

Appendix F

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2330

RYAN P. GIVEY,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE;
JENNIFER ARBITTIER WILLIAMS

(E.D. Pa. No. 2:22-cv-00298)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, and JORDAN, HARDIMAN
SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, and CHUNG, Circuit Judges

The petition for rehearing filed by Appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is **DENIED**.

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: March 1, 2024

Tmm/cc: Ryan P. Givey

Mark J. Sherer, Esq.

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2330

RYAN P. GIVEY,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE;
JENNIFER ARBITTIER WILLIAMS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2-22-cv-00298)
District Judge: Honorable Nitza I. Quinones Alejandro

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on December 21, 2023

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on December 21, 2023.


On consideration whereof, it is now hereby **ORDERED** and **ADJUDGED** by this Court that the judgment of the District Court entered July 14, 2023, be and the same hereby

is **AFFIRMED**. Each side to bear its own costs. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: December 26, 2023


Certified as a true copy and issued in lieu
of a formal mandate on March 11, 2024

Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

Appendix D

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2330

RYAN P. GIVEY,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE;
JENNIFER ARBITTIER WILLIAMS

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 2:22-cv-00298)
District Judge: Honorable Nitza I. Quinones Alejandro

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on December 21, 2023

Before: BIBAS, PORTER, and MONTGOMERY-REEVES, Circuit Judges

(Opinion filed: December 26, 2023)

OPINION*

PER CURIAM

In January 2022, pro se appellant Ryan Givey filed a petition for a writ of mandamus in the District Court.¹ The respondents are the U.S. Department of Justice and Jennifer Arbittier Williams, who at the time was the United States Attorney for the Eastern District of Pennsylvania. In his petition, Givey states that he is the target of a wide-ranging conspiracy that has caused him misfortune in various aspects of his life. He alleges that a network of hostile figures has conspired to, among other things, have him wrongfully declared mentally ill, harm him professionally, isolate him from his family, surveil him 24 hours a day, and undermine his legal interests. He believes that the network includes secret societies (particularly the Freemasons), the mob, government officials, and his own attorneys.

Givey's mandamus petition asks the District Court to order the DOJ and Williams to investigate and prosecute the network's crimes against him. It also asks that Givey, his children, and his supporters be admitted to the federal witness protection program. The District Court dismissed the petition under Federal Rule of Civil Procedure 12(b)(1). The District Court held that Givey's petition was so insubstantial and implausible that it

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

¹ Givey's petition also included a "Motion for Temporary Emergency Injunction," which the District Court denied.

presented no actual federal case or controversy, thus depriving the court of subject-matter jurisdiction to hear the claims. Givey appeals.²

We agree with the District Court. Some claims are “so insubstantial, implausible, . . . or otherwise completely devoid of merit as not to involve a federal controversy.” Oneida Indian Nation of N.Y. v. Oneida Cnty., 414 U.S. 661, 666 (1974). Federal courts lack power to entertain such claims. A claim meets the standard for dismissal if it is “obviously without merit” or its unsoundness so clearly results from previous Supreme Court decisions “as to foreclose the subject.” Cal. Water Serv. Co. v. City of Redding, 304 U.S. 252, 255 (1938) (per curiam); see also Davis v. Wells Fargo, 824 F.3d 333, 350 (3d Cir. 2016); Taussig v. Wellington Fund, Inc., 313 F.2d 472, 475 (3d Cir. 1963). As a pro se appellant, Givey is afforded liberal construction of his pleadings. See Haines v. Kerner, 404 U.S. 519, 520–21 (1972) (per curiam). And the standard for dismissing a federal claim as wholly insubstantial is “especially high.” Hill ex rel. Republic First Bancorp Inc. v. Cohen, 40 F.4th 101, 111 (3d Cir. 2022) (quoting Davis v. U.S. Sentencing Comm’n, 716 F.3d 660, 666 (D.C. Cir. 2013)). But even when viewing the well-pleaded facts in the light most favorable to Givey, his claims are “so attenuated and unsubstantial as to be absolutely devoid of merit,” “wholly insubstantial,” “obviously frivolous,” “plainly unsubstantial,” or “no longer open to discussion.” Hagans v. Lavine, 415 U.S. 528, 536–37 (1974) (quotation marks and citations omitted).

² We have jurisdiction under 28 U.S.C. § 1291. In reviewing a dismissal under Rule 12(b)(1), we review only whether the well-pleaded allegations on the face of the complaint, taken as true, allege facts sufficient to invoke the subject-matter jurisdiction of the District Court. Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 188 (3d Cir. 2006).

Givey has undoubtedly had many struggles over the last nine years involving, among other things, his doctoral program, his family, his job, his application for disability benefits, his attorneys, and his rental properties. But given his efforts to weave these allegations into a vast conspiracy against him, as well as the outlandish nature of some of his claims (such as a secret society spending eight years hiring Givey's friends and family in order to turn those people against him), we agree that his petition was so insubstantial as not to present a federal case or controversy. Thus, the District Court lacked subject matter jurisdiction and therefore lacked the power to adjudicate Givey's mandamus petition.

For these reasons, the District Court's order is affirmed.

Appendix E

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. 23-2330

RYAN P. GIVEY,
Appellant

v.

UNITED STATES DEPARTMENT OF JUSTICE;
JENNIFER ARBITTIER WILLIAMS

(E.D. Pa. No. 2:22-cv-00298)

Present: BIBAS, Circuit Judge

Submitted are

- (1) Emergency Motion filed by Appellant for Immediate Audience with a Judge to Request Witness Protection;
- (2) Document by Appellant In Support of Motion for Immediate Audience with a Judge to Request Witness Protection.

in the above-captioned case.

Respectfully,

Clerk

ORDER

The foregoing motion is denied.

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: February 16, 2024
Tmm/cc: Ryan P. Givey
Mark J. Sherer, Esq

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN P. GIVEY

Plaintiff, pro se

v.

DEPARTMENT OF JUSTICE,
EASTERN DISTRICT OF PA, *et al.*

Defendants

:
:
:
:
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:
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:

CIVIL ACTION

NO. 22-0298

NITZA I. QUINONES ALEJANDRO, J.

JULY 14, 2023

MEMORANDUM OPINION

INTRODUCTION

Petitioner Ryan P. Givey (“Petitioner”), proceeding *pro se*, filed a petition for a writ of *mandamus* (the “Mandamus Petition”) against the Department of Justice, Eastern District of Pennsylvania, and Jennifer Arbittier Williams (“Williams”), in her official capacity as then-United States Attorney for the Eastern District of Pennsylvania (collectively, “Respondents”), in which he alleges the existence of a criminal conspiracy targeted at him, as detailed in a criminal complaint Petitioner previously made to the United States Department of Justice. [ECF 1]. In the Mandamus Petition, Petitioner also moved for a temporary emergency injunction, which this Court denied. [ECF 3].

Before this Court is Williams’ motion to dismiss the Mandamus Petition based on three grounds, *to wit*: (1) lack of subject-matter jurisdiction pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(1); (2) improper service, pursuant to Rule 12(b)(5);¹ and (3) failure to state a claim,

¹ Williams subsequently withdrew the improper service argument in her reply, as Petitioner properly served the United States after the motion to dismiss was filed. (Williams’ Reply, ECF 24, at p. 1).

pursuant to Rule 12(b)(6). [ECF 21]. Petitioner opposes the motion. [ECF 22].² Because this Court finds that it lacks subject-matter jurisdiction, it need not address Williams' other arguments for dismissal and will dismiss this case in its entirety.

BACKGROUND

When ruling on a motion to dismiss under Rule 12(b)(1), a court must accept as true all well-pleaded facts in the petition for a writ of *mandamus*. *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009); *see also Alvarez v. Raufer*, 2020 WL 1233565, at *4 (E.D. Pa. Mar. 12, 2020) (applying the same standard to a motion to dismiss petition for a writ of *mandamus*). The facts relevant to the instant motion to dismiss, as best discerned from the Mandamus Petition, are summarized as follows:³

In August 2018, Petitioner filed a "Petition to Report Federal Crimes to Special Grand Jury or in the Alternative to Grand Jury Pursuant to the United States Constitution and 18 U.S.C. § 3332(a)" with the United States Department of Justice (the "DOJ Petition").⁴ In the DOJ Petition, Petitioner attempts to detail an elaborate criminal conspiracy targeting Petitioner and involving the Federal Bureau of Investigation, other law enforcement officers, attorneys involved in various lawsuits related to Petitioner, members of secret societies, the mafia, and other syndicates of organized crime. In short, Petitioner "believes he is being attacked by a corrupt organization with millions of members, who have infiltrated businesses, school districts, law enforcement, our legal system and government organizations." (Mandamus Pet., ECF 1, ¶ 703).

Petitioner has not yet received any response to the DOJ Petition, and he fears for his safety and the safety of his family as a result of the alleged criminal conspiracy against him. Consequently, Petitioner filed the Mandamus Petition, asking this Court to (1) order the United States Department of Justice to convene a federal special grand jury to consider his allegations of organized crime efforts as detailed in the DOJ Petition; (2) assign a special prosecutor to investigate the alleged criminal conspiracy; and (3) provide witness protection to Plaintiff, his children, and other cooperating witnesses.

² This Court has also considered Williams' reply, [ECF 24], and Petitioner's sur-reply, [ECF 27].

³ These facts are drawn from the Mandamus Petition and its accompanying exhibits. [ECF 1].

⁴ The DOJ Petition was attached to the Mandamus Petition as Exhibit A. [ECF 1-1].

LEGAL STANDARD

A motion to dismiss under Rule 12(b)(1) challenges a federal court's subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Federal courts are courts of limited jurisdiction, and without jurisdiction conferred by the Constitution or by statute, courts lack the power to adjudicate claims. U.S. Const. art III, § 2. A case is properly dismissed for lack of subject-matter jurisdiction when the court does not have either the statutory or the constitutional power to adjudicate the case. *See id.* In evaluating a Rule 12(b)(1) motion, a court must first determine whether the movant presents a facial or factual attack. *Const. Party of Pa. v. Aichele*, 757 F.3d 347, 357 (3d Cir. 2014); *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977). A *facial* attack “concerns ‘an alleged pleading deficiency’ whereas a *factual* attack concerns ‘the actual failure of [a plaintiff’s] claims to comport [factually] with the jurisdictional prerequisites.’” *CNA v. United States*, 535 F.3d 132, 139 (3d Cir. 2008) (citations omitted). In other words, a facial challenge attacks the sufficiency of the pleading on its face without contesting its alleged facts. When a Rule 12(b)(1) motion is filed prior to an answer, as is this case, the motion will be considered a facial challenge to jurisdiction.⁵ *Const. Party*, 757 F.3d at 358. In reviewing a facial challenge, “the court must only consider the allegations of the [petition] and documents referenced therein and attached thereto, in the light most favorable to the plaintiff.” *Gould Elec. Inc. v. United States*, 220 F.3d 169, 176 (3d Cir. 2000). The burden of establishing the court’s subject-matter jurisdiction rests with the party asserting its existence—here, Petitioner. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006).

⁵ A factual challenge “may occur at any stage of the proceedings, from the time the answer has been served until after the trial has been completed.” *Const. Party*, 757 F.3d at 358 (quoting *Mortensen*, 549 F.2d at 889–92).

“[C]ourts must accord special care to *pro se* claimants.” *In re Energy Future Holdings Corp.*, 949 F.3d 806, 824 (3d Cir. 2020) (internal quotation marks and citation omitted). The court must liberally construe *pro se* filings, holding them to “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). Nonetheless, *pro se* petitioners may not “flout procedural rules.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013); *see also Fantone v. Latini*, 780 F.3d 184, 193 (3d Cir. 2015) (recognizing that *pro se* claimants must satisfy *Twombly* and *Iqbal*’s pleading standards).

DISCUSSION

Generally, a party may seek *mandamus* relief from a federal court pursuant to 28 U.S.C. § 1361. However, the remedy of *mandamus* is a drastic measure “to be invoked only in extraordinary situations.” *Erving v. Ebbert*, 2013 WL 393371, at *3 (M.D. Pa. Jan. 31, 2013) (quoting *Stehney v. Perry*, 101 F.3d 925, 935 (3d Cir. 1996)). Thus, the party seeking the issuance of a writ of *mandamus* must show that the right to the issuance of the writ is “clear and indisputable” by demonstrating that said party is owed “a legal duty which is a specific, plain ministerial act devoid of the exercise of judgment or discretion.” *Id.* (quoting *Volcy v. United States*, 469 F. App’x 82, 83–84 (3d Cir. 2012)).

As noted, Williams moves to dismiss the Mandamus Petition for lack of subject-matter jurisdiction, arguing that Petitioner’s claims are frivolous and legally insufficient. A court may dismiss a federal claim for lack of subject-matter jurisdiction based on the legal insufficiency of the claim when the claim is “so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998) (citations omitted). A court can also dismiss

a complaint for lack of subject-matter jurisdiction where the claim is “wholly insubstantial and frivolous.” *Gould*, 220 F.3d at 178 (quoting *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991)); *see also Yoder v. Tompkins*, 671 F. App’x 27, 29 (3d Cir. 2016); *Radeschi v. Pennsylvania*, 846 F. Supp. 416, 419 (W.D. Pa. 1993). Similarly, a court may dismiss a *pro se* complaint that “makes no sense” where the court “ha[s] no idea what happened” to the plaintiff. *Lewis v. Pennsylvania*, 2020 WL 1158713, at *1 (E.D. Pa. Mar. 10, 2020). “Claims grounded in ‘bizarre conspiracy theories, government manipulations of the mind, or supernatural intervention’ have become prime candidates for jurisdictional dismissals.” *Mina v. Chester Cnty.*, 2015 WL 6550543, at *8 (E.D. Pa. Oct. 29, 2015), *aff’d*, 679 F. App’x 192 (3d Cir. 2017) (quoting *Weisser v. Obama*, 2013 WL 4525319, at *1 (D.D.C. Aug. 27, 2013)).

Here, Petitioner mounts nearly 200 pages of allegations against Respondents in an attempt to detail an elaborate criminal conspiracy against him. While this Court must accept Petitioner’s allegations as true, at this stage of the litigation, the Mandamus Petition is, however, replete with conclusory allegations of wrongdoing that lack any factual substance from which to discern any viable claims against Respondents. Even construing Petitioner’s allegations liberally, Petitioner’s allegations of the existence of a vast intrinsic conspiracy that includes, *inter alia*, secret societies, the mob, and the government, “make[] no sense” and cannot withstand Williams’ challenge to subject-matter jurisdiction. *See Lewis*, 2020 WL 1158713, at *1; *Mina*, 2015 WL 6550543, at *8. Importantly, it is difficult to discern from Petitioner’s allegations how Williams is related to the alleged criminal conspiracy, how the conspiracy functioned, and how the relief Petitioner seeks—even if this Court had the authority to grant it—would redress the harms. This Court is unable to unearth any viable federal action in the Mandamus Petition that would entitle Petitioner to the relief he seeks.

Further, this Court has no authority to order the relief Petitioner seeks—his and his family’s admission to the witness protection program. The authority to provide witness protection “for the health, safety, and welfare of Government witnesses and their families” properly belongs with the United States Marshals Service, not the Court. 28 C.F.R. § 0.111(c).

CONCLUSION

For the reasons set forth, Williams’ motion to dismiss is granted, and the Mandamus Petition is dismissed in its entirety, with prejudice, for lack of subject-matter jurisdiction. An Order consistent with this Memorandum Opinion follows.

NITZA I. QUIÑONES ALEJANDRO, J.

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RYAN P. GIVEY

Petitioner, pro se

v.

DEPARTMENT OF JUSTICE,
EASTERN DISTRICT OF
PENNSYLVANIA, *et al.*

Respondents

CIVIL ACTION

NO. 22-0298

ORDER

AND NOW, this 14th day of July 2023, upon consideration of Respondent Jennifer Arbittier Williams' ("Williams") *motion to dismiss*, [ECF 21], Petitioner Ryan P. Givey's ("Petitioner") response in opposition, [ECF 22], Williams' reply, [ECF 24], Petitioner's sur-reply, [ECF 27], and the allegations in the petition for a writ of *mandamus* (the "Petition"), [ECF 1], it is hereby **ORDERED** that, for the reasons set forth in the accompanying Memorandum Opinion, Williams' motion to dismiss is **GRANTED**. Accordingly, the Petition is **DISMISSED**, in its entirety, pursuant to Federal Rule of Civil Procedure 12(b)(1), for lack of subject-matter jurisdiction.

BY THE COURT:

/s/ Nitza I. Quiñones Alejandro

NITZA I. QUIÑONES ALEJANDRO

Judge, United States District Court