayne Donnell's claims are **DISMISSED WITH PREJUDICE**.

So ORDERED and SIGNED this 18th day of February, 2022.

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

Filed 02/18/22 Page 1 of 2 Page ID #: 411

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LAMON SANDEL DEWAYNE	§	
DONNELL	§	
	§	
v.	§	CIVIL NO.
	§	4:20-CV-
	§	714-SDJ
	§	
UNITED STATES OF AMERICA	§	

FINAL JUDGMENT

Pursuant to the Court's Memorandum
Adopting the Report and Recommendation of the
United States Magistrate Judge, which dismisses
this case with prejudice, the Court hereby issues
its Final Judgment, effective upon entry.

It is therefore **ORDERED** that Lamon
Sandel Dewayne Donnell's claims against the
United States of America are **DISMISSED WITH**
PREJUDICE.

All relief not previously granted is hereby
denied.

**So ORDERED and SIGNED this 18th
day of February, 2022.**

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

Filed 04/25/22 Page 1 of 2 Page ID #: 424

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

LAMON SANDEL DEWAYNE §
DONNELL §
§
v. § CIVIL NO.
§ 4:20-CV-
§ 714-SDJ
§
UNITED STATES OF AMERICA §

ORDER

On February 18, 2022, the Court issued its Final Judgment, (Dkt. #30), which dismissed with prejudice all of Plaintiff's claims in this proceeding.

Now before the Court is Plaintiff's Motion to Amend Findings of Fact, (Dkt. #31), and Motion to Alter or Amend Judgment, (Dkt. #32).

Plaintiff asserts various nonsensical arguments in support of his motions, many of which

the Court has already rejected. Because Plaintiff's motions fail to set forth any basis upon which he would be entitled to the relief he seeks, the Court concludes that such motions will be **DENIED**.

Accordingly, it is hereby **ORDERED** that Plaintiff's Motion to Amend Findings of Fact, (Dkt. #31), and Motion to Alter or Amend Judgment, (Dkt. #32), are **DENIED**.

It is further **ORDERED** that Plaintiff's Motion for Ruling on Unopposed Motions to Amend Finding of Fact and Alter or Amend Judgment, (Dkt. #33), is also **DENIED as moot**.

So ORDERED and SIGNED this 25th day of April, 2022.

SEAN D. JORDAN
UNITED STATES DISTRICT JUDGE

EXHIBIT "B"
RULING FROM FEDERAL COURT

United States
Court of
Appeals
for the
Fifth Circuit

United States
Court of Appeals
Fifth Circuit

FILED
August 16, 2022

Lyle W. Cayce
Clerk

No. 22-40296
Summary Calendar

LAMON SANDEL DEWAYNE DONNELL,

Plaintiff—Appellant,

versus

UNITED STATES OF AMERICA,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:20-CV-714

Before JONES, HAYNES, and OLDHAM,
Circuit Judges.

PER CURIAM:*

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Criminally convicted prisoner Lamon Donnell filed a civil case claiming malicious prosecution against the Assistant United States Attorney who prosecuted him; the United States was substituted as the proper party defendant and moved to dismiss for want of subject matter jurisdiction. The district judge, based upon the recommendations of the magistrate judge, granted the Government's motion to dismiss. We agree. See e.g., 28 U.S.C. §§ 2401(b), 2675(a); *Ramming v. United States*, 281 F.3d 158, 162 (5th Cir. 2001) (regarding 28 U.S.C. § 2401(b)); *Coleman v. United States*, 912 F.3d 824, 834 (5th Cir. 2019) (regarding 28 U.S.C. § 2675(a)).

Accordingly, the Government's motion for summary affirmance is GRANTED, the alternative motion for an extension of time is DENIED, and the district court's judgment is AFFIRMED.

See *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969).