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

JOHN FITZGERALD KENNEDY and HILDA TOBIAS KENNEDY, Plaintiffs, v. EDDIE GARCIA, in his official capacity as Dallas Police Department Chief; MICHEL MOORE, in his official capacity as Los Angeles Police Chief; KIMBERLY CHEATLE, in her capacity as Director of the Secret Service; and PAUL LANDIS, former secret service agent and whistleblower, Defendants.	Civil Action No. 3:23-CV-02603-N-BT

DEFENDANT KIMBERLY CHEATLE'S MOTION TO DISMISS

Defendant Kimberley Cheatle in her official capacity as Director of the United States Secret Service ("the Secret Service")[1] moves to dismiss Plaintiffs John Fitzgerald Kennedy and Hilda Tobias Kennedy's entire first amended complaint (ECF No. 10) under Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiff John Fitzgerald Kennedy (together with his wife) appear to assert that the Secret Service (among other defendants) violated his civil rights by negligently investigating the death of President John F. Kennedy. Plaintiffs seek among other things a declaratory judgment that Plaintiff John Fitzgerald Kennedy is the biological offspring of President John F. Kennedy and Norma Jean Baker, otherwise known as Marilyn Monroe. First Am. Verified Compl.

[1] The undersigned represents the Secret Service only and does not represent any of the other defendants.

("Compl."), ECF No. 10, at 17.[2] Plaintiffs sue the Secret Service for (what appears to be) negligence and violations of their civil rights. *See id.* at 14 (listing "negligence and civil rights" as the "violations by the defendants").

Plaintiffs are repeat filers of frivolous lawsuits related to their contention that Marilyn Monroe and President Kennedy are Plaintiff John Fitzgerald Kennedy's biological parents.[3] It appears this latest lawsuit was triggered by an interview "on Fox" in September 2023 of an allegedly former Secret Service agent (Defendant Paul Landis), in which Landis expressed his opinion that he did not think "the government has been honest" about "what happened" on the day President Kennedy was assassinated. ECF No. 10, at 14, 63.

Because the allegations in the complaint appear to be wholly insubstantial and devoid of merit and because the federal government has not clearly waived sovereign immunity for the claims asserted in the complaint, the entire lawsuit should be dismissed.

I. Legal Standards

A. Rule 12(b)(1)

Defendant moves to dismiss under Rule 12(b)(1) because Plaintiffs have not identified a waiver of sovereign immunity and because the federal government is not liable for the conduct of federal actors under 42 U.S.C. § 1983 or the Fourteenth Amendment. As the party asserting federal subject-matter jurisdiction, the plaintiff must

[2] Because the amended complaint (ECF No. 10) is not paginated, pinpoint citations refer to the pagination in the ECF header.

[3] *See, e.g.*, *Kennedy v. Est. of Monroe*, 790 F. App'x 119, 120 (9th Cir. 2020) ("The district court did not abuse its discretion by dismissing plaintiffs' action as frivolous because the action lacked an arguable basis either in law or in fact."); *Kennedy v. Trustees of Testamentary Tr. of Will of Kennedy*, 633 F. Supp. 2d 77, 79 (S.D.N.Y. 2009) ("In this action, Plaintiff John Fitzgerald Kennedy . . . alleges that he is the son of President John F. Kennedy and Marilyn Monroe."), *aff'd*, 406 F. App'x 507 (2d Cir. 2010).

bear "the burden of showing Congress's unequivocal waiver of sovereign immunity." *Freeman v. United States*, 556 F.3d 326, 334 (5th Cir. 2009). "At the pleading stage, [the] plaintiff[ ] must invoke the court's jurisdiction by alleging a claim that is facially outside of the discretionary function exception." *Id.* The Court may dismiss claims under Rule 12(b)(1) based on "(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." *Willoughby v. United States ex rel. U.S. Dep't of the Army*, 730 F.3d 476, 479 (5th Cir. 2013).

B. Rule 12(b)(6) pleading standard

The Court should grant a motion to dismiss under Rule 12(b)(6) if the complaint fails to allege "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Sullivan v. Leor Energy, LLC*, 600 F.3d 542, 546 (5th Cir. 2010). "Determining whether a complaint states a plausible claim for relief . . . [is] a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "[A] plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Sullivan*, 600 F.3d at 546. The "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In assessing the complaint, the Court accepts only "well-pleaded facts as true" and disregards "conclusory allegations, unwarranted factual inferences, [and] legal conclusions." *Singh v. RadioShack Corp.*, 882 F.3d 137, 144 (5th Cir. 2018).

II. Argument & Authorities

The Court should dismiss Plaintiff's entire complaint for three reasons. ***First,***

Plaintiff's complaint should be dismissed because the "allegations within the complaint 'are so attenuated and unsubstantial as to be absolutely devoid of merit, . . . wholly insubstantial, . . . obviously frivolous, . . . plainly unsubstantial, . . . or no longer open to discussion.'" *Starrett v. Lockheed Martin Corp. et al.*, 735 F. App'x 169, 170 (5th Cir. 2018) (quoting *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974)). Put another way, the Fifth Circuit has affirmed that claims against the federal government and its agencies are subject to dismissal under Rule 12(b)(1) when the claims are "patently frivolous," and also under Rule 12(b)(6) when such claims are "fanciful, fantastic, or delusional." *Starrett*, 735 F. App'x at 170.

Such is the case here. Plaintiffs' complaint is lacking in a structure that contains any discernable facts and citation to legal authority that might plausibly allow them to recover. Plaintiffs' complaint appears to recite the same issues that have been previously litigated and dismissed in the Second and Ninth circuits.[4] The claims that Plaintiff Kennedy is the biological son of Marilyn Monroe and President Kennedy appear to be obviously frivolous. Plaintiffs cite no legal authority for their requested relief, nor any plausible factual basis supporting their assertions.

Second, Plaintiffs have not shown that the federal government has waived sovereign immunity for claims seeking to compel the Secret Service (or any other federal agency or official) to "reopen" the investigation into the death President Kennedy or to declare that Plaintiff Kennedy is the child of President Kennedy and Marilyn Monroe—under section 1983, the Fourteenth Amendment (which are, by their own terms related to the conduct of state actors), or any other legal authority. *See*, *e.g.*, *Norton v. McShane*, 332 F.2d 855, 862 (5th Cir. 1964) ("[P]erson must be acting under color of state law for

[4] *See supra* note 3.

the section to apply, whereas the defendants in the instant suits were acting under color of federal law."). It is well established that neither the United States nor its agencies have waived sovereign immunity for constitutional claims. *See Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Moreover, to the extent Plaintiffs' amended complaint may be attempting to assert a claim under the Federal Tort Claims Act (FTCA), constitutional claims are not actionable against federal agencies under the FTCA. *FDIC v. Meyer,* 510 U.S. 471, 485 (1994); *see also Sanchez v. Rowe,* 870 F.2d 291, 295 (5th Cir. 1989). As the party invoking federal subject-matter jurisdiction, Plaintiffs must bear "the burden of showing Congress's unequivocal waiver of sovereign immunity." *Freeman*, 556 F.3d at 334. Plaintiffs have identified no such waiver for his claims, meaning the Secret Service retains sovereign immunity from these claims.

Third, to the extent Plaintiffs may seek monetary damages under the FTCA for a negligent investigation of a crime, any such claim would be barred by the discretionary-function exception. The FTCA is a limited waiver of sovereign immunity through which the United States has consented to be sued only for certain torts committed by federal employees—subject to several exceptions. *See Truman v. United States*, 26 F.3d 592, 594 (5th Cir. 1994). "[T]he exceptions to the FTCA's waiver of sovereign immunity that appear in 28 U.S.C. § 2680 limit the federal courts'[] jurisdiction to hear FTCA claims and, if applicable, bar a suit brought against the government." *Id.* The § 2680 exceptions are broadly "construed in favor of the government." *Id.*

The Supreme Court's two-part *Gaubert* test determines whether the plaintiff pleads allegations outside the discretionary-function exception: "(1) 'the conduct must be a 'matter of choice for the acting employee'"—as opposed to being specifically

prescribed by mandatory statute or regulation—and "(2) the judgment must be of the kind that the discretionary function exception was designed to shield." *Tsolmon v. United States*, 841 F.3d 378, 382 (5th Cir. 2016) (cleaned up). "The plaintiff has the burden of establishing that the discretionary function exception does not apply." *Id.*

The discretionary-function exception preserves the United States' sovereign immunity from FTCA claims "based upon the exercise or performance or the failure to exercise or perform *a discretionary function* or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." *Id.* (emphasis added). As the Supreme Court explains, the "discretionary function exception" reflects Congress's "desire to protect certain governmental activities from exposure to suit by private individuals," *United States v. S.A. Empresa de Viacao Aerea Rio Grandense* (*Varig Airlines*), 467 U.S. 797, 808 (1984), especially for "acts that involve an element of judgment or choice," *United States v. Gaubert*, 499 U.S. 315, 322 (1991) (cleaned up).

The caselaw is clear in the Fifth Circuit: "'[d]ecisions on when, where, and how to investigate and whether to prosecute' have long been found to be core examples of discretionary conduct for which the United States maintains its immunity." *Tsolmon v. United States*, 841 F.3d 378, 383 (5th Cir. 2016) (quoting *Sutton v. United States*, 819 F.2d 1289, 1294–95 (5th Cir. 1987)). Put another way, section "2680(a) exempts the government from liability for exercising the discretion inherent in the prosecutorial function of the Attorney General, no matter whether these decisions are made during the investigation or prosecution of offenses." *Smith v. United States*, 375 F.2d 243, 248 (5th Cir. 1967). This is so because "[t]he federal government's decisions concerning enforcement of its criminal statutes comprise a [core component] of its pursuit of national

policy." *Id.* at 247.

Plaintiffs' claims "fall[] easily into the exception," *see id.* at 248, and should therefore be dismissed.

III. Conclusion

Plaintiffs' complaint is subject to dismissal because it plainly lacks "an arguable basis either in law or in fact." *See Kennedy*, 790 F. App'x at 120 (affirming the sua sponte dismissal of a similar lawsuit filed by the same plaintiffs "as frivolous"). Moreover, as a federal agency, the Secret Service retains sovereign immunity from, and the Court lacks jurisdiction to entertain, Plaintiffs' lawsuit seeking to compel the Secret Service to reopen the investigation into President Kennedy's death and seeking a declaration that Plaintiff Kennedy is President Kennedy and Marilyn Monroe's biological son under section 1983 and the Fourteenth Amendment. Lastly, any negligent-investigation claim would be barred by the discretionary-function exception to the FTCA's limited waiver of sovereign immunity. For all these reasons, Plaintiffs' lawsuit should be dismissed in its entirety.

Respectfully submitted,

LEIGHA SIMONTON
UNITED STATES ATTORNEY

/s/ George M. Padis
George M. Padis
Assistant United States Attorney
Texas Bar No. 24088173
1100 Commerce Street, Third Floor
Dallas, Texas 75242
Telephone: 214-659-8600
Fax: 214-695-8807
george.padis@usdoj.gov

Attorneys for Defendant Kimberly Cheatle

CERTIFICATE OF SERVICE

On February 20, 2024, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I also hereby certify that on this same date, the foregoing document was served via U.S. mail to the Plaintiff, pro se.

/s/ George M. Padis
George M. Padis