

Case No. 24-3010

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

ORDER

DAVID C. LETTIERI

Plaintiff - Appellant

v.

FEDERAL MARSHALS

Defendant - Appellee

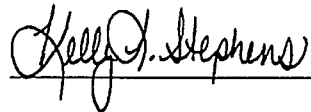
Appellant having previously been advised that failure to satisfy certain specified obligations would result in dismissal of the case for want of prosecution and it appearing that the appellant has failed to satisfy the following obligation(s):

The proper fee was not paid by August 12, 2024.

It is therefore **ORDERED** that this cause be, and it hereby is, dismissed for want of prosecution.

**ENTERED PURSUANT TO RULE 45(a),
RULES OF THE SIXTH CIRCUIT**
Kelly L. Stephens, Clerk

Issued: August 30, 2024



DAVID C. LETTIERI, Plaintiff, v. FEDERAL MARSHALS, Defendant.
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN
DIVISION

2023 U.S. Dist. LEXIS 213545

CASE NO. 4:23CV2202

November 30, 2023, Decided

November 30, 2023, Filed

Editorial Information: Subsequent History

Motion denied by LeTtieri v. Fed. Marshals, 2024 U.S. App. LEXIS 15023 (6th Cir., June 20, 2024)

Counsel {2023 U.S. Dist. LEXIS 1}David C. Lettieri, Plaintiff, Pro se,
Youngstown, OH.

Judges: Benita Y. Pearson, United States District Judge.

Opinion

Opinion by: Benita Y. Pearson

Opinion

MEMORANDUM OF OPINION AND ORDER

I. Background

Pro se Plaintiff David C. Lettieri was a federal pretrial detainee in the custody of the United States Marshals Service ("USMS") at the time the events described in the Complaint (ECF No. 1) took place. He brings this *Bivens* 1 action against "Federal Marshals." The Complaint (ECF No. 1) is almost completely devoid of facts. In the statement of his claim, Plaintiff alleges that he was transferred "for no reason" on June 16, 2023. ECF No. 1 at PageID #: 18. He appears to claim this transfer violated his due process rights. See ECF No. 1 at PageID #: 16-17. Plaintiff seeks \$10,000 in damages.

II. Standard for Dismissal

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365, 102 S. Ct. 700, 70 L. Ed. 2d 551 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972), the district court is required to dismiss an *in forma pauperis* action under 28 U.S.C. § 1915(e) if it fails to state a claim upon which relief may be granted or if it lacks an arguable basis in law or fact. *Neitzke v. Williams*, 490 U.S. 319, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996). An action has no arguable basis in law or fact when it is premised on an indisputably meritless legal theory or when the factual contentions are clearly baseless.{2023 U.S. Dist. LEXIS 2} *Neitzke*, 490 U.S. at 327.

A cause of action fails to state a claim upon which relief may be granted when it lacks "plausibility in th[e] complaint." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 564, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007). A pleading must contain a "short and plain statement of the claim showing that the

pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (quoting Fed. R. Civ. P. 8(a)(2)). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption that all the allegations in the complaint are true. *Twombly*, 550 U.S. at 555. The plaintiff is not required to include detailed factual allegations, but must provide more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. *Id.* The Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986). In reviewing a complaint, the court must construe the pleading in the light most favorable to the plaintiff. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir. 1998).

The Court recognizes that *pro se* pleadings are held to a less stringent standard than formal pleadings drafted by lawyers. *El Bey v. Roop*, 530 F.3d 407, 413 (6th Cir. 2008). However, the "lenient treatment generally accorded to *pro se* litigants has limits." *Pilgrim v. Littlefield*, 92 F.3d 413, 416 (6th Cir. 1996). Liberal construction for *pro se* litigants{2023 U.S. Dist. LEXIS 3} does not "abrogate basic pleading essentials." *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). The court is not required to conjure unpleaded facts or construct claims against defendants on behalf of a *pro se* plaintiff. See *Bassett v. Nat'l Collegiate Ath. Ass'n*, 528 F.3d 426, 437 (6th Cir. 2008). Although specific facts are not required, to meet the basic minimum notice pleading requirements of Fed. R. Civ. P. 8, the complaint must give the defendant fair notice of what the plaintiff's legal claims are and the factual grounds on which they rest. *Id.*

III. Law and Analysis

The Complaint (ECF No. 1), even liberally construed, fails to meet the most basic pleading standard under Rule 8. The Complaint (ECF No. 1) fails to connect any alleged occurrence to any specific cognizable injury, and Plaintiff fails coherently to identify how Defendant has harmed him. The pleading is nothing more than "an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678. Therefore, the Complaint (ECF No. 1) lacks an arguable basis in fact, and it fails to state a claim on which the Court may grant relief.

Even if Plaintiff had satisfied Rule 8, he fails to state a plausible *Bivens* claim. *Bivens* provides a limited cause of action against individual federal government officers acting under color of federal law alleged to have acted unconstitutionally. *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 70, 122 S. Ct. 515, 151 L. Ed. 2d 456 (2001). *Bivens'* purpose{2023 U.S. Dist. LEXIS 4} is to deter individual federal officers, not the agency, from committing constitutional violations. *Id.*; see *FDIC v. Meyer*, 510 U.S. 471, 485-86, 114 S. Ct. 996, 127 L. Ed. 2d 308 (1994) ("[T]he purpose of *Bivens* is to deter the officer. . . . An extension of *Bivens* to agencies of the Federal Government is not supported by the logic of *Bivens* itself.") (italics in original). A *Bivens* action therefore cannot be brought against a federal government agency such as the USMS. *Lenhart v. Savetski*, No. 1:21CV0611, 2021 U.S. Dist. LEXIS 109462, 2021 WL 2400946, at *3 (N.D. Ohio June 11, 2021).

IV. Conclusion

Accordingly, this action is dismissed pursuant to 28 U.S.C. § 1915(e). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

The Clerk is directed to issue a copy of this Memorandum of Opinion and Order by regular mail to David C. Lettieri, Niagara County Jail, 5526 Niagara Street Ext, Lockport, NY 14095.

IT IS SO ORDERED.

November 30, 2023

/s/ Benita Y. Pearson

Benita Y. Pearson

United States District Judge

Date

JUDGMENT ENTRY

Having filed its Memorandum of Opinion and Order, the Court hereby dismisses this action pursuant to 28 U.S.C. § 1915(e). Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal from this decision could not be taken in good faith.

The Clerk is directed to issue a copy of this Judgment Entry by regular mail to David C. Lettieri, Niagara County Jail, 5526 Niagara Street Ext,{2023 U.S. Dist. LEXIS 5} Lockport, NY 14095.

IT IS SO ORDERED.

November 30, 2023

Date

/s/ Benita Y. Pearson

Benita Y. Pearson

United States District Judge

Footnotes

1

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971).

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