

United States Court of Appeals
For the Eighth Circuit

No. 24-3140

George Melvin Cannon

Plaintiff - Appellant

v.

Department of Justice

Defendant - Appellee

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: May 6, 2025

Filed: May 9, 2025

[Unpublished]

Before SMITH, GRASZ, and STRAS, Circuit Judges.

PER CURIAM.

George Cannon appeals the district court's¹ dismissal of his pro se action. After careful de novo review of the record and the parties' arguments on appeal, we

¹The Honorable Roseann A. Ketchmark, United States District Judge for the Western District of Missouri.

affirm for the reasons stated by the district court. See East v. Minnehaha Cnty., 986 F.3d 816, 820 (8th Cir. 2021) (de novo review of dismissal under Fed. R. Civ. P. 12(b)(6)); 8th Cir. R. 47B.

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

No: 24-3140

George Melvin Cannon

Appellant

v.

Department of Justice

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00639-RK)

MANDATE

In accordance with the opinion and judgment of May 9, 2025, and pursuant to the provisions of Federal Rule of Appellate Procedure 41(a), the formal mandate is hereby issued in the above-styled matter.

August 06, 2025

Clerk, U.S. Court of Appeals, Eighth Circuit

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

GEORGE MELVIN CANNON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 4:23-cv-00639-RK
	)	
UNITED STATES DEPARTMENT OF	)	
JUSTICE,	)	
	)	
Defendant.	)	

ORDER

Pro se plaintiff George Melvin Cannon ("Plaintiff") has filed this lawsuit which appears to name as defendants the United States Department of Justice and its employees who worked as assistant attorneys general from 1994 to 2024 and as deputy attorneys general from 2018 to 2024, alleging those employees improperly refused to provide documents and other assistance to him, such that he is now seeking \$20 million in damages. (Doc. 15.)

Now pending is defendant the United States Department of Justice's ("Defendant") motion to dismiss Plaintiff's operative amended complaint under Federal Rule of Civil Procedure 12(b)(1) for lack of subject-matter jurisdiction and Rule 12(b)(6) for failure to state any claims upon which relief can be granted. (Doc. 16.) This motion is ripe for ruling. (*See* Docs. 14, 15, 16, 17, 18, 19, 23, 24.)

After careful consideration, the Court **ORDERS** that Defendant's motion to dismiss is **GRANTED**, and Plaintiff's amended complaint is **DISMISSED** for lack of subject-matter jurisdiction and for failure to state any claims upon which relief can be granted.

I. Background

Plaintiff's lawsuit is closely related to two other lawsuits he has previously filed, and thus the Court begins by reviewing them. Plaintiff filed the first lawsuit in the early 1990s, asserting "claims against the United States for allegedly negligent medical treatment from military physicians while serving in the United States Army." *Cannon v. United States*, 69 F.3d 541 (8th Cir. 1995) (unpublished). The Eighth Circuit summarized Plaintiff's claims as follows:

In January 1988, [Plaintiff] injured his left knee while training at Fort Benjamin Harrison, Indiana. [He] alleged that despite a diagnosis of an unstable knee and a recommendation of physical therapy by a military doctor in Fort Knox, Kentucky, a

doctor at Fort Benjamin Harrison refused to exempt [him] from running two miles during physical training. Shortly thereafter, [he] was transferred to Europe, where he served as a finance clerk. While in Europe, [he] underwent five operations on his knees—three on his left knee and two on his right knee. [He] returned to the United States in January 1993 and received a non-medical discharge on February 2, 1993. On October 1, 1993, he filed an administrative tort claim with the Department of the Army alleging negligent medical treatment by military physicians. After the Army denied his initial claim and appeal, [he] filed this suit, seeking \$30,000,000 in damages.

Id. at *1. “The District Court determined that no federal statute provided a basis for subject matter jurisdiction,” and the Eighth Circuit affirmed “because [his] claims arose out of or were incident to his military service.” *Id.*

Plaintiff filed the second lawsuit in 2018, alleging that the United States Department of Veteran Affairs, the United States Department of Justice, and a number of their employees made discriminatory benefit determinations and false statements in violation of numerous federal constitutional provisions and statutes. *Cannon v. McDonald*, No. 18-00971-CV-W-GAF, 2019 WL 13280196, at *1 (W.D. Mo. Oct. 1, 2019). The district court dismissed this lawsuit, ruling both that sovereign immunity protected the defendants and thus the Court lacked subject-matter jurisdiction and that Plaintiff had not alleged sufficient facts to state plausible claims.

II. Plaintiff’s Allegations

With that background in mind, the Court considers Plaintiff’s current lawsuit. Given Plaintiff is pro se, the Court has given his filings a liberal construction. *E.g.*, *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). In addition, the Court has considered the additional materials Plaintiff has provided with his amended complaint. *E.g.*, *Mills v. City of Grand Forks*, 614 F.3d 495, 498 (8th Cir. 2010). Accordingly, the Court finds Plaintiff’s amended complaint alleges as follows. (*See* Docs. 15, 18, 23.)

Plaintiff’s allegations concern his efforts beginning in 1993 to obtain medical records and other documents from the federal government. For approximately 20 years, he submitted records requests and was unsatisfied with the government’s responses. (Doc. 15 at 3-4.) However, in 2013, Plaintiff did receive records. (*Id.* at 4.) Based on these and other events, Plaintiff believes the government has withheld records from him. (*Id.* at 3-4.) Plaintiff has made various reports about his concerns, but he has been unsatisfied with the government’s response. (*Id.* at 3-5.) Throughout these events, Plaintiff believes that, because he was or is a federal employee himself, Department of Justice attorneys have had a duty to give him legal counsel and other assistance,

and Plaintiff contends their failure to do so has prevented him from being able to obtain records and present evidence about his medical injuries and other grievances. (*Id.* at 3-5.) Plaintiff references a variety of laws—including 42 U.S.C. § 1985, 42 U.S.C. § 1986, 5 U.S.C. § 552, 5 C.F.R. Part 2635, and 5 C.F.R. § 735.203—apparently alleging that Defendant and various of its assistant and deputy attorneys general have violated them.

III. Legal Standards

Defendant moves to dismiss Plaintiff's amended complaint for "lack of subject-matter jurisdiction." Fed. R. Civ. P. 12(b)(1). The law governing a Rule 12(b)(1) motion is well established:

A Rule 12(b)(1) motion may be raised as either a facial challenge or a factual challenge. *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). A facial challenge is based solely on the face of the pleadings whereas a factual challenge considers matters outside the pleadings. *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993). When considering a facial challenge, "the court restricts itself to the face of the pleadings and the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6)." *Branson Label, Inc. v. City of Branson, Mo.*, 793 F.3d 910, 914 (8th Cir. 2015) (quotation omitted). The burden to prove jurisdiction exists rests with the party asserting jurisdiction. *Osborn*, 918 F.2d at 730.

Cannon, 2019 WL 13280196, at *1.

Defendant also moves to dismiss Plaintiff's amended complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (cleaned up). "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.*

IV. Analysis

The Court starts with jurisdiction because "[s]overeign immunity creates a jurisdictional bar" for some lawsuits filed against the United States. *Cannon*, 2019 WL 13280196, at *2.

Sovereign immunity applies to a lawsuit filed against the United States itself. *Id.* In addition, sovereign immunity applies to a lawsuit filed against a federal agency or a federal employee working in his or her official capacity, because the law treats a lawsuit against them as being against the United States itself. *Id.* at *2-3. Here, sovereign immunity applies because Plaintiff has sued the United States Department of Justice, and it is a federal agency. *See id.* at

*2-3. Additionally, sovereign immunity applies because Plaintiff has sued the Département of Justice employees working as assistant attorneys general from 1994 to 2024 and deputy attorneys general from 2018 to 2024 without specifying that he is suing them in their individual capacities.¹ Without that specification, the law deems his lawsuit to be against the employees in their official capacities, making sovereign immunity applicable.² *Id.* at *3.

When sovereign immunity applies, it bars a lawsuit unless the United States has consented to the lawsuit by unequivocally waiving its immunity. *Id.* at *2. Here, Plaintiff has not alleged any waiver, and no waiver is apparent from Plaintiff's filings. (*See* Docs. 15, 18.) Accordingly, the Court concludes that sovereign immunity protects the United States and is a jurisdictional bar to Plaintiff's lawsuit. *See Cannon*, 2019 WL 13280196, at *2-3, 5 (dismissing lawsuit for the same reason); *e.g.*, *Roum v. Bush*, 461 F. Supp. 2d 40, 46 (D.D.C. 2006) (ruling that 42 U.S.C. § 1985 and similar statutes "do[] not waive the federal government's sovereign immunity" and thus "federal employees acting in their official capacities are immune from liability for alleged violations of § 1985").

Despite sovereign immunity's jurisdictional bar, the Court has analyzed Plaintiff's allegations out of an abundance of caution given his pro se status. Upon careful review, the Court finds Plaintiff's lawsuit fails to state claims for relief. Plaintiff's filing references a wide variety of laws without specifying whether he is alleging the Department of Justice and its employees violated those laws or how any alleged violations occurred. Thus, at the outset, the Court finds Plaintiff's allegations lack the factual content and substance necessary to state plausible claims.³

¹ Plaintiff's allegations support the conclusion he is suing these individual employees in their official capacities. The gist of Plaintiff's allegations is that these employees—by virtue of their federal employment—had a duty to assist him and failed to do so, thus showing his allegations concern the employees' official duties and capacities. (Doc. 15 at 3-5.) To that end, Plaintiff's amended complaint identifies the employees categorically, by job title and year, rather than individually. (*Id.* at 1-3.) One of Plaintiff's filings does list some employees by name, (Doc. 18 at 3-4), but the surrounding context indicates his allegations continue to concern their official duties and capacities, and he provides nothing indicating he intends to sue them in their individual capacities.

² This rule applies even when the plaintiff is pro se. *See, e.g., Wheeler v. Iowa State Penitentiary*, 358 F. App'x 759, 760 (8th Cir. 2009).

³ As examples, Plaintiff alleges that Department of Justice attorneys have "violated the 1996 false statement act by making false statement[s] to [the] United States Congress," (Doc. 15 at 3), and "neglected to respond and/or act upon any notices sent to their offices seeking resolution of the alleged gross negligence done by the United States Army, the Department of Veterans Affairs, and the Assistant Attorney General's

See *id.* at *3, 4, 5 (dismissing claims for the same reason). Moreover, legal obstacles prevent Plaintiff from being able to state viable claims under many of the laws he references, including:

- 42 U.S.C. § 1985;⁴
- 42 U.S.C. § 1986;⁵
- 5 U.S.C. § 552;⁶
- 5 C.F.R. Part 2635 and 5 C.F.R. § 735.203;⁷ and
- 28 U.S.C. §§ 1346, *et seq.*⁸

Office,” (*Id.* at 4). These allegations are representative of those that the Court finds to be conclusory, lacking in factual substance, and implausible.

⁴ 42 U.S.C. § 1985 prohibits different types of conspiracies, but there is no claim for conspiracy “if the conspiratorial conduct challenged is essentially a single act by a single corporation acting exclusively through its own directors, officers, and employees, each acting within the scope of his or her employment.” *Runs After v. United States*, 766 F.2d 347, 354 (8th Cir. 1985) (cleaned up). As discussed above, here Plaintiff has made allegations only against the Department of Justice and its employees acting in their official capacities, and all such allegations are deemed to be allegations against the United States. Because the United States cannot conspire with itself, Plaintiff cannot state a § 1985 claim.

⁵ 42 U.S.C. § 1986 “creates civil liability in those who neglect or refuse to prevent or aid in the prevention of a conspiracy to deprive third parties of their right to equal protection of the laws, as defined in 42 U.S.C. § 1985. A § 1986 failure-to-prevent-conspiracy claim therefore requires an actionable § 1985 conspiracy claim.” *Escalante v. Gardner Police Dep’t*, No. 23-CV-2529-JWB-TJJ, 2024 WL 1116071, at *2 (D. Kan. Mar. 14, 2024), *report and recommendation adopted sub nom. Escalante v. City of Gardner*, No. 23-2529-JWB, 2024 WL 1655141 (D. Kan. Apr. 17, 2024), and *aff’d sub nom. Escalante v. City of Gardner, Kansas*, No. 24-3058, 2024 WL 3963728 (10th Cir. Aug. 28, 2024). Given Plaintiff cannot state a § 1985 claim as discussed above, he likewise cannot state a § 1986 claim.

⁶ 5 U.S.C. § 552 is the Freedom of Information Act (“FOIA”). To exhaust his administrative remedies before filing suit, Plaintiff must have requested records specifically pursuant to FOIA. See, e.g., *Moon v. Fed. Bureau of Prisons*, 642 F. App’x 651 (8th Cir. 2016); *Smallwood v. United States Dep’t of Just.*, 266 F. Supp. 3d 217, 221 (D.D.C. 2017). Here, there is no allegation that Plaintiff has done so. In addition, Plaintiff seeks \$20 million, but “money damages[] are not available under FOIA[.]” *Pondexter v. Sec’y United States Dep’t of Hous. & Urb. Dev.*, 788 F. App’x 93, 96 (3d Cir. 2019). Finally, given Plaintiff alleges he received documents in 2013, any applicable statute of limitations bars his claim. See, e.g., 5 U.S.C. § 522a(g)(5); *Reep v. United States Dept. of Just.*, No. 18-5132, 2018 WL 6721099, at *1 (D.C. Cir. Dec. 18, 2018).

⁷ 5 C.F.R. Part 2635 and 5 C.F.R. § 735.203 are federal regulations which concern ethical standards for the federal government’s executive branch employees. These regulations expressly do not provide a private cause of action. *Atkins v. Vilt*, No. 3:21-CV-295-BJB, 2021 WL 2021125, at *4 (W.D. Ky. May 20, 2021). Thus, Plaintiff cannot state a claim under them.

⁸ To the extent Plaintiff’s allegations fall within the Federal Tort Claims Act, 28 U.S.C. §§ 1346, *et seq.*, Plaintiff’s allegations do not show he has exhausted his administrative remedies. See *After v. United States*, 511 F. App’x 596, 597 (8th Cir. 2013).

In summary, Plaintiff has had both ample notice of his lawsuit's defects and deficiencies and ample opportunity to correct them so as to allege plausible and viable claims. (Docs. 8, 9, 14, 16, 17, 19, 24.) However, Plaintiff's amended complaint and other filings continue to be defective and deficient, so the Court must dismiss this lawsuit.

V. Conclusion

After careful consideration, the Court **ORDERS** that Defendant's motion to dismiss (Doc. 16) is **GRANTED**, and Plaintiff's lawsuit is **DISMISSED** for lack of subject-matter jurisdiction and for failure to state any claims upon which relief can be granted.

The Court directs the Clerk's Office to send, via certified U.S. Mail, a copy of this Order to Plaintiff at the following address:

George Melvin Cannon
1018 Johnston Dr.
Raymore, MO 64083

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: September 23, 2024

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

No: 24-3140

George Melvin Cannon

Appellant

v.

Department of Justice

Appellee

Appeal from U.S. District Court for the Western District of Missouri - Kansas City
(4:23-cv-00639-RK)

ORDER

The petition for rehearing by the panel is denied.

July 23, 2025

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Susan E. Bindler