

NOT PRECEDENTIAL

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

No. 23-3142

**CLYDE PONTEFRACT,
Appellant**

v.

**FEDERAL BUREAU OF PRISONS;
UNITED STATES POST OFFICE;
UNITED STATES POST OFFICE, Supervisor, Fort Dix;
WARDEN FORT DIX FCI**

**On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 1-23-cv-02569)
District Judge: Honorable Karen M. Williams**

**Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
on October 28, 2024**

Before: BIBAS, FREEMAN, and NYGAARD, Circuit Judges

(Opinion filed: December 10, 2024)

OPINION*

PER CURIAM

Pro se appellant Clyde Pontefract appeals from the District Court's dismissal of his complaint without prejudice. We will affirm the District Court's judgment.

I.

Pontefract is a federal prisoner at FCI Fort Dix in New Jersey. He sued the Federal Bureau of Prisons (BOP), the warden of Fort Dix, and the supervisor of the Fort Dix post office, alleging that the defendants mishandled five of his mailings between October 2021 and August 2022:

First, in October 2021, Pontefract received time-sensitive legal mail from the Fifth Circuit Court of Appeals that was processed as regular mail rather than incoming legal mail. Second, in November and December 2021, copies of a time-sensitive motion that Pontefract wanted to file in the Fifth Circuit Court of Appeals were returned twice due to insufficient postage. Third, in March 2022, Pontefract mailed a Flat Rate Box to a paralegal service that contained Pontefract's legal work, but the paralegal service never received the box. Fourth, on an unspecified date, Pontefract received a report that he ordered from the paralegal service that was missing 78 pages; he reordered the report and received the complete report. Finally, in May 2022, Pontefract sent a Flat Rate Envelope to the paralegal

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

service that contained his military records, and the paralegal service did not receive the envelope until August 2022.

Pontefract alleged that these mailing issues violated his First Amendment right of access to the courts, the Administrative Procedure Act (APA), and various statutes and regulations governing the transmission of mail and the BOP's handling of prisoners' mail.¹ He requested declaratory and injunctive relief and reimbursement of his filing fees.

The District Court conducted a screening pursuant to 28 U.S.C. § 1915A, and it spontaneously dismissed Pontefract's complaint without prejudice, finding that he did not plausibly allege a claim under either the APA or 42 U.S.C. § 1983. Pontefract appealed.

II.

We have jurisdiction under 28 U.S.C. § 1291,² and we exercise plenary review over the District Court's dismissal of Pontefract's complaint under § 1915A. *See Durham v. Kelley*, 82 F.4th 217, 223 (3d Cir. 2023). Generally, a claim should survive dismissal if it is "facially plausible," which means that it contains sufficient factual allegations that, if accepted as true, allow the court to reasonably infer that the defendants are liable for the misconduct alleged. *See Clark v. Coupe*, 55 F.4th 167, 178 (3d Cir. 2022). We may affirm

¹ Specifically, Pontefract alleged that the "Post Office at Fort Dix" violated 39 U.S.C. § 101(e) and § 401(2).

² Generally, an order is not yet appealable if it dismisses a complaint without prejudice, because the plaintiff may correct the deficiency. *See Borelli v. City of Reading*, 532 F.2d 950, 951 (3d Cir. 1976) (per curiam). But here, we will exercise jurisdiction because it appears from the record that Pontefract chose to stand on his complaint by appealing rather than filing an amended complaint. *See Frederico v. Home Depot*, 507 F.3d 188, 190–93 (3d Cir. 2007).

the District Court’s judgment on any basis supported by the record. *See Hildebrand v. Allegheny County*, 757 F.3d 99, 104 (3d Cir. 2014).

III.

Pontefract argues first that because he paid his full filing fee, the District Court should not have screened his complaint pursuant to § 1915A. Pontefract is an incarcerated person who filed a civil action seeking redress from government entities. Thus, the plain language of § 1915A required the District Court to screen his complaint “as soon as practicable” and dismiss any portion of the complaint that was “frivolous, malicious, or fails to state a claim upon which relief may be granted.” *See* 28 U.S.C. § 1915A(a), (b)(1). The District Court must conduct a § 1915A screening regardless of whether the plaintiff is proceeding in forma pauperis. *See Brown v. Sage*, 941 F.3d 655, 660 (3d Cir. 2019).

IV.

Pontefract challenges the District Court’s dismissal of his APA claims against the BOP and employees of the BOP and United States Postal Service (USPS). Pontefract’s complaint alleged that the defendants violated various USPS regulations and BOP program statements governing the processing of federal prisoners’ mail, and that federal courts have jurisdiction over those claims under the APA. The District Court rejected Pontefract’s APA claims in part because it concluded that there was no “final agency action at issue.” *See* ECF No. 10 at 4. On appeal, Pontefract asserts that he *did* allege that there were final agency actions concerning both the BOP and USPS defendants. We address his claims against each agency in turn.

First, the District Court correctly determined that Pontefract did not adequately allege an APA claim against the BOP. Pontefract alleged that he filed a grievance about only the insufficient-postage issue, that he appealed the denial of that grievance to the regional director and then the “Administrator” at the BOP’s “Central Office,” and that he “received [a] final action from the [BOP’s] Central Office.”³ Even if these statements sufficiently allege administrative exhaustion, they did not provide enough information for the District Court to determine whether it had any basis under the APA to exercise judicial review over the BOP’s final response. *See* 5 U.S.C. § 706(2) (outlining grounds for judicial review of agency actions). Only one basis for judicial review might apply here: the court’s ability to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁴ Without further context—specifically, the reasoning that the BOP’s final decisionmaker provided for its rejection of Pontefract’s appeal and some plausible explanation of why that decision was “arbitrary or capricious” or contrary to law⁵—the District Court was unable

³ *See* ECF No. 1 at ¶¶ 35–41 (alleging grievance process for insufficient-postage issue); *id.* at ¶¶ 50–51, 55–56, 61, 63 (conceding that no grievances about the four other alleged mail issues reached a final BOP decisionmaker); ECF No. 1-1 at 12–15 (attaching some grievance and administrative appeal documents regarding insufficient-postage issue).

⁴ For reasons addressed below, Pontefract did not plausibly allege that the BOP acted contrary to his constitutional rights. *Cf.* 5 U.S.C. § 706(2)(B). Pontefract did not claim that the BOP acted “in excess of” its statutory authority or that it failed to observe procedural requirements. *Cf.* 5 U.S.C. § 706(2)(C)–(E).

⁵ Pontefract did not explain why the BOP’s decision not to redress Pontefract’s insufficient-postage issue was “not in accordance with law.” BOP regulations state that “postage charges are the responsibility of the inmate,” except in narrow circumstances that would not have applied to Pontefract’s allegations. 28 C.F.R. § 540.21. Pontefract’s complaint

to review the alleged final agency action. Under these circumstances, it was appropriate for the District Court to dismiss such a vaguely pleaded APA claim against the BOP.

Second, it is unnecessary to consider whether Pontefract identified a “final” agency decision (or failure to act) of the USPS, because Pontefract cannot bring his claims that USPS agents have failed to comply with USPS regulations under the APA.⁶ His claims against USPS agents solely challenge the quality and efficiency of the postal services provided to him. *See* ECF No. 1 at ¶¶ 79–85 (citing 39 U.S.C. §§ 101(d)–(e) & 401(2)). Jurisdiction to hear such claims lies exclusively with the Postal Regulatory Commission (PRC), with review by the D.C. Circuit. *See LeMay v USPS*, 450 F.3d 797, 799–800 (8th Cir. 2006).

V.

Finally, we need not decide whether Pontefract can bring his access-to-courts claims under *Bivens*⁷ or some other means, because even if he could, he has not stated a plausible claim. A prisoner’s First Amendment right of access to courts requires only that he be

did not identify any other regulation or statute that would have required the BOP to resolve an insufficient-postage issue. To the extent that Pontefract cited BOP program statements regarding prison mail, those program statements alone “do not create entitlements enforceable under the APA.” *See Robinson v. Sherrod*, 631 F.3d 839, 841–42 (7th Cir. 2011).

⁶ The judicial review provisions of the APA, 5 U.S.C. §§ 701 to 706, generally do not apply to the USPS’s exercise of its powers, absent narrow exceptions that do not apply here. *See* 39 U.S.C. § 410(a); *Sears, Roebuck & Co. v. USPS*, 844 F.3d 260, 265 (D.C. Cir. 2016).

⁷ *See Egbert v. Boule*, 596 U.S. 482, 498–99 (2022) (holding that there is no *Bivens* claim for federal officials’ alleged retaliation against a plaintiff’s exercise of his First Amendment rights, and observing that the Supreme Court has “never held that *Bivens* extends to First Amendment claims” (quoting *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012))).

provided the tools he needs to attack his sentence and challenge conditions of his confinement—these protections do not extend to the impairment of any other types of litigation. *See Lewis v. Casey*, 518 U.S. 343, 355 (1996). A prisoner plausibly alleges that the defendants inhibited his ability to present a past legal claim by showing that (1) he “lost a chance to pursue a ‘nonfrivolous’ or ‘arguable’ underlying claim” that challenged either his criminal sentence or the conditions of his confinement; and (2) there is no other available remedy than in the denial-of-access suit. *See Rivera v. Monko*, 37 F.4th 909, 915 (3d Cir. 2022); *Christopher v. Harbury*, 536 U.S. 403, 415 (2002); *Lewis*, 518 U.S. at 349. “The complaint must describe the underlying arguable claim well enough to show that it is ‘more than mere hope,’ and it must describe the ‘lost remedy.’” *See Monroe v. Beard*, 536 F.3d 198, 205 (3d Cir. 2008).

Here, three of the five alleged mail issues could not have constituted an access-to-courts issue, because they did not foreclose Pontefract from making any arguable, nonfrivolous claim challenging his sentence or prison conditions.⁸ We presume that the remaining two mail issues were directly related to his efforts to challenge his federal criminal sentence in the Fifth Circuit. Even if Pontefract had been able to timely submit his proposed motion

⁸ First, the box of legal documents that the paralegal service never received was transmitted simply for “safekeeping,” and Pontefract did not allege that these documents were related to any active litigation or that they were the only copies of the documents. Second, the report that Pontefract received with 78 pages missing was replaced with a full report, and Pontefract did not claim that this caused him to forfeit his ability to bring any claims based on the report. Third, Pontefract’s documents about military service that arrived at the paralegal service 3 months after they were mailed were not alleged to be relevant to any legal action. Perhaps these were related to some prospective sentencing motion, but there was no arguable, nonfrivolous sentencing claim based on Pontefract’s sentencing in 2012 that could have been raised only from May 2022 to August 2022.

for reconsideration to the Fifth Circuit, that motion would not have persuaded the Fifth Circuit to reverse its denial of Pontefract's request to raise yet another collateral attack on his 2010 guilty plea and 2012 sentence.

VI.

Because Pontefract presents no meritorious issues on appeal, we will affirm the District Court's judgment.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-3142

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Appellant

v.

FEDERAL BUREAU OF PRISONS; WARDEN FORT DIX FCI; UNITED STATES
POST OFFICE, Supervisor, Fort Dix

(D.N.J. No. 1:23-cv-02569)

SUR PETITION FOR REHEARING

Present: CHAGARES, *Chief Judge*, and HARDIMAN,
KRAUSE, RESTREPO, BIBAS, PORTER, MATEY,
PHIPPS, FREEMAN, MONTGOMERY-REEVES,
CHUNG, and NYGAARD,* *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**.

* Judge Nygaard's vote is limited to panel rehearing only.

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: May 30, 2025
Sb/jk/cc: Clyde Pontefract

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

CLYDE PONTEFRACT,

Plaintiff,

v.

FEDERAL BUREAU OF PRISONS, et al.,

Defendants.

Civil Action No. 23-2569 (KMW) (MJS)

OPINION

WILLIAMS, District Judge:

This matter comes before the Court on the Court's *sua sponte* screening of Plaintiff Clyde Pontefract's complaint. (ECF No. 1.) As Plaintiff has now paid the applicable filing fee¹ and is a prisoner who seeks redress from the employees of a governmental entity, this Court is required to screen his complaint pursuant to 28 U.S.C. § 1915A and dismiss any claim which is frivolous, malicious, fails to state a claim for which relief may be granted, or seeks relief from an immune defendant. For the reasons set forth below, Plaintiff's complaint shall be dismissed without prejudice.

I. BACKGROUND

Plaintiff is a federal prisoner currently confined in FCI Fort Dix. (ECF No. 1 at 2.) Plaintiff seeks in his complaint to bring suit against the Warden of Fort Dix and the local post office which serves Fort Dix for issues he has had with various pieces of mail he has sent and received while at

¹ Plaintiff mailed the fee to the Court several months ago, but records of the payment were not made available to the court until relatively recently as Plaintiff mailed the fee to a different vicinage and the payment was not attributed to this matter until early October 2023.

the prison. (*Id.* at 3-22.) Plaintiff's issues began in late 2021, following the denial of his certificate of appealability by the Fifth Circuit in his collateral challenge to his conviction. (*Id.* at 4.) Plaintiff sought to file a petition for rehearing, but his filing became delayed when his mailing of the petition was returned for insufficient postage twice. (*Id.* at 3-6.) Plaintiff filed grievances regarding this situation, but was told that the post office, and not the prison, determines postage rates and determines whether additional postage is needed. (*Id.* at 6-7.) In March 2022, Plaintiff mailed another document which was apparently never received by the paralegal service to which he mailed it. (*Id.* at 11.) In May 2022, Plaintiff mailed another package to the paralegal service, which was not received until August. (*Id.* at 13.)

Plaintiff also had issues with incoming mail. In October 2021, he received mail from the Fifth Circuit which he believes was not properly processed, though it is unclear in what way he believes the processing was improper. (*Id.* at 10.) Plaintiff also ordered a congressional report related to a 2003 statute from a paralegal service, but received a copy missing 78 pages. (*Id.* at 12.) When he complained, prison officials told him that the paralegal service must have sent an incomplete report and denied any responsibility for missing pages. (*Id.* at 12.) Plaintiff believes all of these actions violate his rights and are in violation of various BOP and Post Office policies. (*Id.* at 14-18.)

II. LEGAL STANDARD

Because Plaintiff is a prisoner who seeks redress from employees of a governmental entity, this Court is required to screen his complaint pursuant to 28 U.S.C. § 1915A. Pursuant to the statute, this Court must *sua sponte* dismiss any claim that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.* The legal standard for dismissing a complaint for failure to state a claim

pursuant to 28 U.S.C. § 1915A is “identical to the legal standard employed in ruling on [Rule] 12(b)(6) motions.” *Courteau v. United States*, 287 F. App’x 159, 162 (3d Cir. 2008).

In deciding a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), a district court is required to accept as true all factual allegations in the complaint and draw all reasonable inferences from those allegations in the light most favorable to the plaintiff, *see Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008), but need not accept as true legal conclusions couched as factual allegations. *Papasan v. Allain*, 478 U.S. 265, 286 (1986). A complaint need not contain “detailed factual allegations” to survive a motion to dismiss, but must contain “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). A complaint “that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do,’” and a complaint will not “suffice” if it provides only “‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Id.* (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555, 557 (2007)). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (quoting *Twombly*, 550 U.S. at 556). A complaint that provides facts “merely consistent with” the defendant’s liability “stops short of the line between possibility and plausibility” and will not survive review under Rule 12(b)(6). *Id.* (quoting *Twombly*, 555 U.S. at 557). While *pro se* pleadings are to be liberally construed in conducting such an analysis, *pro se* litigants must still “allege sufficient facts in their complaints to support a claim.” *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 245 (3d Cir. 2013).

III. DISCUSSION

In his complaint, Plaintiff seeks to raise federal civil rights claims against the Bureau of Prisons, the warden of Fort Dix, and the United States Post Office for his issues with mail while in prison. Plaintiff also states that he wishes to raise a challenge to his mail issues pursuant to the Administrative Procedure Act. Turning first to the APA, judicial review under the Act requires both that there be a final agency action made by the federal agency in question and that no other adequate remedy be available in a court of law. *See, e.g.,* 5 U.S.C. § 704; *Wayne Land & Mineral Group LLC v. Del. River Basin Comm.*, 894 F.3d 509, 526 (3d Cir. 2018). Plaintiff's claims do not concern actual final actions by the agencies in question – the BOP and Post Office – and instead attacks discrete failures to live up to applicable regulations by persons employed by Fort Dix or the local Post Office. Therefore, because there is no final agency action at issue here, and because Plaintiff has other potential avenues for relief including federal civil rights claims, review under the APA is not available, and Plaintiff's APA claims are therefore dismissed without prejudice.

Turning to Plaintiff's civil rights claim, Plaintiff essentially raises two classes of claims – interference with his right to use of the mail, and interference with his access to the courts. Although civil rights claims can be raised on such bases, he names as Defendants in this matter two federal agencies – the Post Office and BOP – and the Warden of Fort Dix, who Plaintiff fails to allege was in any way involved in the mail issues he experienced. Federal civil rights claims, however, cannot be brought against federal agencies. *See F.D.I.C. v. Meyer*, 510 U.S. 471, 476-77, 484-85 (1994). Plaintiff's claims against the Post Office and BOP must therefore be dismissed.

Finally, as to the Warden, Plaintiff fails to plead any facts showing that the warden was in any way involved in his mail issues. A federal civil rights defendant must have personal involvement in the alleged wrong in order to be held liable, a claim may not be based solely on a defendant's role as a supervisor. *See, e.g., Chavarriaga v. N.J. Dep't of Corr.*, 806 F.3d 210, 222 (3d Cir. 2015) (citing *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988)). In raising a

claim against a supervisor, a Plaintiff must therefore normally plead either direct involvement in the alleged violation, or that a policy, practice, or custom put into place by the supervisor was the moving force behind the violations alleged. *Id.* Plaintiff has not pled any facts indicating that the Warden was involved in his mail issues, and has not identified any policy, practice, or custom imposed by the warden which caused the violations. Indeed, he identifies a number of prison policies in his complaint all of which he believes entitle him to more full use of the mail, suggesting that any violations arising from his mail issues were contrary to, rather than motivated by, the prison's policies. As Plaintiff has not pled facts showing that the warden was personally involved in any wrongs, his claims against the warden must be dismissed without prejudice for failure to state a claim for which relief may be granted.

IV. CONCLUSION

For the reasons expressed above, Plaintiff's complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE** in its entirety. An order consistent with this Opinion will be entered.



Hon. Karen M. Williams,
United States District Judge