

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

APR 28 2025

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JERMEL ARCILICIA TAYLOR,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

No. 24-3317

D.C. No.
2:24-cv-00453-IM
District of Oregon,
Pendleton

ORDER

Before: TASHIMA, OWENS, and DESAI, Circuit Judges.

After considering the response to the court's May 28, 2024 order, we deny the motion to proceed in forma pauperis (Docket Entry No. 4) and dismiss this appeal as frivolous. *See* 28 U.S.C. § 1915(a), (e)(2).

No further filings will be entertained in this closed case.

DISMISSED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

JERMEL ARCILICIA TAYLOR,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:24-cv-00453-IM

ORDER OF DISMISSAL

IMMERGUT, District Judge.

Plaintiff Jermel Arcilicia Taylor (“Taylor”), a self-represented litigant in custody at Eastern Oregon Correctional Institution, brings this civil rights action pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). The Court previously granted Taylor leave to proceed *in forma pauperis*.¹ Upon review, the Court finds that the complaint must be summarily dismissed.

¹ The Court notes that on March 13, 2024, Taylor acquired three strikes pursuant to 28 U.S.C. § 1915(g), which prohibits him from proceeding *in forma pauperis* except in narrow

BACKGROUND

Taylor brings this action against the United States for “making a Christian, federal holiday.” (Compl. (ECF No. 2) at 4.) Specifically, Taylor alleges that Christmas, Easter, and Halloween are “anti-American” and infringe on his rights under the First Amendment. (*Id.* at 4-5.) Taylor alleges that he presently suffers “mental confusion [and] delusion . . . to the point of mental illness” because he “was lied to [his] entire life about Santa Claus[], the Easter Bunny, and Halloween as religious holidays of truth by [his] teacher, parents, [and] the Federal Government.” (*Id.* at 5.) Taylor therefore seeks “1 quadrillion dollars” in damages. (*Id.* at 5.)

STANDARDS

The Court must dismiss an action initiated by an individual in custody seeking redress from a governmental entity or officer or employee if the Court determines that the action (i) 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 U.S.C. §§ 1915(e)(2)(B); 28 U.S.C. § 1915A(b). To state a claim, a plaintiff must allege facts which, when accepted as true, give rise to a plausible inference that the defendants violated the plaintiff’s constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556-57 (2007). Taylor is proceeding as a self-represented litigant, and therefore the Court construes the pleadings liberally and affords Taylor the benefit of any doubt. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (noting that documents filed by a self-represented litigant must be liberally construed, and a self-represented litigant’s complaint “must be held to less stringent standards than formal pleadings drafted by lawyers”) (simplified). “Unless it is absolutely clear that no amendment can

circumstances. Because Taylor filed the instant case on March 11, 2024, two days before he acquired his third strike, the Court granted him leave to proceed *in forma pauperis* here.

cure” defects in the complaint, “a pro se litigant is entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

DISCUSSION

Taylor alleges that the establishment of “Christian federal holidays” is unconstitutional. (Compl. at 4.) His complaint must be summarily dismissed, however, because it seeks monetary relief from a defendant that is immune from suit and otherwise fails to state a claim upon which relief may be granted.

Taylor seeks to recover damages against the United States for establishing various holidays. However, it is well established that “[a]bsent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.” *Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 475 (1994); *see also Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (explaining that “[i]t is well settled that the United States is a sovereign, and, as such, is immune from suit unless it has expressly waived such immunity and consented to be sued”). “*Bivens* does not provide a means of cutting through the sovereign immunity of the United States itself.” *Arnsberg v. United States*, 757 F.2d 971, 980 (9th Cir. 1985). Taylor’s claims therefore are barred by sovereign immunity.

Even if Taylor could proceed against the United States or another proper defendant, Taylor seeks to challenge the establishment of “Christian federal holidays”—specifically, Christmas, Easter, and Halloween. As an initial matter, Easter and Halloween are not federal holidays. In addition, courts that have considered the question have held that “the establishment of Christmas Day as a legal public holiday does not violate the [First Amendment’s] Establishment Clause because it has a valid secular purpose, it does not have the effect of

endorsing religion in general or Christianity in particular, and it does not impermissibly cause excessive entanglement between church and state.” *Ganulin v. United States*, 71 F.Supp.2d 824, 835-36 (S.D. Ohio 1999), *affirmed by* 238 F.3d 420 (6th Cir. 2000), *cert. denied*, 532 U.S. 973 (2001). Taylor thus fails to state a claim upon which relief may be granted.

Because no amendment can cure these defects, the complaint must be dismissed, without leave to amend.

CONCLUSION

Based on the foregoing, the Court DISMISSES Taylor’s ’s Complaint (ECF No. 2), with prejudice, for failure to state a claim, and DENIES AS MOOT all pending motions. Additionally, for the reasons set forth above, the Court certifies that any appeal taken from this order would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3)(A).

IT IS SO ORDERED.

DATED this 18th day of April, 2024.

/s/ Karin J. Immergut
Karin J. Immergut
United States District Judge