

E.D.N.Y. - Bklyn
21-cv-4749
Kuntz, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of June, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
José A. Cabranes,
Michael H. Park,
Circuit Judges.

Bryan M. Espinoza,

Plaintiff-Appellant,

v.

21-3108

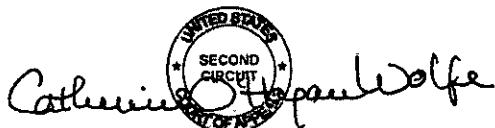
Federal Bureau of Investigations,
Central Intelligence Agency,
Officer of Equal Employment Opportunity,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis and other relief. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

If Appellant believes he has been defrauded, he is free to file an appropriate claim in state court against the proper defendants.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of September, two thousand twenty-two.

Bryan M. Espinoza,

Plaintiff-Appellant,

v.

Federal Bureau of Investigations, Central Intelligence Agency, Officer of Equal Employment Opportunity,

Defendants-Appellees.

ORDER

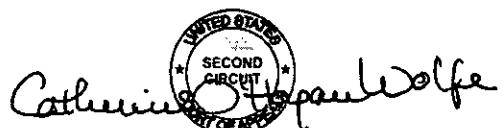
Docket No: 21-3108

Appellant, Bryan M. Espinoza, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk


Catherine O'Hagan Wolfe

October 04th, 2022 – Mandate & Order – Clerk of Court (Catherine O'Hagan Wolfe)

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MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

E.D.N.Y. – Brooklyn
21-cv-4749
Kuntz, J.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of June, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
José A. Cabranes,
Michael H. Park,
Circuit Judges.

Bryan M. Espinoza,

Plaintiff-Appellant,

v.

21-3108

Federal Bureau of Investigations,
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Appellant, pro se, moves for leave to proceed in forma pauperis and other relief. Upon due consideration, it is hereby ORDERED that the motions are DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

If Appellant believes he has been defrauded, he is free to file an appropriate claim in state court against the proper defendants.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe



Catherine O'Hagan Wolfe

MANDATE ISSUED ON 10/04/2022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
BRYAN ESPINOZA, :
: Plaintiff, : **MEMORANDUM & ORDER**
: : 21-CV-4729(WFK)
v. :
: FEDERAL BUREAU OF INVESTIGATIONS; :
: CENTRAL INTELLIGENCE AGENCY :
(Office of Equal Opportunity), :
: Defendants. :
-----X

WILLIAM F. KUNTZ, II, United States District Judge:

On August 19, 2021, Bryan Espinoza (“Plaintiff”) filed a pro se complaint against the Federal Bureau of Investigations (“FBI”) and the Central Intelligence Agency (“CIA”). By Order dated August 27, 2021, this Court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”) and dismissed the complaint because Plaintiff’s claims for monetary damages were barred by the doctrine of sovereign immunity and for failure to conform with Rule 8(a) of the Federal Rules of Civil Procedure. *See Espinoza v. Fed. Bureau of Investigations*, 21-CV-4749, 2021 WL 3861724, at *1 (E.D.N.Y. Aug. 27, 2021) (Kuntz, J.). Plaintiff was, however, granted thirty (30) to file an amended complaint. For the reasons stated below, Plaintiff’s amended complaint, filed on September 27, 2021 is hereby DISMISSED.

BACKGROUND

In his amended complaint, Plaintiff alleges that the Court has jurisdiction over his claims under a multitude of federal statutes, including, but not limited to, 18 U.S.C. § 242, Deprivation of rights under color of law; 18 U.S.C. § 1505, Obstruction of proceedings before departments,

agencies, and committees; and 18 U.S.C. § 1510, Obstruction of criminal investigations. Am. Compl. at 4, ECF No. 5. As best as can be ascertained, Plaintiff alleges that since 2019, he has reported “tips” to both the FBI and CIA and that the agencies have failed to act. *Id.* at 7. Plaintiff appears to assert that the “Malfeasance and Nonfeasance by Public Officials” is unconstitutional. *Id.* The amended complaint contains a lengthy list of the “tips” that Plaintiff submitted to the FBI and CIA. For example, Plaintiff alleges Mark Suzman, the Chief Executive Officer of the Bill and Melinda Foundation conspired against Plaintiff’s “human rights . . . following an unauthorized payment on [Plaintiff’s] Verizon account.” *Id.* at 9. Plaintiff further accuses Suzman of grand larceny by deception, fraud and swindles, harassment, criminal coercion, economic espionage, and conspiracy. *Id.* at 8. In addition, Plaintiff accuses a host of individuals including rappers Sean Combs, Sean Carter and Kasseem Daoud Dean of intimidation, illegal interrogation, harassment, economic espionage, criminal incitement, importation of controlled substances, bribery and more. *Id.* at 10–11. Plaintiff asserts that he reported the alleged criminal behavior to the New York City Police, the FBI, and the CIA and to date, he has not received relief. For relief, Plaintiff seeks an employment contract and monetary damages. *Id.* at 2.

STANDARD OF REVIEW

An amended complaint must plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 (2d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Although all allegations contained

in the complaint are assumed to be true, this tenet is “inapplicable to legal conclusions.” *Iqbal*, 556 U.S. at 678. In reviewing a *pro se* complaint, the court must be mindful that the plaintiff’s pleadings should be held “to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); *see also Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (noting that even after *Twombly*, courts “remain obligated to construe a *pro se* complaint liberally”). In addition to requiring sufficient factual matter to state a plausible claim to relief, pursuant to Rule 8 of the Federal Rules of Civil Procedure, plaintiff must provide a short, plain statement of claim against each defendant named so that they have adequate notice of the claims against them. *Iqbal*, 556 U.S. 678 (Rule 8 “demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.”).

DISCUSSION

I. Plaintiff’s Amended Complaint Fails to State a Federal Claim

Although Plaintiff asserts that his amended complaint is brought pursuant to federal-question jurisdiction and cites to a host of federal statutes, Plaintiff does not plausibly state any facts that would suggest a violation of any federal statute or constitutional provision by the Defendants. Plaintiff’s allegations are insufficient to establish this Court’s subject matter jurisdiction because simply referencing constitutional provisions or federal statutes is insufficient to establish subject matter jurisdiction. *See Perpetual Secs., Inc. v. Tang*, 290 F.3d 132, 137 (2d Cir. 2002) (“Simply raising a federal issue in a complaint will not automatically confer federal question jurisdiction.”). Rather, a court must “proceed prudently and make pragmatic distinctions between those allegations, if any, that raise substantial questions and those that . . .

[are] so patently without merit as to justify . . . the court's dismissal for want of jurisdiction." *Id.* (quoting *Duke Power Co. v. Carolina Env. Study Grp.*, 438 U.S. 59, 70 (1978)). There is no subject matter jurisdiction if the purported federal claim is clearly "immaterial and made solely for the purpose of obtaining jurisdiction" or is "wholly insubstantial and frivolous." *S. New Eng. Tel. Co. v. Glob. NAPs Inc.*, 624 F.3d 123, 132 (2d Cir. 2010) (internal citations omitted). Here, even given a liberal construction, Plaintiff's allegations do not support a colorable claim such that the Court's federal-question subject matter jurisdiction may be invoked. The allegations contained in Plaintiff's amended complaint are nonsensical and even with liberal construction, no plausible claims can be discerned.

II. Plaintiff's Claims against Defendants are Barred by Sovereign Immunity

Plaintiff's amended complaint names two federal agencies as Defendants and as noted in the Court's prior order, even if Plaintiff had plausibly alleged a violation of his constitutional rights, sovereign immunity bars his claims for monetary damages absent a waiver. *See Lehman v. Nakshian*, 453 U.S. 156, 160 (1981); *County of Suffolk v. Sebelius*, 605 F.3d 135, 140 (2d Cir. 2010) ("Absent an unequivocally expressed statutory waiver, the United States, its agencies, and its employees when functioning in their official capacities are immune from suit based on the principle of sovereign immunity."); *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000) (citations omitted). Plaintiff's amended complaint fails to establish any basis for the waiver of sovereign immunity. *See Bank v. Wolfe*, 19-CV-441, 2020 WL 4748320, at *4 (E.D.N.Y. Aug. 17, 2020) (Matsumoto, J.) (noting that although plaintiff cites to 28 U.S.C. § 1331, the federal question statute, this statute does not serve as a waiver of sovereign immunity); *Torres v. City of New York*, 19-CV-6332, 2019 WL 6051550, at *4 (S.D.N.Y. Nov. 13, 2019) (McMahon, J.),

appeal withdrawn, 19-3878, 2019 WL 8012242 (2d Cir. Dec. 16, 2019) (dismissing plaintiff's claims against the CIA as frivolous under the doctrine of sovereign immunity). Accordingly, Plaintiff's claim for money damages against the FBI and CIA is dismissed as barred by sovereign immunity.

CONCLUSION

Plaintiff's amended complaint, filed *in forma pauperis*, is dismissed as it fails to state a claim upon which relief may be granted, *see* 28 U.S.C. § 1915(e)(2)(B), and because Plaintiff's claim for monetary damages against the FBI and the CIA is barred by the doctrine of sovereign immunity.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of any appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962). The Clerk of Court is directed to enter judgment and close this case.

SO ORDERED.

s/ WFK

HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: November 16, 2021
Brooklyn, New York

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
BRYAN ESPINOZA,

Plaintiff,

JUDGMENT
21-CV-4749(WFK)

-against-

FEDERAL BUREAU OF INVESTIGATIONS;
CENTRAL INTELLIGENCE AGENCY
(Office of Equal Opportunity),

Defendants.

----- X

A Memorandum and Order of Honorable William F. Kuntz, II, United States District Judge, having been filed on November 16, 2021, dismissing Plaintiff's amended complaint as it fails to state a claim upon which relief may be granted, *see* 28 U.S.C. § 1915(e)(2)(B), and because Plaintiff's claim for monetary damages against the FBI and the CIA is barred by the doctrine of sovereign immunity; certifying pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith; and denying *in forma pauperis* status for the purpose of any appeal, *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962); it is

ORDERED and ADJUDGED that Plaintiff's amended complaint is dismissed as it fails to state a claim upon which relief may be granted, *see* 28 U.S.C. § 1915(e)(2)(B), and because Plaintiff's claim for monetary damages against the FBI and the CIA is barred by the doctrine of sovereign immunity; that pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith; and that *in forma pauperis* status is denied for the purpose of any appeal.

Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: Brooklyn, NY
November 16, 2021

Douglas C. Palmer
Clerk of Court

By: /s/Jalitza Poveda
Deputy Clerk