UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

OSCAR DANTZLER	*	**CASE NO. 22-2211**
v.	*	**SECT. M(2)**
U.S. DEPARTMENT OF JUSTICE, ET AL.		**JUDGE ASHE**
	*	**MAG. CURRAULT**

MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION
or alternatively FOR FAILURE TO STATE A CLAIM

NOW INTO COURT, through the undersigned Assistant United States Attorney, come defendants, the U.S. Department of Justice and Merrick Garland, individually and in his official capacity as Attorney General of the United States (collectively "DOJ"), and respectfully moves the Court under FED. R. CIV. P. 12(b)(1), (b)(6), and (h)(3) to dismiss the claims in plaintiff, Oscar Dantzler's, complaint against DOJ. Dantzler also purports to assert claims against U.S. District Court Judge Jay Zainey and U.S. Magistrate Judge Janis van Meerveld. The Court should sua sponte dismiss those claims on the basis of absolute judicial immunity.

DOJ asserts the present motion while reserving further defenses under FED. R. CIV. P. 12(b)(4)–(5) for insufficient process and insufficient service of process.

WHEREFORE, for the reasons explained in the attached memorandum of law, DOJ prays that the Court grant this motion and dismiss Dantzler's claims against DOJ for lack of subject matter jurisdiction and failure to state a plausible claim for relief under FED. R. CIV. P. 12(b)(1), (b)(6), and (h)(3).

Respectfully submitted,

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UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon:

Oscar Dantzler
P.O. Box 1786
Hammond, LA 70404
oscardantzler@yahoo.com

by mailing the same by certified United States mail, postage prepaid and electronic mail on this **28th day of July, 2022**.

Peter M. Mansfield

Assistant United States Attorney

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

OSCAR DANTZLER	*	**CASE NO. 22-2211**
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NOTICE OF SUBMISSION

PLEASE TAKE NOTICE that defendants, the U.S. Department of Justice and Merrick Garland, individually and in his official capacity as Attorney General of the United States' (collectively "DOJ"), motion to dismiss for failure to state a claim and for lack of subject-matter jurisdiction is set for submission before United States District Judge Barry W. Ashe on August 25, 2022 at 10:00am.

Respectfully submitted,

DUANE A. EVANS
UNITED STATES ATTORNEY

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MEMORANDUM IN SUPPORT OF MOTION TO DISMISS FOR LACK OF SUBJECT-MATTER JURISDICTION or alternatively FOR FAILURE TO STATE A CLAIM

I. Introduction and summary of the argument

MAY IT PLEASE THE COURT: Pro se plaintiff, Oscar Dantzler, has filed numerous lawsuits alleging a variety of frivolous claims dating back nearly 20 years. This case is yet another example. Dantzler seeks a writ of mandamus to compel defendants, the U.S. Department of Justice and Merrick Garland, individually and in his official capacity as Attorney General of the United States (collectively "DOJ"), to investigate Dantzler's allegations of criminal conduct. He further purports to assert claims against U.S. District Judge Jay Zainey and U.S. Magistrate Judge Janis van Meerveld arising out of rulings they made in a pending prior case he filed in the Eastern District of Louisiana. Dantzler's pro se complaint fails to assert plausible claims for relief against the DOJ and these federal judges. Further, Dantzler has not invoked a valid basis for the Court's exercise of subject-matter jurisdiction over the alleged claims against the DOJ and these federal judges.

For these reasons, as further explained below, the Court should grant this motion and dismiss Dantzler's claims for failure to state a plausible claim for relief and for lack of subject-matter jurisdiction. *See* FED. R. CIV. P. 12(b)(1), (b)(6), and (h)(3).

II. Facts and procedural background

According to a recent Courtlink docket search, Dantzler has filed more than 25 cases over the past 25 years. Dantzler's prior filings just in the Eastern District of Louisiana[1] include:

- *Dantzler v. City of Hammond*, #00-408: Case dismissed without prejudice.
- *Dantzler v. Hammond, et al.*, #00-446: Summary judgment granted to defendants; affirmed on appeal.
- *Dantzler v. Anderson, et al.*, #00-1491: Case dismissed for failure to state a claim and lack of subject-matter jurisdiction.
- *Dantzler v. Tangipahoa Parish*, #05-147: In forma pauperis application denied.
- *Dantzler v. Pope, et al*., #06-2817: Summary judgment granted to defendants; affirmed on appeal.
- *Dantzler v. Montecino, et al*., #06-10924: Claims dismissed and Dantzler enjoined from further frivolous and vexatious filings without pre-clearance from the court.
- *Dantzler v. Pope, et al*., #07-9516: Case stayed and administratively closed.
- *Dantzler v. Dantzler, et al*., #08-3821: In forma pauperis application denied.
- *Dantzler v. Pope, et al*., #08-3777: Claims against all defendants, including the United States and several federal judges, dismissed. Dantzler enjoined from further frivolous and vexatious filings without preclearance from the court.
- *Dantzler v. Dantzler, et al*., #08-4484: Removed state-court case remanded.
- *Dantzler v. Africk, et al*., #09-3703: Claims against the United States and numerous federal judges dismissed.
- *Dantzler v. EEOC, et al*., #09-4246: Claims against the United States and numerous federal judges dismissed.

1 Dantzler has also filed cases in Louisiana state courts, District Court for the District of Columbia, and the District of South Carolina.

- *Dantzler v. State of Louisiana*, #14-742: Habeas claim against the State of Louisiana dismissed.
- *Dantzler v. United States*, #16-280: In forma pauperis application denied.
- *Dantzler v. Triumph Hous. Mgmt., et al*., #17-2113: Claims dismissed for service failure.
- *Dantzler v. Louisiana Sec'y of State, et al*., #18-11022: Claim dismissed for failure to prosecute.
- *Dantzler v. Tangipahoa Sch. Bd., et al*., #20-2960: Case originally assigned to Judges Zainey and van Meerveld; matter still pending before Judges Ashe and Currault.
- *Dantzler v. Apb Bail Bonding, LLC, et al*., #22-286: Case voluntarily dismissed.

Dantzler's present complaint relates to the #20-2960 action, which is still pending. In that case, Dantzler sued the Tangipahoa School Board, among many other defendants, for employment-related claims allegedly arising under the Title VII. *Dantzler v. Tangipahoa Sch. Bd., et al*., No. 20-2960 (E.D. La.), at Rec. Doc. 1. The case was assigned to Judge Zainey, but received an automatic referral to Judge van Meerveld in accordance with EDLA Local Rule 73.2(C) and 28 U.S.C. § 636(c). In that pending case, Dantzler moved the court to order the FBI and DOJ to investigate his claims of fraud, concealment, and conspiracy between the clerk's office, opposing attorneys, and the Tangipahoa School Board. No. 20-2960 at Rec. Doc. 27. Judge van Meerveld denied Dantzler's motion, finding that "[t]he commencement of federal prosecutions is a matter of discretion left to the executive branch of government." *Id*. at Rec. Doc. 33 (citing *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965)).

Apparently dissatisfied with that order, Dantzler moved to recuse Judge van Meerveld. *Id*. at Rec. Doc. 41. Judge Zainey denied the motion to recuse, but withdrew the referral to Judge van Meerveld under 28 U.S.C. § 636(c) due to Dantzler's ostensible lack of consent. *Id*. at Rec. Doc. 51.

Dantzler filed his complaint in the above-captioned matter on July 18, 2022. Rec. Doc. 1. His complaint re-urges the same relief sought against DOJ in the motion Judge van Meerveld correctly denied in the #20-2960 action. *Id*. at p. 3. Dantzler also named Judges Zainey and van Meerveld as defendants, alleging bias in their rulings in the #20-2960 action. *Id*. at pp. 12–15. Both judges recused themselves from Dantzler's #20-2960 action thereafter due to the pendency of the present lawsuit. No. 20-2960 at Rec. Docs. 109 & 114.

III. Argument

A. Standards of review

To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must plead enough facts "to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 547 (2007)). A claim is "plausible on its face" when the pleaded facts allow the court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal* at 678. A court must accept the complaint's factual allegations as true and must "draw all reasonable inferences in the plaintiff's favor." *Lormand v. U.S. Unwired, Inc.,* 565 F.3d 228, 232 (5th Cir. 2009). The Court need not, however, accept as true legal conclusions couched as factual allegations. *Iqbal* at 678. To be legally sufficient, a complaint must establish more than a "sheer possibility" that the plaintiff's claims are true. *Id.* The complaint must contain enough factual allegations to raise a reasonable expectation that discovery will reveal evidence of each element of the plaintiff's claim. *Lormand,* 565 F.3d at 255–57. If it is apparent from the face of the complaint that an insurmountable bar to relief exists, and the plaintiff is not entitled to relief, the court must dismiss the claim. *Jones v. Bock,* 549 U.S. 199, 215 (2007).

A motion to dismiss under FED. R. CIV. P. 12(b)(1) challenges the subject-matter jurisdiction of a federal district court. A claim is properly dismissed for lack of subject-matter

jurisdiction under Rule 12(b)(1) when the court lacks the statutory or constitutional power to adjudicate the claim. *See Home Builders Assoc., Inc. v. Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). Because federal courts are courts of limited jurisdiction, absent jurisdiction conferred by statute, they lack the power to adjudicate claims. *See*, *e.g.*, *Stockman v. Fed. Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998). Thus, a federal court must dismiss an action whenever it appears that subject-matter jurisdiction is lacking. *Id.* The burden of proof on a motion to dismiss under Rule 12(b)(1) is on the party asserting jurisdiction. *Id.*

In considering a Rule 12(b)(1) motion to dismiss for lack of subject-matter jurisdiction "a court may evaluate: (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." *Den Norske Stats v. HeereMac Vof*, 241 F.3d 420, 424 (5th Cir. 2001); *Barrera-Montenegro v. United States*, 74 F.3d 657, 659 (5th Cir. 1996).

Pro se pleadings must be given the benefit of liberal construction. *Cooper v. Sheriff of Lubbock Cnty.,* 929 F.2d 1078, 1081 (5th Cir. 1991). On the other hand, pro se litigants are not exempt from the requirement that they plead sufficient facts to allege a plausible claim for relief or from the principle that mere legal conclusions do not suffice to prevent dismissal. *Taylor v. Books A Million, Inc.,* 296 F.3d 376, 378 (5th Cir. 2002) (citing *Christian Leader Conf. v. Sup. Ct. of La.,* 252 F.3d 781, 786 (5th Cir. 2001)).

Although pro se pleadings are liberally treated, at least "some facts must be alleged that convince [the court] that the plaintiff has a colorable claim; conclusory allegations will not suffice." *Mills v. Criminal Dist. Court # 3*, 837 F.2d 677, 678 (5th Cir. 1988). Similarly stated, "pro se plaintiffs must . . . plead factual allegations that raise the right to relief above the speculative level." *Chhim v. Univ. of Texas at Austin*, 836 F.3d 467, 469 (5th Cir. 2016). In sum, a pro se

complaint "must contain either direct allegations on every material point necessary to sustain a recovery . . . or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial." *Govea v. ATF,* 207 F. App'x 369, 372 (5th Cir. 2006) (cleaned up). A court need not "conjure up unpled allegations or construe elaborately arcane scripts to save a complaint." *Id.*

B. Dantzler's complaint does not state a plausible claim for relief, nor invokes a valid basis for the Court's exercise of subject-matter jurisdiction over DOJ.

Dantzler claims that the Court has mandamus jurisdiction under 28 U.S.C. § 535 to order DOJ to investigate his claims of fraud, concealment, and conspiracy. Rec. Doc. 1 at pp. 19–20. This isn't the first time Dantzler has asserted a mandamus argument against DOJ. In a recent decision, the district court for the District of Columbia rejected this same argument. *See Dantzler v. U.S. Dep't of Just*., No. 20-01505, 2021 WL 2809125 (D.D.C. July 6, 2021). In that case, as in the present case, Dantzler sought the court's assistance "to compel the FBI and DOJ to investigate and prosecute his discrimination and conspiracy claims." *Id*. at *5. Unsurprisingly, the D.C. district court denied Dantzler's request for mandamus, finding that 28 U.S.C. § 535(a) grants the executive branch discretion to investigate alleged violations of federal law, but doesn't impose a judicially enforceable duty. *Id*. The court further noted that the Supreme Court "has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion." *Id*. (quoting *Heckler v. Chaney*, 470 U.S. 821, 831 (1985)). Therefore, "mandamus will not lie to control the exercise of this discretion." *Id*. (quoting *Powell v. Katzenbach*, 359 F.2d 234, 234 (D.C. Cir. 1965)).

As Judge van Meerveld correctly held in the #20-2960 action, the same result equally applies here in the Fifth Circuit. The Fifth Circuit has noted that "[t]he Attorney General is the

President's surrogate in the prosecution of all offenses against the United States" and "[t]he discretion of the Attorney General in choosing whether to prosecute or not to prosecute, or to abandon a prosecution already started, is absolute." *Smith v. United States*, 375 F.2d 243, 246–47 (5th Cir. 1967). Since "[t]he decision to investigate, like the decision to prosecute, is one which the Constitution places in the executive branch," the "constitutional separation of powers prevents the courts from interfering with the exercise of prosecutorial discretion[.]" *LaRouche v. Webster*, 566 F. Supp. 415, 417–18 (S.D.N.Y. 1983); *Rutherford v. Louisiana*, No. 10-1987, 2011 WL 692031, at *6 (E.D. La. Feb. 17, 2011) (same).

For these reasons, Dantzler has not stated a plausible claim for mandamus relief against DOJ, nor does the mandamus statute grant the court subject-matter jurisdiction to order DOJ to commence an investigation into Dantzler's allegations.

C. As an interested party, the United States notes the absolute judicial immunity of Judges Zainey and van Meerveld in this case.

Under the authority of 28 U.S.C. § 517, the United States, as an interested party, suggests to the Court that Judges Zainey and van Meerveld are entitled to absolute judicial immunity in this case. Thus, the Court should sua sponte dismiss Dantzler's claims against these judicial defendants. *See Guthrie v. Tifco Indus.,* 941 F.2d 374, 379 (5th Cir. 1991) (A district court is "authorized to consider the sufficiency of the complaint on its own initiative.").

"It is well established that judges enjoy absolute immunity for judicial acts performed in judicial proceedings." *Mays v. Sudderth*, 97 F.3d 107, 110-11 (5th Cir. 1996). "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority . . . ." *Mays*, 97 F.3d at 111 (citing *Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978)). Further, "[t]he alleged magnitude of the judge's errors or the mendacity of his acts is irrelevant." *Boyd v. Biggers*, 31 F.3d 279, 284 (5th Cir. 1994). Rather, "[absolute] [j]udicial

immunity can be overcome only by showing that the actions complained of were nonjudicial in nature or by showing that the actions were taken in the complete absence of all jurisdiction." *Id.* (citing *Mireles*, 502 U.S. at 11).

There are several important policy justifications for the application of absolute judicial immunity. "This broad scope of immunity is afforded to judges for actions taken within their jurisdiction because their role in the judicial system requires that they enjoy freedom to determine the law unfettered by the threat of collateral attacks against the judge personally." *Mays,* 97 F.3d at 111. As the Supreme Court noted, absolute judicial immunity is justified "by the long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993).

Dantzler alleges that Judges Zainey and van Meerveld's rulings and actions in the #20-2960 action evince some bias against him. Rec. Doc. 1 at pp. 12–14. This isn't Dantzler's first attempt to sue federal judges that have ruled against him. Indeed, in the #08-3777 action, Dantzler's claims against Judges Feldman, Wilkinson, King, Jolly, and Higginbotham were dismissed on the basis of absolute judicial immunity. *See* No. 08-3777 at Rec. Doc. 80 (Africk, J.). Then, in the #09-3703 action, the court dismissed Dantzler's claims against Judges Africk, Lemmon, Jones, Roby, and Knowles based on absolute judicial immunity. *See* No. 09-3703 at Rec. Doc. 50 (Engelhardt, J.). Finally, in the #09-4246 matter, the court dismissed Dantzler's claims against Judges Jones, King, Knowles, Lemmon, Roby, Wilkinson, Feldman, Jolly, and Africk. *See* No. 09-4246 at Rec. Docs. 51 (Africk, J.) & 55 (Berrigan, J.).

As in those cases, Dantzler's allegations in this case facially arise out of the judges' "judicial acts performed in [a] judicial proceeding[]," such as ruling on motions and the like. *Mays*,

supra; *see also Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991) ("Clearly, the judge was acting within his judicial capacity in his rulings in the [plaintiffs'] prior lawsuit."); *DeLeon v. City of Haltom City*, 106 F. App'x 909, 911–12 (5th Cir. 2004) (holding that a state-court judge's "decisions not to provide [plaintiff] with an indigency hearing, not to inform her of her right to counsel, and not to appoint counsel for her" were judicial acts entitled to absolute immunity).

In sum, because Dantzler seeks relief against Judges Zainey and van Meerveld based on alleged claims arising out of their exercise of judicial authority in one of his many prior lawsuits, absolute judicial immunity applies.

IV. Conclusion

For these reasons, the Court should grant this motion and dismiss Dantzler's claims against the DOJ and the federal judges for failure to state a plausible claim for relief and lack of subject-matter jurisdiction.

Respectfully submitted,

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