APPENDIX

TABLE OF APPENDICES

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 22-80609-CV-MIDDLEBROOKS

LOUIS WAYNE RATFIELD,
Plaintiff,

v.

ELLEN L. COHEN, STEPHANIE A. EVANS,
TRACY L. GOSTYLA, and ATTORNEY
GENERAL MERRICK GARLAND,

Defendants. /

ORDER ON MOTION TO PROCEED IN FORMA PAUPERIS

THIS CAUSE comes before the Court on Plaintiff Louis Wayne Ratfield's ("Plaintiff") Application to Proceed In Forma Pauperis, filed on April 20, 2022, ("Motion"). (DE 3). For the reasons stated below, Plaintiff's request to proceed in forma pauperis is denied and Plaintiff's Complaint is dismissed.

I. In Forma Pauperis Application

Permission to proceed in forma pauperis is committed to the sound discretion of the court. ***CAMP v. OLIVER***, 798 F.2d 434,437 (11th Cir. 1986). A court "may authorize the commencement...or prosecution of any suit, action or proceeding...or appeal therein, without the prepayment of fees ...therefor, by a person who submits an affidavit that inclu-

des a statement of all assets such [person] possesses that the person is unable to pay such fees..." 28 USC Sec. 1915(a)(1) Section 1915 requires a determination as to whether "the statements in the [applicant's] affidavit satisfy the requirement of poverty." ***WATSON v. AULT*** 525 F.2d 886, 891 (5th Cir. 1976). An applicant's "affidavit will be held sufficient if it represents that the litigant, because of his poverty, is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents." ***MARTINEZ v. KRISTI KLEANERS, INC.***, 364 F.3d 1305, 1307 (11th Cir. 2004). Based on Plaintiff's affidavit of indigency (DE 3), he appears to be indigent.

II. 28 U.S.C. Sec. 1915(e)(2) Screening

The Court must also determine whether Plaintiff's Complaint states a claim upon which relief may be granted, and if not, must dismiss it without prejudice. See 28 U.S.C. Sec. 1915(e)(2). Applications to proceed in forma pauperis are governed by 28 U.S.C. Sec.1915. Section 1915 grants the the district courts broad discretion in the management of in forma pauperis cases. See e.g., ***MILLER v. DONALD***, 541 F.3d 1091, 1097 (11th Cir. 2008). While a court must construe pro se pleadings liberally and hold them to a less stringent standard than pleadings drafted by attorneys, see id . (citing ***HUGHES v. LOTT***,350 F.3d 1157,1160(11thCir. 2003))the court must dismiss a complaint if it is frivolous, malicious, or if it "fails to state a claim upon which relief may be granted." ***HUGHES***, 350 F.3d at 1159 (quoting 28 USC. Sec. 1915(e)(2)). The court also must dismiss a complaint if it "seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. Sec. 1915(e)(2)(B)(iii).

The standard for determining whether a complaint states claim upon which relief may be granted is the same un-

der Sec.1915(e)(2) & Federal Rule of Civil Procedure12(b)(6). See ***MITCHELL v. FARCASS,*** 112 F.3d1483,1490 (11thCir.1997) ("The language of Sec.1915(e)(2)(B)(ii) tracks the language of Federal Rule of Civil Procedure 12(b)(6)"). A complaint need not contain detailed factual allegations. See Fed. R.Civ. P. 8(a)(2) (pleading must contain a "short & plain statement of the claim showing that the pleader is entitled to relief..."). However, a plaintiff's obligation to provide the grounds for his entitlement to relief requires more than labels & conclusions; a "formulaic recitation of the elements of a cause of action will not do..." ***BELL ATLANTIC CORP. v. TWOMBLY,*** 550 U.S. 544, 555 (2007).

Here, Plaintiff brings claims under 42 U.S.C Sec.1983 against several federal prosecutors & the Attorney General of the United States for money damages. (DE 1 at 1, 5, 9). Plaintiff's claims arise out of his 2007 prosecution and conviction of federal tax crime. Plaintiff brings Fourth & Eighth Amendment claims against the prosecutors, and sues the Attorney General as "the current supervisor". (Id. at 9-11). Plaintiff alleges that Defendants violated the Fourth Amendment due to his 2006 arrest & 2007 tax prosecution, which he contends they had no authority to initiate. (Id. at 9-11). Plaintiff specifically alleges that the prosecutor Defendants did not have authority from the Secretary of the Treasury to proceed with his prosecution after he was indicted by the grand jury & they lied to the presiding judge. (Id. at 9). With respect to the Eighth Amendment, Plaintiff alleges that his allegedly false imprisonment constitutes cruel and unusual punishment. (Id. at 10-11). Plaintiff's claims must be dismissed because Defendants are entitled to absolute immunity for the conduct alleged and his claims are time-barred.

"[I]n initiating a prosecution and in presenting the

[government's] case, the prosecutor is immune from a civil suit for damages under Sec. 1983." ***IMBLER v PACHTMAN***, U.S.424 U.S.409, 430 (1976). If an affirmative defense would defeat the action, such as absolute immunity, the district court may dismiss a complaint as frivolous pursuant to Sec. 1915 ***CLARK v. STATE of GA. PARDONS & PAROLE BD***, 915 F.2d, 636, 641-42 & n.2 (11th Cir. 1990) (citing ***KIMBLE v. BECKNER***, 806 F.2d 1256, 1257 (5th Cir. 1986)(per curiam)); **KIMBLE**, 806, F.2d at 1257 ("describing dismissal of an IFP Civil rights suit brought by a prisoner against the presiding federal judge, prosecutors, and witnesses as "a proper dismissal of a frivolous or malicious complaint").

Additionally, Plaintiff's claims are time-barred. To dismiss a complaint "as time-barred prior to service it must appear beyond a doubt from the complaint itself that [the plaintiff] can prove no set of facts which would avoid a statute of limitations bar.'" ***HUGHES***, 350 F.3d at 1163 (citation omitted). The statute of limitations for Sec. 1983 claims are governed by the forum state's personal injury statute of limatations, which in Florida, is four years.[1] ***JOSEPH v. STATE MUT LIFE. INS. CO. OF AM.***, 196 F. App'x 760 (11th Cir. 2006) (citing Fla. Stat. Sec. 768.28 (14)).

It is clear that more than four years has elapsed since the accrual of Plaintiff's claims. For Sec. 1983 damages claim for false arrest in violation of the Fourth Amendment, the statute of limitations begins to run when the plaintiff "becomes detained pursuant to legal process". ***WALLACE v., KATO,*** 549 U.S. 384, 397 (2007). Here, that occurred some-

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[1] Plaintiff's contention that there "is no applicable Statute of Limitations for fraud" because this conduct was done "egregiously, fraudulently [in] violation under color of law" is without merit (See DE 1 at 9-10).

time between Plaintiff's April 18, 2006, arrest and July 20, 2007 sentencing. Even if going by his release date of November 9, 2017 the statute of limitations has still run. The same is true for Plaintiff's Eight Amendment claim. Regardless of whether the limitations period began to run at the beginning or end of his incarceration, more than four years has clearly elapsed based on the dates alleged in the complaint[2] The complaint thus cannot state any legally cognizable claim for relief & is frivolous. See ***BILAL v. DRIVER***, 251 F.3d 1346, 1349 (11th Cir. 2001) ("A claim is frivolous if it is without arguable merit either in law or fact."). Accordingly, it is hereby **ORDERED** and **ADJUDGED** that;

(1) Plaintiff's Motion to Proceed in Forma Pauperis (DE 3) is **DENIED**.

(2) This case is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. Sec. 1915(e)(2).

ORDERED in Chambers, at West Palm Beach, Florida this 21st day of April 2022

[handwritten signature]
Donald M. Middlebrooks, USD Judge

[2] Nor are there any grounds for equitable tolling alleged. Equitable tolling under Florida law is permissible where "the plaintiff has been misled or lulled into inaction, has in some extraordinary way been prevented from asserting his rights, or has timely asserted his rights mistakenly in the wrong forum". ***Mathis v. Vizcarrondo***, 792 F. App'x 746, 748 (11th Cir. 2019) (quoting ***Williams v. Albertson's Inc.,*** 879 So. 2d 657, 659 (Fla. 5th DCA 2004)). Plaintiff does not allege that such conduct has occurred. Plaintiff alleges that he is "continuing under sentencing of false supervised release," but he clearly alleges that his "[f]alse incarceration [was] completed on November 9, 2017," and does not allege any way that he was prevented from enforcing his rights. (See DE 1 at 9-10). Plaintiff also alleges that he filed a tort lawsuit on March 9, 2012, but that lawsuit was against the presiding judge, not these Defendants, (Id. at 10).

Appendix D

[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

October 26, 2022

No. 22-11961-JJ

Non-Argument Calendar

LOUIS WAYNE RATFIELD,

Plaintiff-Appellant,

Versus

ELLEN L. COHEN,
US Federal Prosecutor,
STEPHANIE A. EVANS,
US Federal Prosecutor,
TRACY L. GOSTYLA,
US Federal Prosecutor.
U.S. ATTORNEY GENERAL.

Defendants-Appellees.

Appeal from the United States District Court

For the Southern District of Florida

D.C. Docket No. 0:22-cv-80609-DMM

Before JORDAN, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Louis Ratfield, appearing pro se, appeals the dismissal with prejudice his ***BIVENS***[1] claims alleging violations of

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[1] ***BIVENS v, SIX UNKNOWNN NAMED AGENTS of FED. BUREAU of NARCOTICS***, 403 U.S. 388 (1971).

his Fourth & Eighth Amendment rights during prosecution of, and subsequent incarceration for, various federal tax offenses. He argues that the district court erred in dismissing his claims for frivolity and failure to state a claim for which relief can be granted. Ratfield additionally argues that the district court erred in finding that the Defendants were entitled to absolute prosecutorial immunity and in finding that his claims were time-barred by the statute of limitations. Lastly, Ratfield contends that the district court in dismissing his claims with prejudice.

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We review a district court's dismissal of an in forma pauperis complaint as frivolous under 18 USC, Sec. 1915(e)(2)(B)(i) for an abuse of discretion. ***HUGHES v. LOTT***, 350 F.3d 1157, 1160 (11th Cir. 2003).

A district court may dismiss an in forma pauperis action "at any time if" the claim "(1) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a Defendant who is immune from such relief." 28 USC, Sec. 1915(e)(2)(B).

A suit brought under 42 USC, Sec.1983 challenges the constitutionality of the actions of state officials, while a ***BIVENS*** suit challenges the constitutionality of federal officials' actions. ***ABELLA v. RUBINO***, 63 F.3d 1063, 1065 (11th Cir.1995).We have stated that"a ***BIVENS*** action is analogous to Sec. 1983 suits against state and local officers." ***Smith ex Rel. SMITH v. SIEGELMAN***, 322 F.3d 1290, 1297 n. 15 (11th Cir. 2003). Accordingly, a federal official sued under ***Bivens*** has the same immunity as a similar state official sued for the identical violation under Sec. 1983. ***ABELLA***, 63 F.3d at 1064.

Prosecutors are absolutely immune from liability for damages for activities that are intimately associated with the judicial phase of the criminal process and acts undertaken when "initiating a prosecution and in presenting the state's case." ***IMBLER v. PACHTMAN***, 424, U.S. 409, 430-31 (1976). The absolute immunity extends to acts done in the prosecutor's role as an advocate for the state. ***BUCKLEY v. FITZSIMMONS***, 509 U.S. 259, 273 (1993).

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A claim based on a respondent superior theory of liability is insufficient to support a claim under Sec. 1983. ***POLK COUNTY v. DODSON***, 454 U.S. 312, 325 (1981). "Supervisory officials are not vicariously liable under section 1983 for the unconstitutional acts of their subordinates. Plaintiffs must instead allege that the supervisor, through his own actions, violated the Constitution." ***INGRAM v. KUBIK***, 30 F. 4d 1241, 1254 (11th Cir. 2022) *cert. dismissed*, 142 S. Ct. 2855 (2022) (citations omitted). Where a plaintiff brings a Sec. 1983 claim premised on a theory of supervisory liability the district court may properly dismiss the claim pursuant to Sec. 1915(e)(2)(B)(ii), ***HENLEY v. PAYNE***, 945 F.3d 1320, 1331-32 (11th Cir. 2019).

Here, the district court did not err in dismissing Ratfield's ***BIVENS*** claims based on absolute prosecutorial immunity. As federal prosecutors, Cohen, Gostyla, and Evans are entitled to absolute immunity for actions undertaken in their roles as advocates for the government. See ***IMBLER***, 424 U.S. at 430-31; ***BUCKLEY***, 509 U.S. at 273. According to the facts alleged in the complaint, Cohen, Evans, and Gostyla prosecuted an alleged IRS violation following an indictment by a grand jury without proper authority from the Secretary of the Treasury. Even assuming those facts are true,

Cohen, Evans, and Gostyla are entitled to absolute immuneity for these actions as they were acting as advocates for the government. See ***BUCKLEY***, 509 U.S.at 273. Ratfield's allegations that Cohen lied during his trial are similarly protected by absolute prosecutorial immunity as an act undertaken in presenting the government's case.

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See ***IMBLER***, 424, U.S. at 431. Further, Ratfield's claims against Garland are premised on a theory of respondent superior, which is insufficient to support a claim brought under Sec.1983 and thus under ***BIVENS***. Accordingly, the district court did not err in dismissing Ratfield's complaint.

ARRIRMED October 26, 2022.

Appendix F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-11961-JJ

LOUIS WAYNE RATFIELD.
Plaintiff-Appellant,

Versus
ELLEN L. COHEN,
US Federal Prosecutor,
STEPHANIE A. EVANS,
US Federal Prosecutor,
TRACY L. GOSTYLA,
US Federal Prosecutor,
U.S. ATTORNEY GENERAL.
Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC
BEFORE: JORDAN, BRASHER, & ANDERSON, Circuit Judges
PER CURIAM:
The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Rehearing En Banc is also treated as a Petition for Rehearing before the panel & is DENIED. (FRAP 35, IOP2).

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