NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1265

CARLTON THEODORE LANDIS,
Appellant

v.

DAVID J. EBBERT; IAN CONNERS; J. RAY ORMOND; J. KONKLE; HUGH HERWITZ; D. LANGTON; J. SAVIDGE; M. CONDIT; STEESE; HACKENBURG; CRESSINGER; J. SIENKIEWICZ

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 1-21-cv-00244)
District Judge: Honorable Christopher C. Conner

Submitted Pursuant to Third Circuit LAR 34.1(a)
December 1, 2022
Before: JORDAN, GREENAWAY, Jr., and NYGAARD, Circuit Judges

(Opinion filed December 8, 2022)

OPINION*

PER CURIAM

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Appendix A

Appellant Carlton Landis appeals from the District Court's order dismissing his complaint. For the reasons that follow, we will affirm.

At all relevant times, Landis was incarcerated at United States Penitentiary Lewisburg in Pennsylvania. Landis filed a complaint alleging that prison officials violated federal civil rights laws by conspiring to deprive him of recreation privileges because he is African-American, see 42 U.S.C. §§ 1985(3), 1986, and committed state tort violations. The District Court screened the complaint, dismissed it for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B), and extended Landis leave to amend his § 1985(3) claim. Landis timely appealed, electing to stand on his original complaint. See C.A. No. 14 at p. 3; see also Weber v. McGrogan, 939 F.3d 232, 240 (3d Cir. 2019). We have jurisdiction to consider the appeal under 28 U.S.C. § 1291. We exercise plenary review over the dismissal of a complaint pursuant to § 1915(e)(2)(B). See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

To state a § 1985(3) claim, Landis must allege: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws . . . ; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privilege of a citizen of the United States." Farber v. City of Paterson, 440 F.3d 131, 134 (3d Cir. 2006) (quoting United Bhd. of Carpenters & Joiners v. Scott, 463 U.S. 825, 828–29 (1983)). The allegations for a conspiracy must be "based in fact" and not "merely upon [the plaintiff's] own suspicion and speculation." Young v. Kann, 926 F.2d 1396, 1405

n.16 (3d Cir. 1991); see also D.R. by L.R. v. Middle Bucks Area Vocational Tech. Sch., 972 F.2d 1364, 1377 (3d Cir. 1992) (conclusory allegations are not sufficient to state a § 1985(3) claim).

We agree with the District Court that Landis failed to plead facts sufficient to allege that a conspiracy existed. In his complaint, Landis alleged that, on September 18, 2018, defendants tried to place him in a cell with another inmate to instigate black-on-black violence. See ECF No. 1 at p. 9. On the way to the cell, Landis complained to prison officials about the dangerous assignment. The assignment did not come to fruition because the other inmate prohibited Landis from entering. Defendant Hackenburg escorted Landis to an unoccupied cell and "threatened to exact revenge on [Landis] because of his race and his complaints about the dangerous cell assignment." Id. at p. 10. Later that day, Landis learned he had lost his recreation privileges. Id. Defendant Konkle informed him that the revocation occurred because Landis was "not properly prepared." Id. Around October 5, his privileges were reinstated but he was assaulted by a staff member. Three days later, Landis lost his recreation privileges for complaining about that assault, and his privileges were not reinstated until June 2019. Id. at p. 11. Defendants' statements and the months-long revocation of privileges are insufficient to state a conspiracy claim. While Landis maintained that defendants acted maliciously in revoking his privileges, those allegations are speculative at best. Nor does his conclusory allegation that defendants "agreed via written and oral communication" to revoke his privileges, id. at p. 18, show that they conspired against him. Accordingly, we reject

Landis's contention that a conspiracy "can be readily gleaned from the complaint," C.A. No. 22 at p. 4,[1,2] and will affirm the District Court's judgment.

[1] As discussed, the District Court granted Landis leave to amend his complaint as to the conspiracy claim, and Landis specifically rejected that offer.

[2] Landis's remaining arguments also lack merit. The District Court did not err in dismissing his complaint at the screening stage. Indeed, it was obligated to do so. See Brown v. Sage, 941 F.3d 655, 660 (3d Cir. 2019) (en banc). Nor did the District Court err in dismissing his state tort claims. Landis argues that defendants acted outside the scope of their employment in revoking his recreation privileges. In his view, state law should govern his tort claims because the Federal Tort Claims Act (FTCA) only applies to defendants acting within the scope of their employment. See C.A. No. 22 at p. 5. Landis's scope-of-employment allegation does not transform his tort claims to ones arising under state law. The FTCA is the proper vehicle for litigating tort claims against federal prison officials. See 28 U.S.C. §§ 2674, 2679. Because Landis explicitly stated he was not seeking relief under the FTCA, see ECF No. 1 at p. 3, the District Court correctly dismissed the state tort claims for lack of jurisdiction. See ECF Nos. 13 & 14.

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Submitted Pursuant to Third Circuit LAR 34.1(a)
December 1, 2022
Before: JORDAN, GREENAWAY, Jr., and NYGAARD, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on December 1, 2022. On consideration whereof, it is now hereby

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ORDERED and ADJUDGED by this Court that the judgment of the District Court entered January 19, 2022, be and the same is hereby affirmed. Costs not taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 8, 2022

Certified as a true copy and issued in lieu of a formal mandate on 01/30/2023

Teste: Patricia A Dodszuweit

Clerk, U.S. Court of Appeals for the Third Circuit

CARLTON THEODORE LANDIS, Plaintiff v. DAVID J. EBBERT, IAN CONNERS, J. RAY ORMOND, J. KONKLE, HUGH HERWITZ, D. LANGTON, J. SAVIDGE, M. CONDIT, STEESE, HACKENBURG, CRESSINGER, J. SIENKIEWICZ, Defendants
UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
2022 U.S. Dist. LEXIS 9949
CIVIL ACTION NO. 1:21-CV-244
January 19, 2022, Decided
January 19, 2022, Filed

Counsel {2022 U.S. Dist. LEXIS 1}**Carlton** Theodore **Landis**, Plaintiff, Pro se, OKLAHOMA CITY, OK.

Judges: Christopher C. Conner, United States District Judge.

Opinion

Opinion by: Christopher C. Conner

Opinion

MEMORANDUM

Plaintiff **Carlton** Theodore **Landis ("Landis")**, an inmate who was housed at all relevant times at the United States Penitentiary, Lewisburg, Pennsylvania ("USP-Lewisburg"), commenced this action against twelve individuals employed by the Federal Bureau of Prisons ("BOP") suing them under the Pennsylvania constitution, state tort law, and 42 U.S.C. § 1985(3) and § 1986. (Doc. 1). Before the court is the United States' motion for initial screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A. (Doc. 6). For the reasons set forth below, the court will grant the motion, perform an initial screening of the complaint, and dismiss the complaint with leave to amend.

I. Factual Background & Procedural History

In the complaint, Landis names the following defendants: Warden David J. Ebbert; National Inmate Appeals Administrator Ian Conners; Northeast Regional Director J. Ray Ormond; Captain John Konkle; former BOP Director Hugh Hurwitz; Correctional Officer D. Langton; Correctional Officer Jesse Savidge; Correctional Officer M. Condit; Correctional Officer Steese; Correctional Officer Michael Hackenberg; Correctional**{2022 U.S. Dist. LEXIS 2}** Officer Cressinger; and Correctional Officer J. Sienkiewicz. (Doc. 1 ¶¶ 9-20).

Landis alleges that on September 18, 2018, officials at USP-Lewisburg attempted to place him in a cell with another African American inmate to invoke "black-on-black violence." (Id. at ¶¶ 21-22). The inmate refused to accept Landis as a cellmate, and Landis was placed in another, unoccupied cell. (Id. at ¶¶ 23-25). Because Landis complained about the "dangerous cell assignment", defendants Savidge, Hackenburg, and Steese allegedly revoked his recreation from September 18, 2018 through October 4, 2018. (Id. at ¶¶ 26-27). On October 5, 2018, Landis attended recreation where he

was threatened and harassed by inmates and assaulted by a prison official. (Id. at ¶¶ 31-32).

Landis alleges that from October 8, 2018 through June 15, 2019, defendants revoked his recreation based on his various complaints about prison officials and because he was African American. (Id. at ¶¶ 34-35, 40). He further alleges that defendants conspired to revoke his recreation. (Id. at ¶¶ 43, 46, 56).

For relief, Landis seeks compensatory and punitive damages. (Id. at ¶ 73).

II. Legal Standard

Under 28 U.S.C. § 1915A, federal district courts must "review . .**{2022 U.S. Dist. LEXIS 3}** . a complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a). This initial screening is to be done as soon as practicable and need not await service of process. See id. If a complaint fails to state a claim upon which relief may be granted, the court must dismiss the complaint. 28 U.S.C. § 1915A(b)(1). District courts have a similar screening obligation with respect to actions filed by prisoners proceeding *in forma pauperis* and prisoners challenging prison conditions. See 28 U.S.C. § 1915(e)(2)(B)(ii) ("[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted."); 42 U.S.C. § 1997e(c)(1) ("The Court shall on its own motion or on the motion of a party dismiss any action brought with respect to prison conditions under section 1983 of this title . . . by a prisoner confined in any jail, prison, or other correctional facility if the court is satisfied that the action . . . fails to state a claim upon which relief can be granted.").

In dismissing claims under §§ 1915(e), 1915A, and 1997e, district courts apply the standard governing motions to dismiss filed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. See Mitchell v. Dodrill, 696 F. Supp. 2d 454, 471 (M.D. Pa. 2010) (explaining that when dismissing**{2022 U.S. Dist. LEXIS 4}** a complaint pursuant to § 1915A, "a court employs the motion to dismiss standard set forth under Federal Rule of Civil Procedure 12(b)(6)"). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for the dismissal of complaints that fail to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). When ruling on a motion to dismiss under Rule 12(b)(6), the court must "accept as true all [factual] allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the plaintiff." Kanter v. Barella, 489 F.3d 170, 177 (3d Cir. 2007) (quoting Evancho v. Fisher, 423 F.3d 347, 350 (3d Cir. 2005)). Although the court is generally limited in its review to the facts contained in the complaint, it "may also consider matters of public record, orders, exhibits attached to the complaint and items appearing in the record of the case." Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384 n. 2 (3d Cir. 1994); see also In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997).

Federal notice and pleading rules require the complaint to provide "the defendant notice of what the . . . claim is and the grounds upon which it rests." Phillips v. Cty. of Allegheny, 515 F.3d 224, 232 (3d Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). To test the sufficiency of the complaint in the face of a Rule 12(b)(6) motion, the court must conduct a three-step inquiry. See Santiago v. Warminster Twp., 629 F.3d 121, 130-31 (3d Cir. 2010). In the first step, "the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.'" Id. (quoting Ashcroft v. Iqbal, 556 U.S. 662, 675, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)). Next, the factual and legal elements of a claim should be separated; well-pleaded facts must be accepted**{2022 U.S. Dist. LEXIS 5}** as true, while mere legal conclusions may be disregarded. Id.; see also Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009). Once the well-pleaded factual allegations have been isolated, the court must determine whether they are sufficient to show

a "plausible claim for relief." Iqbal, 556 U.S. at 679 (citing Twombly, 550 U.S. at 556); Twombly, 550 U.S. at 555 (requiring plaintiffs to allege facts sufficient to "raise a right to relief above the speculative level"). A claim "has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 556 U.S. at 678.

III. Discussion

A. Landis Cannot Sue the BOP Defendants Under the Pennsylvania Constitution or Pennsylvania Tort Law

Landis is suing the twelve individual BOP defendants under the Pennsylvania Constitution and Pennsylvania tort law. (Doc. 1 ¶¶ 4, 5, 70-72). He specially states that "nothing in this complaint shall be construed as Plaintiff attempting to assert any claim pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 88 (1971), or the Federal Tort Claims Act, 28 U.S.C. 1346(b)". (Id. at ¶ 7). However, Landis cannot sue the individual BOP defendants under the Pennsylvania Constitution or Pennsylvania tort law. The proper avenue is to pursue a claim against the United States under the Federal Tort Claims Act ("FTCA").**{2022 U.S. Dist. LEXIS 6}** See 28 U.S.C. §§ 2674, 2679; CNA v. United States, 535 F.3d 132, 138 n. 2 (3d Cir. 2008) ("The Government is the only proper defendant in a case brought under the FTCA."). Because Landis' state law claims may not proceed against the individual defendants, the court will dismiss these claims for lack of jurisdiction.

B. Landis Fails to State a Claim Under Sections 1985(3) and 1986

Landis alleges that the BOP defendants conspired to deprive him of equal protection of the laws in violation of 42 U.S.C. § 1985(3) and 42 U.S.C. § 1986. (Doc. 1 ¶¶ 43, 46, 56, 68-69).

To prevail under § 1985(3), a plaintiff must prove the following elements: "(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." United Brotherhood of Carpenters and Joiners of Am., Local 610, AFL-CIO v. Scott, 463 U.S. 825, 828-29, 103 S. Ct. 3352, 77 L. Ed. 2d 1049 (1983). In the complaint, Landis alleges that defendants conspired together to revoke his recreation because he was African American. (Doc. 1 at 10-19). Importantly, conclusory allegations do not form the basis for a claim based on a violation of § 1985.

First, Landis has satisfied the identifiable class requirement of § 1985 by**{2022 U.S. Dist. LEXIS 7}** alleging that defendants discriminate against African American inmates. Second, "[a] conspiracy claim based upon Section 1985(3) requires a clear showing of invidious, purposeful and intentional discrimination between classes or individuals." Robinson v. McCorkle, 462 F.2d 111, 113 (3d Cir. 1972). The type of race-based discrimination alleged by Landis is invidious. See Farber v. City of Paterson, 440 F.3d 131, 141 (3d Cir. 2006) ("to state a § 1985(3) claim, it must be independently determined that discrimination . . . is invidious in the same way that discrimination directed at African-Americans is invidious."). Third, Landis has alleged a violation of a right recognized under § 1985-his right to equal protection of the laws. However, Landis fails to allege sufficient specific facts to support any conspiratorial agreement actionable under § 1985(3). (Doc. 1 at 10-18). Mere conclusory allegations of deprivations of constitutional rights under § 1985(3) are insufficient to state a claim under § 1985(3). See Robinson, 462 F.2d at 113; Kokinda v. Pennsylvania Dep't of Corr., 779 F. App'x 944, 948-49 (3d Cir. 2019) (nonprecedential). Landis has failed to allege any specific facts showing that a conspiracy existed. Thus, his claim under § 1985(3) must fail.

Next, Landis brings a claim under 42 U.S.C. § 1986. (Doc. 1 ¶¶ 4, 5, 69). Section 1986 is a companion to § 1985(3). In order to state a claim under § 1986, a plaintiff must allege that: "(1) the defendant had actual knowledge of a § 1985 conspiracy, (2) the defendant**{2022 U.S. Dist. LEXIS 8}** had the power to prevent or aid in preventing the commission of a § 1985 violation, (3) the defendant neglected or refused to prevent a § 1985 conspiracy, and (4) a wrongful act was committed." Clark v. Clabaugh, 20 F.3d 1290, 1295 (3d Cir. 1994). Therefore, if a plaintiff does not set forth a cause of action under § 1985, his claim under § 1986 necessarily fails as well, because "transgressions of § 1986 by definition depend on a preexisting violation of § 1985." Rogin v. Bensalem Tp., 616 F.2d 680, 696 (3d Cir. 1980). Because Landis cannot proceed with a claim under § 1985(3), his claim under § 1986 necessarily fails. See id. Moreover, even if Landis had valid claims under § 1985, his claims under § 1986 must be dismissed because they were filed beyond the statute of limitations for § 1986 actions. Section 1986 provides its own statute of limitations, which states that "no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued." 42 U.S.C. § 1986. In this case, Landis' cause of action under § 1986 occurred from September 2018 to June 2019, but he did not file his complaint until February 2021. Thus, his claims against the defendants under § 1986 must be dismissed because they were not brought within the one-year statute of limitations.

IV. Leave to Amend

The court recognizes that the sufficiency of this *pro se***{2022 U.S. Dist. LEXIS 9}** pleading must be construed liberally in favor of Landis. See Erickson v. Pardus, 551 U.S. 89, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). The federal rules allow for liberal amendments in light of the "principle that the purpose of pleading is to facilitate a proper decision on the merits." Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962) (citations and internal quotations omitted). Consequently, a complaint should not be dismissed with prejudice for failure to state a claim without granting leave to amend, "unless such an amendment would be inequitable or futile." Phillips, 515 F.3d at 245 (citing Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004)). Because Landis' § 1985(3) claim is factually rather than legally flawed, the court will grant him an opportunity to amend his pleading with respect to this claim. However, based on the fundamental legal flaws in Landis' state law claims and § 1986 claim, granting leave to amend these claims would be futile.

V. Conclusion

We will grant the United States' motion (Doc. 6) for initial screening and dismiss the complaint with leave to amend. An appropriate order shall issue.

/s/ CHRISTOPHER C. CONNER

Christopher C. Conner

United States District Judge

Middle District of Pennsylvania

Dated: January 19, 2022

ORDER

AND NOW, this 19th day of January, 2022, upon consideration of the United States' motion (Doc. 6) for initial screening pursuant to 28 U.S.C. § 1915(e)(2) and § 1915A, and for the**{2022 U.S. Dist. LEXIS 10}** reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

1. The motion (Doc. 6) is GRANTED.

2. The complaint (Doc. 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

3. On or before **February 8, 2022**, plaintiff may file an amended complaint with respect to his 42 U.S.C. § 1985(3) claim.

/s/ CHRISTOPHER C. CONNER

Christopher C. Conner

United States District Judge

Middle District of Pennsylvania

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between—

(1) Citizens of different States;

(2) citizens of a State and citizens or subjects of a foreign state, except that the district courts shall not have original jurisdiction under this subsection of an action between citizens of a State and citizens or subjects of a foreign state who are lawfully admitted for permanent residence in the United States and are domiciled in the same State;

(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

(4) a foreign state, defined in section 1603(a) of this title [28 USCS § 1603(a)], as plaintiff and citizens of a State or of different States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $75,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title [28 USCS § 1441]—

(1) a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, except that in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of—

(A) every State and foreign state of which the insured is a citizen;

(B) every State and foreign state by which the insurer has been incorporated; and

(C) the State or foreign state where the insurer has its principal place of business; and

(2) the legal representative of the estate of a decedent shall be deemed to be a citizen only of the same State as the decedent, and the legal representative of an infant or incompetent shall be deemed to be a citizen only of the same State as the infant or incompetent.

(d) (1) In this subsection—

(A) the term "class" means all of the class members in a class action;

(B) the term "class action" means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

(C) the term "class certification order" means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

(D) the term "class members" means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;

(B) whether the claims asserted will be governed by laws of the State in which the

action was originally filed or by the laws of other States;

(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A) (i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

(II) at least 1 defendant is a defendant—

(aa) from whom significant relief is sought by members of the plaintiff class;

(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the

defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

(5) Paragraphs (2) through (4) shall not apply to any class action in which—

(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

(A) concerning a covered security as defined under [section] 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3) [15 USCS § 77p(f)(3)]) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

(10) For purposes of this subsection and section 1453 [28 USCS § 1453], an

unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

(11) (A) For purposes of this subsection and section 1453 [28 USCS § 1453], a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

(B) (i) As used in subparagraph (A), the term "mass action" means any civil action (except a civil action within the scope of section 1711(2) [28 USCS § 1711(2)]) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

(ii) As used in subparagraph (A), the term "mass action" shall not include any civil action in which—

(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

(II) the claims are joined upon motion of a defendant;

(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

(C) (i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407 [28 USCS § 1407], or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407 [28 USCS § 1407].

(ii) This subparagraph will not apply—

(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.

(e) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title [28 USCS § 1346(b)], and the remedies provided by this title in such cases shall be exclusive.

(b) (1) The remedy against the United States provided by sections 1346(b) and 2672 of this title [28 USCS §§ 1346(b) and 2672] for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government—

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d) (1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title [28 USCS § 1346(b)] and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title [28 USCS § 2675(a)], such a claim shall be deemed to be timely presented under section 2401(b) of this title [28 USCS § 2401(b)] if—

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 [28 USCS § 2677], and with the same effect.