IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOHN FITZGERALD KENNEDY, *et al.*,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:23-CV-2603-N-BT
	§	
EDDIE GARCIA, *et al.*,	§	
	§	
Defendants.	§	

DEFENDANT EDDIE GARCIA'S MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT, AND BRIEF IN SUPPORT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendant Chief Eddie Garcia ("Chief Garcia"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, files this Motion to Dismiss seeking dismissal of all claims alleged against him in Plaintiffs' First Amended Verified Complaint (ECF No. 10) (the "Complaint"). In support of this Motion, Chief Garcia respectfully shows the Court as follows:

I. PROCEDURAL AND FACTUAL SUMMARY

Plaintiffs John Fitzgerald Kennedy ("Plaintiff" or "Kennedy") and his wife Hilda Tobias Kennedy ("Mrs. Kennedy") allege Kennedy is the eponymous child of the former president and actress Marilyn Monroe. Compl. ¶¶ 2-4. The Complaint states that Kennedy has endured a great deal of suffering throughout his life. *Id*. ¶¶ 13-18. Kennedy claims that his father included him in his will yet bad actors willfully deprived him of his birthright and subjected him to terrible abuse. *Id*. ¶¶ 45-54. Plaintiffs filed their original complaint on November 27, 2023 (ECF No. 3), and filed their amended Complaint on January 2, 2024 (ECF No. 10).

Plaintiffs assert claims "pursuant to Section 1 of the Civil Rights Act of 1871[1], 42 U.S.C.

[1] The Civil Rights Act of 1871 is codified as 42 U.S.C. § 1983.

§ 1983 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for violations of the First and Fourteenth Amendments to the United States Constitution, 18 U.S.C. § 1591, 18 U.S. Code § 249 and Executive Order 13899." Compl. ¶ 42. The Complaint asks this Court to order an expedited DNA test "by the Texas Rangers." *Id.* ¶ 71. The Complaint also seeks numerous forms of declaratory relief, including a judgment that Kennedy is the child of the former president and Marilyn Monroe, as well as that Kennedy suffered horrendous harm from kidnappers. *Id.* ¶ 79. All of Plaintiffs' claims should be dismissed with prejudice because they are not legally viable.

II. APPLICABLE LEGAL STANDARDS FOR 12(b)(6) DISMISSAL

Rule 12(b)(6) provides for dismissal of a claim if the complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims stated in the complaint and must be evaluated solely on the basis of the pleadings. *Jackson v. Procunier*, 789 F.2d 307, 309 (5th Cir. 1986). The allegations contained in the complaint are to be construed in the plaintiff's favor and all *well-pleaded* facts are to be accepted as true. *In re Katrina Canal Breaches Litig.*, 495 F.3d 191, 205 (5th Cir. 2007) (quoting *Martin K. Eby Constr. Co. v. Dall. Area Rapid Transit*, 369 F.3d 464, 467 (5th Cir. 2004)). However, conclusory allegations and legal conclusions couched as factual allegations are not to be accorded a presumption of truth. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (recognizing that "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions"); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986) (emphasizing that on a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation")); *Kaiser Alum. & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982) ("Although we must accept as true the well-pleaded allegations of a complaint . . . we do not accept as true conclusory allegations in the complaint."); *see also Fernandez-Montes v.*

Allied Pilots Ass'n, 987 F.2d 278, 284 (5th Cir. 1993) (legal conclusions masquerading as factual assertions are insufficient to prevent dismissal for failure to state a claim). While the complaint need not contain "detailed factual allegations," the plaintiff must plead "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555. Therefore, and critically, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555).

Furthermore, the alleged facts must be enough to raise a right to relief above the speculative level. *Twombly*, 550 U.S. at 555 (abrogating *Conley v. Gibson*, 355 U.S. 41 (1957)). Thus, to survive a motion to dismiss made pursuant to Rule 12, a complaint must contain sufficient factual matter, accepted as true, to "state a claim for relief that is plausible on its face." *Id.* 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." *Iqbal*, 556 U.S. at 678 (citation omitted). "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* (citation omitted). If a complaint pleads facts that are "merely consistent with" a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief. *Id.*. (internal quotation marks and citation omitted). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (applying Fed. R. Civ. P. 8(a)(2) (requiring "a short and plain statement of the claim showing the pleader is entitled to relief[]")).

III. ARGUMENT AND AUTHORITIES

Chief Garcia is sued "in his official capacity as Dallas Police Department Chief."[2] Compl. ¶ 65. An official-capacity lawsuit is "only another way of pleading an action against an entity of which an officer is an agent." *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (citation and quotation marks omitted). Therefore, all claims against Chief Garcia should be treated as claims against the City of Dallas.

Plaintiffs' allegations about Dallas are limited to the following:

- "I was subject to physical and sexual abuse and my property was stolen directly after my father's murder in Dallas, Texas a few blocks from this court," Compl. ¶ 48;
- "Everything related to my protection and identity theft and further child sex trafficking stems from the murder committed in Dallas, Texas of my father, President John F. Kennedy, and the negligence surrounding the investigation of his death and the fiduciary due of the Secret Service and the civil rights violations of the state agencies in connection with that negligence," *id*. ¶ 62; and
- A recent segment on Fox News featuring a member of President Kennedy's Secret Service detail led Mr. Kennedy "to the undeniable conclusion that the entire investigation [of the Kennedy assassination] was conducted with astonishing negligence," *id*. ¶ 63.

In short, all of Plaintiffs' Dallas-related complaints arise from the Dallas Police Department's role in the investigation of President Kennedy's assassination in Dallas in 1963. All claims against Chief Garcia must be dismissed with prejudice for many reasons, including the expiration of the statute of limitations, Mrs. Kennedy's lack of standing, Mr. Kennedy's inability to plead constitutional violations, and black-letter law prohibiting Plaintiffs' civil enforcement of criminal statutes and executive orders.

[2] Plaintiffs could not plausibly plead their claims against Chief Garcia in his personal capacity, not least because he was not yet born at the time of the complained-of conduct.

a. Plaintiffs' claims are barred by the statute of limitations.

A two-year statute of limitations applies to § 1983 claims arising from conduct that occurred in Texas. *Piotrowski v. City of Houston*, 237 F.3d 567 (5th Cir. 2001). This lawsuit was filed on November 27, 2023 (ECF No. 3). While it is difficult to ascertain precisely when the Dallas Police Department's participation in the investigation of the Kennedy assassination ended, the Court can safely assume that the investigation concluded sometime prior November 27, 2021. All of Plaintiffs' claims against Chief Garcia are barred by the statute of limitations and must be dismissed with prejudice.

b. Mrs. Kennedy lacks standing.

Mrs. Kennedy lacks standing to bring the claims asserted in this case because she has not alleged any violations of her constitutional rights (as opposed to those of her husband). "Ordinarily, one may not claim standing in this Court to vindicate the constitutional rights of some third party. Reference to this rule is made in varied situations. The requirement of standing is often used to describe the constitutional limitation on the jurisdiction of this Court to 'cases' and 'controversies.'" *Barrows v. Jackson*, 346 U.S. 249 (1953).

Only one paragraph of the Complaint contains allegations related to Mrs. Kennedy:

> I, your plaintiff, Hilda Tobias Kennedy due to the many injuries request expedited DNA testing by the Texas Rangers and trial for my husband and me under FRCP 1: *" ... the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.*." The extenuating circumstances for this are attached. Please excuse Honorable Judge John Porto for incorrectly copying the case caption and incorrectly naming my husband *Johnathon* Fitzgerald Kennedy instead of John Fitzgerald Kennedy.

Compl. ¶ 71. None of the alleged wrongs discussed in the Complaint and its attachments were directed at Mrs. Kennedy. Accordingly, her claims should be dismissed with prejudice.

c. Plaintiffs have not stated a claim under 42 U.S.C § 1983.

"Section 1983 creates a species of tort liability for the deprivation of any rights, privileges, or immunities *secured by the Constitution*." *Manuel v. City of Joliet, Ill.*, 580 U.S. 357, 362 (2017) (cleaned up) (emphasis added). "[T]he Constitution does not guarantee due care on the part of state officials; liability for negligently inflicted harm is categorically beneath the threshold of constitutional due process." *County of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). There is no legal basis for a § 1983 claims based on an allegedly unreasonable or deficient investigation of a crime. *Shields v. Twiss*, 389 F.3d 142, 150-51 (5th Cir. 2004).

Kennedy does not allege that any City of Dallas employee ever took any actions toward him directly. Instead, his claims against the City of Dallas (via its agent Chief Garcia) are based on his unspecified dissatisfaction with the Dallas Police Department's investigation of President Kennedy's assassination. These claims fail as a matter of law because the Constitution does not guarantee a right to any investigation at all, and thus it certainly did not impose a duty upon the Dallas Police Department to take measures or reach conclusions that are acceptable to Kennedy. These claims are not viable and must be dismissed with prejudice.

d. Kennedy cannot bring claims pursuant to criminal statutes or executive orders.

Kennedy also purports to bring claims pursuant to 18 U.S.C. § 1591, 18 U.S.C. § 249 and Executive Order 13899. Compl. ¶ 42. He cannot state a claim upon which relief can be granted under any of these provisions. 18 U.S.C. § 1591 is a criminal statute prohibiting the sex trafficking of children. 18 U.S.C. § 249 is the federal criminal "hate crime" statute making it unlawful to cause "bodily injury" to another person because of the actual or perceived race, color, religion, or national origin" of that person. Kennedy may not bring claims pursuant to these statutes because "[c]riminal statutes can neither be enforced by civil action nor by private parties." *Hassell v. United*

States, 203 F.R.D. 241, 244 (N.D. Tex. June 1, 1999) (citing *United States v. Claflin*, 97 U.S. 546, **2 (1878). As Kennedy noted, Executive Order 13899 "directs federal agencies to consider a specific definition of antisemitism when investigating civil rights complaints." Compl. ¶ 31. The City of Dallas is not and has never been a federal agency. Accordingly, these claims should be dismissed with prejudice.

e. Plaintiffs have not stated a claim under 28 U.S.C. §§ 2201-02.

The Declaratory Judgment Act, 28 U.S.C. §§ 2201–02, gives federal courts broad discretion to grant or refuse to grant declaratory judgment. *Torch, Inc. v. LeBlanc*, 947 F.2d 193, 194 (5th Cir. 1991). In determining whether to decide a declaratory judgment action, the court must ascertain: (1) if the action is justiciable; (2) if the court has authority to grant the requested relief; and (3) whether the court should exercise its discretion to decide the action. *Orix Credit Alliance, Inc. v. Wolfe*, 212 F.3d 891, 895 (5th Cir. 2000). With respect to justiciability, a federal court may not issue a declaratory judgment unless there exists an "actual controversy." *See Middle South Energy, Inc. v. City of New Orleans*, 800 F.2d 488, 490 (5th Cir. 1986) (citing *Maryland Cas. Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941)).

As this Court has explained, "The Declaratory Judgment Act does not exempt federal district courts from the constitutional requirement that there be an actual controversy between the parties." *Standard Fire Ins. Co. v. Sassin*, 894 F. Supp. 1023, 1026 (N.D. Tex. 1995). This Court has affirmed that a "request for declaratory judgment is remedial in nature and dependent upon the assertion of viable causes of action." *Miller v. CitiMortgage, Inc.*, 970 F. Supp. 2d 568, 591 (N.D. Tex. 2013). Nothing in the Complaint plausibly pleads a justiciable action or controversy between the City of Dallas and the Plaintiffs. *See Golden v. Zwickler*, 394 U.S. 103, 108 (1969) ("[T]he question in each case is whether the facts alleged, under all the circumstances, show that there is a

substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.") Nothing in the Complaint alleges facts that show that this Court has authority to grant the requested relief, such as declaratory judgments regarding Kennedy's parentage or ethnic background.[3] And finally, nothing in the Complaint suggests that this Court should or could exercise its discretion adjudicate Mr. Kennedy's allegations. All requests for declaratory judgment are fatally flawed and should be dismissed with prejudice.

IV. CONCLUSION

Plaintiffs' Complaint does not plead facts from which this Court can infer that the City of Dallas (through its agent Chief Garcia) could be plausibly liable for Plaintiffs' alleged injuries. All claims should be dismissed with prejudice.

[3] Plaintiffs have previously—and unsuccessfully—litigated issues related to Kennedy's status as a beneficiary to the former president's estate. *See, e.g. Kennedy v. Trustees of Testamentary Tr. of Will of Kennedy*, 406 F. App'x 507, 511 (2d Cir. 2010) ("While presumptions may be overcome, the lack of anything in President Kennedy's will indicating an intent to include non-marital children as beneficiaries and the failure to allege any facts that could, if true, overcome the presumption makes dismissal for failure to state a claim appropriate in this case.")

CITY ATTORNEY OF THE CITY OF DALLAS

TAMMY L. PALOMINO
City Attorney

s/ Lindsay Wilson Gowin
Lindsay Wilson Gowin
Deputy Chief of Torts
Texas State Bar No. 24111401
lindsay.gowin@dallas.gov

J. Cheves Ligon
Senior Assistant City Attorney
Texas State Bar No. 24070147
John.Ligon@Dallas.gov

7DN Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201
Telephone: 214-670-1236
Facsimile: 214-670-0622

Attorneys for Defendant Eddie Garcia

CERTIFICATE OF SERVICE

I certify that on February 26, 2024, I electronically filed the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the CM/ECF electronic case filing system of the court. The electronic case filing system will send a "Notice of Electronic Filing" notification to all case participants registered for electronic notice, including all *pro se* parties and/or attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ *Lindsay Wilson Gowin*
Senior Assistant City Attorney