

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 17-40031
Summary Calendar

SHELLEY SONIAT,

Plaintiff-Appellant

v.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; DON D. BUSH; RICHARD SCHELL; PATRICK BANIS, Intake Branch Chief, Department of Housing and Urban Development Region 6, Fort Worth Regional Office; GARRY SWEENY, Regional Director, Department of Housing and Urban Development Region 6, Fort Worth Regional Office; GORDON F. PATTERSON, Acting Director, Office of Enforcement, Fair Housing and Equal Opportunity and Department of Housing and Urban Development,

Defendants-Appellees

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:16-CV-337

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:

Shelley Soniat, proceeding pro se, has moved for leave to proceed in forma pauperis (IFP) on appeal, for the appointment of counsel, and for leave to supplement the latter request. Soniat seeks to appeal the district court's judgment dismissing her suit against the above-named defendants in its

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entirety. She has also moved for this court to vacate the dismissal and to remand her case.

By moving for leave to proceed IFP on appeal, Soniat challenges the district court's certification that her appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Our inquiry into her good faith "is limited to whether the appeal involves legal points arguable on their merits (and therefore not frivolous)." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (internal quotation marks and citation omitted). We review de novo a dismissal for lack of jurisdiction and a dismissal for failure to state a claim for relief. *Chhim v. Univ. of Texas at Austin*, 836 F.3d 467, 469 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 1339 (2017).

The district court dismissed defendants Magistrate Judge Don D. Bush and District Judge Richard Schell because they enjoyed absolute judicial immunity, the suit was an impermissible collateral attack on the earlier judgment, and they were not properly served. The district court dismissed Soniat's claims against the Department of Housing and Urban Development (HUD), Banis, Sweeney, and Patterson because they enjoyed sovereign immunity and because Soniat failed to state a claim against them upon which relief could be granted.

Soniat challenges the district court's sovereign immunity determination, arguing her claims might be subject to the general waiver of sovereign immunity offered under the Tucker Act, 28 U.S.C. § 1491. However, if "the Tucker Act applies to this suit, jurisdiction over this case was proper only in the United States Court of Federal Claims." *Ford Motor Co. v. United States*, 134 S. Ct. 510, 510 (2013).

Soniat also argues that her claims are allowed by *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), which

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established a cause of action against federal officials in their individual capacities for a violation of a federal constitutional right. However, *Bivens* does not provide a cause of action seeking damages from a federal agency for its alleged violation of a federal constitutional right or from federal officials who are sued in their official capacities. *F.D.I.C. v. Meyer*, 510 U.S. 471, 486 (1994); *Affiliated Prof'l Home Health Care Agency v. Shalala*, 164 F.3d 282, 286 (5th Cir. 1999). Further, the district court properly concluded that the judicial defendants were judicially immune from suit for damages because the acts Soniat complained of were judicial acts not taken in the clear absence of jurisdiction. *See Adams v. McIlhany*, 764 F.2d 294, 297 (5th Cir. 1985).

To survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), Soniat was required to "state a claim to relief that is plausible on its face," which required that she plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (internal quotation marks and citation omitted).

Soniat's allegation that the HUD defendants' actions were due to their personal bias, disability bias, or gender bias "amount[s] to nothing more than a formulaic recitation of the elements of a constitutional discrimination claim," i.e., that the defendants acted "'because of,' not merely 'in spite of,' their actions' adverse effects on her. *Iqbal*, 556 U.S. at 681 (internal quotation marks and citation omitted). Similarly, her allegation that the HUD defendants conspired with the judges to deprive her of due process is an "assertion of an unlawful agreement" and thus a "legal conclusion." *Id.* at 680

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(internal quotation marks and citation omitted). The district court was not required to accept these conclusory allegations as true. *See id.* at 681.

The well-pleaded facts in Soniat's complaint were merely consistent with the possibility of the HUD defendants' bias or discrimination, "[b]ut given more likely explanations, they do not plausibly establish this purpose." *Iqbal*, 556 U.S. at 681. Because Soniat pleaded insufficient facts to have "nudged [her] claims across the line from conceivable to plausible," her claims seeking damages from the HUD employees in their individual capacities were subject to dismissal. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

Soniat's claims seeking declaratory relief from the defendants does not present "a substantial controversy between parties having adverse legal interests." *Johnson v. Onion*, 761 F.2d 224, 225 (5th Cir. 1985) (internal quotation marks and citation omitted). "The fact that it is most unlikely that [Soniat] will again come into conflict with [the defendants] in circumstances similar to the ones presented here, and with the same results, precludes a finding that there was sufficient immediacy and reality here to warrant an action for declaratory relief." *Adams v. McIlhany*, 764 F.2d 294, 299 (5th Cir. 1985).

In sum, Soniat has failed to show an error in the district court's certification decision and has not established that she will raise a nonfrivolous issue on appeal. *See Baugh*, 117 F.3d at 202; *Howard*, 707 F.2d at 220. Soniat's motions for leave to proceed IFP, appointment of counsel, leave to supplement her request for counsel, and this court to vacate and remand are DENIED, and her appeal is DISMISSED as frivolous. *See Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.

This is Soniat's second appeal relating to her alleged housing discrimination. Soniat is hereby WARNED that filing repetitious, frivolous, or

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otherwise abusive pleadings will invite the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on her ability to file pleadings in this court and any court subject to this court's jurisdiction. She is ORDERED to review all pending matters and move to dismiss any that are frivolous, repetitive, or otherwise abusive.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

SHELLEY SONIAT,

Plaintiff,

v.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, ET AL;

Defendants.

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CIVIL ACTION NO. 4:16-CV-00337
JUDGE MAZZANT/JUDGE JOHNSON

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is Defendants Department of Housing and Urban Development (“HUD”), Patrick Banis, Garry Sweeney, and Gordon F. Patterson’s (the “HUD Individuals”) (collectively the “HUD Defendants”) Motion to Dismiss (Dkt. 38). *Pro se* Plaintiff Shelley Soniat filed her Response to Docket 38 Defendants U.S. Department of Housing and Urban Development, Patrick Banis, Garry Sweeney, and Gordon F. Patterson’s (HUD) Motion to Dismiss Plaintiff’s First Amended Complaint (Dkt. 40). Related to this motion and response, Plaintiff additionally filed a Motion for Clarification from Defendants (Dkt. 46). For the following reasons, the Court recommends the HUD Defendants’ motion (Dkt. 38) be **GRANTED** and Plaintiff’s motion (Dkt. 46) be **DENIED AS MOOT**.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff previously filed a lawsuit in three (3) separate actions against three (3) defendants—a property-management company, her ex-boyfriend, and HUD—that were filed in

this district in 2014 (the “Prior Suit”).¹ Plaintiff essentially alleged defendants violated the Fair Housing Act, the Americans with Disabilities Act (“ADA”), and the Fourteenth Amendment by discriminating against her. *See Soniat v. Jackson*, 2014 WL 6968871, at *1 (E.D. Tex. Dec. 9, 2014). The case was referred to Magistrate Judge Don D. Bush from Judge Richard Schell (collectively, the “Judicial Defendants”). Judge Bush recommended the case be dismissed with prejudice for failure to state a claim and, thus, denied Plaintiff’s request for the issuance of summons. *See id.* at *2, 6. Judge Schell subsequently adopted Judge Bush’s report and dismissed the consolidated action. *See Soniat v. Jackson*, 2015 WL 1503650 (E.D. Tex. Mar. 31, 2015). Plaintiff appealed and the Fifth Circuit affirmed the district court’s ruling. *See Soniat v. Jackson*, 628 F. App’x 292 (5th Cir. 2016). Plaintiff filed a petition for a writ of certiorari in the Supreme Court, which was denied on May 16, 2016. *See Soniat v. Jackson*, 136 S. Ct. 2016, 2016 WL 900300 (May 16, 2016).

On May 20, 2016, Plaintiff filed the instant lawsuit in this district against the Judicial Defendants and HUD (Dkt. 1). On June, 10, 2016, Plaintiff filed a Motion to Add Defendants (Dkt. 5). The Court granted her motion to add the HUD Individuals (Dkt. 18). On September 27, 2016, Plaintiff filed an Amended Complaint, which is the live pleading in the case (Dkt. 21). She asserts the Judicial Defendants discriminated against her by not allowing her to exercise and enjoy her rights under the Fair Housing Act. *See* Dkt. 21 at 1. Further, she asserts the HUD Defendants’ policy of deferring to the judges’ discretion and refusing to respond to her previous lawsuit has a discriminatory effect on women and minorities. *See id.* at 1-2. Specifically, Plaintiff claims that after the Judicial Defendants refused to issue a summons in the Prior Suit, she

¹ *See* Dkt. 21 at 6, 8; *see also Soniat v. Jackson et al.*, No. 4:14cv77, consolidated with 4:14cv122 and 4:14cv131 (E.D. Tex.).

sent a personal letter to HUD, and it refused to answer her lawsuit, resulting in a discriminatory effect. *See id.* at 7; Dkt. 1 at 11.

On November 2, 2016, the HUD Defendants filed a motion to dismiss, arguing the Court should dismiss Plaintiff's case for the following reasons: (1) pursuant to Federal Rule of Civil Procedure 12(b)(1), the Court lacks subject-matter jurisdiction; and (2) pursuant to Federal Rule of Civil Procedure 12(b)(6), Plaintiff has failed to state a claim upon which relief can be granted. *See* Dkt. 38 at 4. Plaintiff filed a response (Dkt. 40) and a Motion for Clarification from Defendants (Dkt. 46).

LEGAL STANDARD

1. Rule 12(b)(1)

A motion to dismiss under Rule 12(b)(1) challenges the subject-matter jurisdiction of the court. *See Ramming v. United States*, 281 F.3d 161 (5th Cir. 2001). The party asserting jurisdiction bears the burden of proof on the Rule 12(b)(1) motion to dismiss. *See id.* The court properly dismisses a case for lack of subject matter jurisdiction if the court lacks the statutory or constitutional power to adjudicate the case. *See CleanCOALition v. TXU Power*, 536 F.3d 469, 473 (5th Cir. 2008).

A motion under Rule 12(b)(1) should be granted only if it appears beyond doubt the plaintiff cannot prove a plausible set of facts in support of her claim. *See Lane v. Halliburton*, 529 F.3d 548, 557 (5th Cir. 2008). The court may find a plausible set of facts by considering (1) the complaint alone; (2) the complaint supplemented by undisputed facts evidenced in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts. *See id.* The court must accept all well-pleaded allegations in the complaint as true and construe those allegations in light most favorable to the plaintiff. *See Truman v. United*

States, 26 F.3d 592, 594 (5th Cir. 1994). Further, because the United States is a sovereign, the terms of its consent to be sued “define the federal courts’ jurisdiction to entertain suits against it.” *See Metro. Life Ins. Co. v. Atkins*, 225 F.3d 510, 512 (5th Cir. 2000).

2. Rule 12(b)(6)

Rule 12(b)(6) provides a party may move for dismissal of an action for failure to state a claim upon which relief can be granted. *See* FED. R. CIV. P. 12(b)(6). The court must accept as true all well-pleaded facts contained in the plaintiff’s complaint and view them in light most favorable to the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). A complaint must provide a short and plain statement of the claim showing the pleader is entitled to relief. *See* FED. R. CIV. P. 8(a). A complaint that does not allege “enough facts to state a claim to relief that is plausible on its face” will not survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

When considering a motion to dismiss, the court’s review is limited to the complaint, any documents attached to the complaint, and any documents attached to the motion to dismiss that are central to the claim and referenced by the complaint. *See Lone Star Fund V (U.S.), L.P. v. Barclays Bank PLC*, 594 F.3d 383, 387 (5th Cir. 2010) (citing *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000)).

ANALYSIS

1. Rule 12(b)(1)

The HUD Defendants argue Plaintiff failed to identify any statute to demonstrate this Court’s subject-matter jurisdiction. *See* Dkt. 38 at 4-5. In order to properly file suit against the United States or one of its agencies, a complaint must identify a statute that confers subject-matter jurisdiction on the district court and a federal law that waives the sovereign immunity of

the United States for each cause of action. *See Creamer v. United States*, 261 F. App'x 814, 814 (5th Cir. 2008). Plaintiff cites to the following statutes to support her argument that the Court has subject-matter jurisdiction: (1) the federal-question statute, 28 U.S.C. § 1331; (2) the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; and (3) Title III of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12131-12134. *See* Dkt. 21 at 3.

Plaintiff has two (2) main factual allegations against the HUD Defendants. First, she alleges HUD’s “policy of blindly deferring to judges['] discretion” and its policy of not responding to lawsuits “unless summons is issued” has a “discriminatory effect on minorities.” *See* Dkt. 21 at 2. Plaintiff further asserts HUD’s lack of response after she sent a personal letter to HUD also resulted in a discriminatory effect on minorities. *See id.* at 7; Dkt. 1 at 11. Second, Plaintiff claims that the HUD Individuals wrongfully declined to take action on her fair-housing complaint. *See* Dkt. 21 at 11. Plaintiff fails to direct the Court to any statute waiving the HUD Defendants’ sovereign immunity for these claims.

It is well-settled the federal question statute—28 U.S.C. § 1331—is not a waiver of sovereign immunity. *See Humphreys v. United States*, 62 F.3d 667, 673 (5th Cir. 1995). Further both the Fair Housing Act and the ADA do not include a waiver of the federal government’s sovereign immunity. *See Unimex, Inc. v. U.S. Dept. of Hous. And Urban Dev.*, 594 F.2d 1060, 1061-62 (5th Cir. 1979) (the Fair Housing Act does not apply to the federal government); *Chamberlain v. Chandler*, 344 F. App'x 911, 913 (5th Cir. 2009) (ADA is not applicable to the federal government). Because Plaintiff has not identified any statute which would waive the HUD Defendants’ sovereign immunity, her claims should be dismissed pursuant to Rule 12(b)(1).

2. Rule 12(b)(6)

The HUD Defendants further argue the allegations in Plaintiff's Amended Complaint do not plausibly suggest an entitlement to relief against them. *See* Dkt. 38 at 7. Plaintiff's Amended Complaint merely discusses her grievances towards the HUD Defendants and their denial of services when she submitted a complaint under the Fair Housing Act. *See* Dkt. 21 at 7-8. She also argues HUD should have answered the lawsuit, despite being properly served and should have "filed a Waiver of the Service of Summons." *See id.* A party is not required to voluntarily respond to a lawsuit when it has not been properly served. *See* FED. R. CIV. P. 4(c). Her allegations that HUD allegedly maintained a discriminatory policy in declining to respond to a lawsuit in which it was not properly served is meritless. Further, the Court notes the HUD Defendants responded to a lawsuit once it was properly served in the present case. Thus, Plaintiff has failed to state a claim upon which relief can be granted.

3. Plaintiff's Motion for Clarification

Plaintiff has filed a motion asking the HUD Defendants to cite to legal precedent supporting alleged statements made by them when they denied her services. *See* Dkt. 46. Because the Court lacks subject-matter jurisdiction over this case and Plaintiff has failed to state a claim upon which relief may be granted, the Court declines to address this issue.

The Court has evaluated the substance of Plaintiff's allegations, rather than the form. In its findings herein, the Court has been mindful that *pro se* pleadings are entitled to a liberal construction that includes all reasonable inferences which can be drawn from them. *See Haines v. Kerner*, 404 U.S. 519, 521 (1972); *Tassio v. Onemain Fin., Inc.*, No. 4:15-CV-00484, 2016 WL 410024, *1 (E.D. Tex. Feb. 3, 2016). Indeed, "a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89 (2007) (internal citations omitted). Nonetheless, *pro se* litigants

are still required to provide sufficient facts in support of their claims. *United States v. Pineda*, 988 F.2d 22, 23 (5th Cir. 1993). The Court has evaluated Plaintiff's pleadings herein accordingly. Even construing all the facts in a light most favorable to Plaintiff, the Court finds the HUD Defendants' motion should be granted.

RECOMMENDATION

For the foregoing reasons, the Court recommends the HUD Defendants' motion to dismiss (Dkt. 38) be **GRANTED**. Further, the Court recommends Plaintiff's Motion for Clarification from Defendants (Dkt. 46) be **DENIED AS MOOT**.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days)

SIGNED this 16th day of December, 2016.



KIMBERLY C. PRIEST JOHNSON
UNITED STATES MAGISTRATE JUDGE

United States District Court
EASTERN DISTRICT OF TEXAS DIVISION
SHERMAN DIVISION

SHELLEY SONIAT,

Plaintiff,

v.

DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT, ET AL.,

Defendants.

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CIVIL ACTION NO. 4:16CV337
JUDGE MAZZANT/JUDGE JOHNSON

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On December 16, 2016, the report of the Magistrate Judge (Dkt. #67) was entered containing proposed findings of fact and recommendations that Defendants Judge Richard A. Schell and Judge Don D. Bush's Motion to Dismiss (Dkt. #42) should be **GRANTED** and this case should be **DISMISSED** as to these Defendants.

Pro se Plaintiff Shelly Soniat timely filed Objections on December 28, 2016 (Dkt. #72). She further filed supplemental arguments in support of her objections (Dkt. #79). Plaintiff asserts arguments similar to those made in her Amended Complaint (Dkt. #21) and "Response to Docket 42 Motion to Dismiss All Claims Against Judge Richard A. Schell and Judge Don D. Bush" (Dkt. #47), and fails to show a stated claim upon which relief can be granted. Plaintiff continues to insist Defendants improperly refused to issue summons in her previous case (the "Prior Suit")¹ because Defendants were discriminating against her. She believes she has been deprived of a

¹ *Soniat v. Jackson et al.*, No. 4:14cv77, consolidated with 4:14cv122 and 4:14cv131 (E.D. Tex.).

“federal statutory right” because Defendants refused to issue summons in the Prior Suit. However, in the Prior Suit, the Court held Plaintiff failed to state a federal question based on her factual allegations; thus, Plaintiff’s case was not proper before the Court. *See Soniat v. Jackson*, 2014 WL 6968871, at *6 (E.D. Tex. Dec. 9, 2014), *adopted by*, 2015 WL 1503650 (E.D. Tex. Mar. 31, 2015). A Court may not adjudicate a case in which it does not have subject-matter jurisdiction. *See* FED. R. CIV. P. 12, 41. Defendants, acting in their judicial capacity, were unable to adjudicate the Prior Suit because dismissal was required; thus, the Court could not issue summons in the case the Court did not have jurisdiction over.

Plaintiff cites to numerous cases in which she claims support her argument that discrimination has been established as a matter of law and judicial immunity does not bar the present case. *Forrester v. White* is distinguishable from Plaintiff’s case. *See* 484 U.S. 219 (1988). As Plaintiff states in her objections, judges do not have absolute immunity for employment decisions. *See* Dkt. #72 at 5 (citing *Forrester*, 484 U.S. at 543). However, Defendants’ decisions in the Prior Suit were not administrative or employment decisions. Defendants dismissed the case in their judicial capacity because it was improper before the Court; therefore, issuance of summons was unnecessary and improper. Thus, reliance on this case is misguided.

Village of Willowbrook v. Olech is distinguishable from Plaintiff’s case because the plaintiff in that case was able to state a claim that the Village of Willowbrook (the “Village”) was motivated by ill will resulting from the plaintiff’s success in an unrelated lawsuit against the Village. *See* 825 U.S. 562, 562 (2000). Here, Plaintiff merely asserts Defendants were discriminating against her simply because Defendants directed the clerk of court to refuse Plaintiff’s request to issue summons, something which was under their power after the case was dismissed. Further, Plaintiff believes a mere statement is enough to state a claim upon which

relief can be granted. As the Supreme Court has held more recently, a complaint that does not allege enough facts to state a claim for relief that is plausible on its face will not survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). Plaintiff has not alleged enough plausible facts to support a claim.

Skinner v. Okla. ex rel. Williamson is completely unrelated to Plaintiff's case. *See* 316 U.S. 535 (1942). In *Skinner*, the Supreme Court held a sterilization law that applied to a class of "habitual criminals," but not to another class who had committed intrinsically the same quality of offense, violated the Equal Protection Clause of the 14th Amendment. *See id.* at 541. Plaintiff oversimplifies the holding in *Skinner* when she states "the Court held treating similar crimes differently violate[s] the [E]qual Protection Clause of the 14th Amendment." *See* Dkt. #79 at 2. Further, Plaintiff has not alleged any punishment for a crime that she is charged with that violates her rights under the 14th Amendment. Hence, her reliance on this case is erroneous.

Cotler v. Inter-County Orthopaedic Ass'n, P.A. is also distinguishable. *See* 526 F.2d 537 (3rd Cir. 1975). In that case, the Third Circuit held it is improper for a district court to stay, pending outcome of related state court proceedings, a federal case involving a cause of action over which federal jurisdiction is exclusive. *See id.* at 542. Plaintiff's reliance on this case is wrong. It is not improper for a Court to dismiss a case in which it does not have jurisdiction. *See* FED. R. CIV. P. 12, 41. Further, once a case is dismissed, the Court does not have authority to issue summons. Regardless, Plaintiff's reliance on this case fails to show Defendants' actions were wrongful. As in *Cotler*, the plaintiff sought relief on the court's wrongful actions by appealing his case to the Third Circuit. *See Cotler*, 526 F.2d at 526. The Third Circuit issued a writ of mandamus to correct the wrongs of the district court. *See id.* Here, Plaintiff already appealed her case to the Fifth Circuit for Defendants alleged wrongdoing by failing to issue

summons in the Prior Suit. *See Soniat v. Jackson*, 628 F. App'x 292 (Jan. 6, 2016). After the Fifth Circuit's thorough review, the Fifth Circuit held that there was no error. *See id.* Plaintiff also sought relief to the Supreme Court and was unsuccessful. *Soniat v. Jackson*, 136 S. Ct. 2016 (May 16, 2016). Thus, this case does not support Plaintiff's contentions.

Pulliam v. Allen is also unrelated to Plaintiff's case. *See* 466 U.S. 522 (1984). In that case, the respondents were arrested for nonjailable misdemeanors, and the magistrate judge in Virginia county imposed a bail that the respondents were unable to meet. *See id.* at 522. The Supreme Court held that judicial immunity was no bar to injunctive relief or attorney's fees against the *state* magistrate judge. *See id.* Despite the fact that Defendants are federal judges, Plaintiff is vaguely requesting declaratory relief and award of damages—relief which is barred by judicial immunity. *See* Dkt. #21 at 30. Although she also requests attorneys' fees, she does not currently have an attorney, and she has not succeeded in a case against Defendants. Finally, Plaintiff argues she is entitled to “injunctive relief under 1983.” As previously stated, *Pulliam* does not apply to federal judges; nevertheless, Plaintiff failed to specify what injunctive relief she is seeking. Her citations to other case law that provided for injunctive relief is inadequate to demonstrate the likelihood of substantial and immediate irreparable injury, and the inadequacy of remedies at law. Thus, *Pulliam* is inapplicable to Plaintiff's case.

Plaintiff fails to discuss any reasons the Magistrate Judge was incorrect in finding that dismissal is also proper on two (2) other grounds: (1) that her suit is an improper collateral attack on the Prior Suit's judgment; and (2) that she failed to properly serve Defendants. Plaintiff's only argument is that the Magistrate Judge has an inherent “bias and favoritism” towards Defendants, which she fails to support with any plausible facts. *See* Dkt. 72 at 7; *see also Iqbal*, 556 U.S. at

678-79. Thus, although the Magistrate Judge was correct in finding the case is barred by judicial immunity, Plaintiff's case should also be dismissed on these two (2) grounds.

Therefore, the Court hereby adopts the findings and conclusions of the Magistrate Judge (Dkt. #67) as the findings and conclusions of this Court. It is, therefore, **ORDERED** that Defendants' motion to dismiss (Dkt. #42) is **GRANTED** and this case should be **DISMISSED** as to Defendants Judge Richard A. Schell and Judge Don D. Bush.

IT IS SO ORDERED.

SIGNED this 6th day of January, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

United States District Court
EASTERN DISTRICT OF TEXAS DIVISION
SHERMAN DIVISION

SHELLEY SONIAT,	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 4:16CV337
	§	JUDGE MAZZANT/JUDGE JOHNSON
v.	§	
	§	
DEPARTMENT OF HOUSING AND	§	
URBAN DEVELOPMENT, ET AL.,	§	
	§	
Defendants.	§	

ORDER OF DISMISSAL

Pursuant to the Memorandum Adopting Report and Recommendation of United States Magistrate Judge filed in this matter this date, *pro se* Plaintiff Shelley Soniat's "Motion for Ruling on Federal Question" (Dkt. #43) and "Motion for Clarification from Defendants" (Dkt. #46) are **DENIED as MOOT**.

Further, it is **CONSIDERED, ORDERED, AND ADJUDGED** that the above-entitled and numbered cause of action is **DISMISSED**, in its entirety. All costs are to be borne by the party that incurred them. The Clerk of Court is directed to close the case.

IT IS SO ORDERED.

SIGNED this 9th day of January, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 17-40031

SHELLEY SONIAT,

Plaintiff - Appellant

v.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT; DON D. BUSH; RICHARD SCHELL; PATRICK BANIS, Intake Branch Chief, Department of Housing and Urban Development Region 6, Fort Worth Regional Office; GARRY SWEENEY, Regional Director, Department of Housing and Urban Development Region 6, Fort Worth Regional Office; GORDON F. PATTERSON, Acting Director, Office of Enforcement, Fair Housing and Equal Opportunity and Department of Housing and Urban Development,

Defendants - Appellees

Appeal from the United States District Court
for the Eastern District of Texas

ON PETITION FOR REHEARING EN BANC

Before HIGGINBOTHAM, JONES, and COSTA, Circuit Judges.

PER CURIAM:

X

No member of the panel nor judge in regular active service of the court having requested that the court be polled on Rehearing En Banc (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

The court having been polled at the request of one of the members of the court and a majority of the judges who are in regular active service and not disqualified not having voted in favor (FED R. APP. P. and 5TH CIR. R. 35), the Petition for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE