

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL EDWARDS,
Plaintiff,

v.

CITY OF PHILADELPHIA, et al.,
Defendants.

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: CIVIL ACTION
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: NO. 06-2775
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Memorandum and Order

YOHN, J.

March ____, 2007

Plaintiff Michael Edwards, *pro se*, brings the instant civil rights action, pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), against the following defendants: the City of Philadelphia; Philadelphia Prison Systems (“PPS”); Leon King (Commissioner of PPS); Pennsylvania Department of Corrections (“DOC”); Jeffrey Beard (Secretary of DOC); Pennsylvania Governor Edward Rendell; Prison Health Services Inc.; Wexford Health-Service Inc.; and the United States Department of Justice (“DOJ”).¹ Edwards asserts constitutional claims under the First, Fifth, Eighth, and Fourteenth Amendments. DOJ, the only federal defendant in the instant action, has filed a motion to dismiss pursuant to Rule

¹Edwards improperly names DOJ as a defendant. A tort claim cannot be asserted against a federal government agency; rather, the claim must be brought against the United States. *See Medina v. City of Philadelphia*, 2005 U.S. Dist. LEXIS 8740, at *7 (E.D. Pa. May 9, 2005) (citing *McNiff v. Asset Mgmt. Specialists*, 337 F. Supp. 2d 685, 691 (E.D. Pa. 2004)). In light of Edwards’ *pro se* status, I will assume that his claims against the DOJ are actually being brought against the United States.

12(b) of the Federal Rules of Civil Procedure. Edwards has filed a response and DOJ has filed a reply thereto. For the following reasons, I will grant DOJ's motion to dismiss.

I. Factual & Procedural Background²

On June 6, 2006, Edwards—an inmate at the State Correctional Institute (“SCI”) in Fayette, Pennsylvania (“SCI-Fayette”)—filed a *pro se* § 1983 complaint, asserting claims based on allegations with regard to the poor condition of Pennsylvania state prisons. Edwards alleges that the unsanitary and dangerous environmental conditions of the state prisons allow for the spread of communicable diseases, including Hepatitis C and tuberculosis. These conditions are allegedly caused by defendants, among other things, retaining inept healthcare providers, forcing non-infected prisoners to eat and bunk with infected prisoners, and failing to screen for diseases. Edwards also alleges that prisoners are exposed to hazardous and disease-causing items, including asbestos; toxic mold spores; bird, rodent, and insect droppings; and human feces, blood, urine, and saliva. Edwards claims that defendants failed to warn of these dangerous conditions and conspired to cover-up the infections caused by exposure to hazardous prison conditions by falsifying medical records. In addition, Edwards alleges that defendants extort prisoners by charging them for medical treatment for the illnesses caused by the unsanitary and dangerous prison conditions, and that the employees of DOC abuse prisoners and mistreat the mentally ill. Edwards also states that the employees of DOC denied him medical treatment and confiscated his legal material in retaliation because he was “jailhouse lawyering,” refusing to

²In evaluating a motion to dismiss, all allegations in the complaint and all reasonable inferences that can be drawn therefrom must be accepted as true and viewed in the light most favorable to the non-moving party. *Rocks v. City of Philadelphia*, 868 F.2d 644, 645 (3d Cir. 1989) (citing *Wisniewski v. Johns-Manville Corp.*, 759 F.2d 271, 273 (3d Cir. 1985)).

share cells with infected prisoners, reporting improper conditions to the media and state representatives, and helping Muslims acquire separate religious services. Based on these allegations, Edwards broadly asserts claims under the First, Fifth, Eighth, and Fourteenth Amendments against all defendants.

On July 20, 2006, Edwards filed a motion to amend his complaint pursuant to Rule 15(c)(3) and (d) of the Federal Rules of Civil Procedure. That motion was denied, without prejudice to a future filing, because Edwards did not specify any particular additional defendant, entity or claim. A motion for class certification was filed on July 25, 2006, which was subsequently denied because Edwards failed to serve a copy of the motion on any defendant. On September 28, 2006, DOJ moved for dismissal pursuant to Rule 12(b)(1) and (b)(6). DOJ contends that Edwards' complaint should be dismissed with prejudice because: (1) neither the United States nor DOJ has waived sovereign immunity; (2) the complaint fails to name any individual DOJ officer or employee of the federal government; and (3) Edwards has failed to exhaust his administrative remedies. Edwards filed a response to DOJ's motion on November 30, 2006.³ In the response, Edwards asserts that his complaint also contains a claim against DOJ for failure to prosecute DOC for the unsanitary and dangerous conditions of state prisons. On December 12, 2006, DOJ filed a reply to Edwards' response.

II. Legal Standards

When a defendant challenges subject matter jurisdiction under Rule 12(b)(1), the plaintiff

³Edwards filed a motion for extension/enlargement of time to respond to DOJ's motion on October 9, 2006. On October 24, 2006, I issued an order granting Edward's motion and allowing him to file a response on or before December 1, 2006. (Docket No. 11.) The Clerk has interpreted Edwards' response (Docket No. 17) as an opposing motion to dismiss.

bears the burden of persuasion. Fed. R. Civ. P. 12(b)(1); *Kehr Packages, Inc. v. Fidelcor, Inc.*, 926 F.2d 1406, 1409 (3d Cir. 1991). However, the plaintiff's burden is light, *see Dugan v. Coastal Industries, Inc.*, 96 F. Supp. 2d 481, 482-83 (E.D. Pa. 2000), and in the case of a *pro se* plaintiff, the complaint is to be construed liberally, *Haines v. Kerner*, 404 U.S. 519, 520 (1972). "A district court can grant a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction based on the legal insufficiency of a claim. But dismissal is proper only when the claim 'clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction or . . . is wholly insubstantial and frivolous.'" *Kehr Packages*, 926 F.2d at 1408-09 (quoting *Bell v. Hood*, 327 U.S. 678, 682 (1946)). Where the defendant's motion is not merely a facial challenge to the district court's jurisdiction, the court is not limited to the face of the pleadings in determining whether it has subject matter jurisdiction; it "may review any evidence to resolve factual disputes concerning the existence of jurisdiction." *Gotha v. U.S.*, 115 F.3d 176, 179 (3d Cir. 1997).

When deciding whether to dismiss a claim pursuant to Rule 12(b)(6), the court is testing the sufficiency of a complaint. Fed. R. Civ. P. 12(b)(6); *Johnsrud v. Carter*, 620 F.2d 29, 33 (3d Cir. 1980) (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). In making its ruling, the court must accept as true all well-pled allegations of fact in the plaintiff's complaint, and any reasonable inferences that may be drawn therefrom, to determine whether "under any reasonable reading of the pleadings, the plaintiff may be entitled to relief." *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996). "The issue is not whether [the claimant] will ultimately prevail but whether the claimant is entitled to offer evidence to support the claim." *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1420 (3d Cir. 1997). Courts will grant a motion to dismiss "only if it is

clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). However, a court need not credit a plaintiff’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

III. Discussion

Edwards broadly asserts that DOJ violated his constitutional rights under the First, Fifth, Eighth, and Fourteenth Amendments by conspiring to conceal the dangerous and unsanitary conditions of the state prisons. DOJ contends that Edwards’ constitutional claims must be dismissed under Rule 12(b)(6)—because he has failed to state a claim upon which relief can be granted—and under Rule 12(b)(1)—because this court lacks subject matter jurisdiction over Edwards’ claims. I am in agreement with DOJ’s latter contention.⁴ With regard to Edwards’ constitutional claims against DOJ, I conclude that this court lacks subject matter jurisdiction. Dismissal is appropriate as to the constitutional claims against DOJ because they are jurisdictionally barred by the doctrine of sovereign immunity. *See Antol v. Perry*, 82 F.3d 1291, 1297 (3d Cir. 1996) (stating “sovereign immunity is jurisdictional in nature” and citing *FDIC v. Meyer*, 510 U.S. 471 (1994)). “It is true that ‘absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.’” *Stehney v. Perry*, 101 F.3d 925, 933 (3d Cir. 1996) (quoting *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994)). Because sovereign immunity has not been waived as to constitutional claims against federal agencies, *see Couden v. Duffy*, 446

⁴Because I conclude that dismissal is appropriate under Rule 12(b)(1) for all claims against DOJ, I need not discuss DOJ’s argument that the complaint must be dismissed under Rule 12(b)(6) because Edwards has failed to exhaust administrative remedies as required by the Prisoner Litigation Reform Act. (*See* Compl. ¶ 72, Ex. A-2.)

F.3d 483, 499 (3d Cir. 2006) (citing *Meyer*, 510 U.S. at 477-78), this court lacks subject matter jurisdiction over those claims. Therefore, Edwards’ constitutional claims against DOJ must be dismissed under Rule 12(b)(1).⁵

In his response to DOJ’s motion to dismiss, Edwards argues that his complaint also contains a claim for DOJ’s failure to prosecute DOC for mistreating prisoners and allowing unsanitary and dangerous prison conditions to exist. (*See* Pl.’s Resp. 7.) Even if I liberally construe plaintiff’s complaint—given his *pro se* status—and find that such a claim is asserted and sufficiently supported by the allegations in his complaint, it would not survive DOJ’s motion to dismiss. DOJ contends that the decision of whether or not to prosecute is within its complete discretion; therefore, this court is without jurisdiction to entertain such a claim. I agree. It is well-established 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.” *Heckler v. Chaney*, 470 U.S. 821, 831 (1985); *see also Purveegiin v. Gonzales*, 448 F.3d 684, 689 (3d Cir. 2006) (stating “[a]n action is considered to be within an agency’s absolute discretion, and not subject to judicial review, if the relevant statute or regulation is drawn so that a court would have no meaningful standard against which to judge the agency’s action” (quotations omitted)). Thus, Edwards’ claim for failure to prosecute against DOJ must be dismissed under Rule 12(b)(1) as well.

For the reasons stated above, DOJ’s motion to dismiss under Rule 12(b)(1) will be

⁵While the complaint asserts claims under *Bivens*, no individual federal official is listed as a defendant; rather, Edwards only asserts claims against a federal agency, DOJ. *See Dambach v. United States*, 2006 U.S. App. LEXIS 31322, at *6 (3d Cir. Dec. 19, 2006) (not precedential) (“A *Bivens* action is not available against the United States or one of its agencies.”). Therefore, the claims against DOJ cannot rely on *Bivens*.

granted. An appropriate order follows.

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CIVIL ACTION

NO. 06-2775

Order

AND NOW on this ____ day of March 2007, upon careful consideration of the United States Department of Justice’s motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (Docket No. 10), plaintiff’s response thereto (Docket No. 17), and the Department of Justice’s reply, IT IS HEREBY ORDERED that:

1. The Department of Justice’s motion to dismiss (Docket No. 10) is GRANTED, plaintiff’s claims against the Department of Justice are DISMISSED with prejudice, and the Department of Justice is dismissed as a party to this action.
2. Plaintiff’s response (Docket No. 17), which the Clerk has interpreted as an opposing motion to dismiss, is denied as moot.

s/ William H. Yohn Jr.
William H. Yohn Jr., Judge