

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DELTA DIVISION**

REED CHRISTENSEN

PLAINTIFF

v.

Case No. 2:24-cv-00229 DPM/PSH

**UNITED STATES DEPARTMENT OF JUSTICE;
UNITED STATES DISTRICT COURT,
DISTRICT OF COLUMBIA**

DEFENDANTS

BRIEF IN SUPPORT OF MOTION TO DISMISS

Introduction

On December 30 2024, Myra Christensen filed a *pro se* Complaint and Motion for Temporary Restraining Order seeking relief for herself and Reed Christensen. Documents No. 1 and 2. In the Complaint, she sued the Federal Correctional Institution – Forrest City Low and Chad Garrett, former warden. Document No. 1. On January 6, 2025, Myra Christensen filed an Amended Complaint. Document No. 7. On January 31, 2025, the Court gave Reed Christensen to file an amended complaint on his own behalf, and asked Myra Christensen to clarify the claims she brought on behalf of herself. Document No. 15.

On March 3, 2025, Myra Christensen notified the court that she did not wish to pursue her Amended Complaint or the Motion for Temporary Restraining Order. Document No. 22. On May 2, 2025, Reed Christensen filed an Amended Complaint on his own behalf. Document No. 27. In it, Christensen substituted the United States Department of Justice and the United States District Court for

the District of Columbia as Defendants. *Id.* On May 14, 2025, the Court directed the Clerk to remove the Federal Correctional Institution – Low and Chad Garrett, former warden as party Defendants. Docket Entry No. 30. For reasons stated herein, they will be referred to as the United States of America. Christensen clarifies that he does not seek money damages, but rather a declaratory judgment that his constitutional rights were violated both here and in Washington, D.C. Document No. 27 at 2.

As set forth below, Christensen’s Amended Complaint should be dismissed. First, Reed Christensen, a *pro se* litigant, has never properly commenced suit in this case. Therefore, there is no complaint to amend. Second, if the Court entertains the Amended Complaint on the merits, his allegations occurring in Washington, D.C. should be dismissed for improper venue. Fed. R. Civ. P. 12(b)(3). Finally, although the United States and its agencies are usually immune from suit for constitutional violations, the Administrative Procedures Act provides a waiver for nonmonetary relief. 5 U.S.C. § 702. However, Christensen’s allegations do not establish standing or avail him judicial review, and the United States retains its sovereign immunity from suit. *Id.*; U.S. CONST. art. III § 2. Accordingly, Christensen’s Amended Complaint must be dismissed. Fed. R. Civ. P. 12(b)(1).

Discussion of Authority

A. Reed Christensen Has Never Properly Commenced an Action Against Defendants and Cannot Amend a Nullity

Regardless of whether Reed Christensen gave Myra Christensen the authority to do so, she is not a licensed attorney may not practice law in Arkansas. *Davenport v. Lee*, 348 Ark. 148, 160, 72 S.W. 3d 85, 92 (2002); *Henson v. Craddock*, 2020 Ark. 24, *7 – 8, 593 S.W.3d 10, *15 (January 23, 2020). The Arkansas Supreme Court has defined the “practice of law” as:

[O]ne who appears before a court of record for the purpose of transacting business with the court in connection with any pending litigation or when any person seeks to invoke the processes of the court in any matter pending before it, that person is engaging in the practice of law.

Davenport v. Lee, 348 Ark. at 160, 72 S.W. 3d at 92 (2002).

Further, Rule 11(a) of the Federal Rules of Civil Procedure states that:

Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of records in the attorney’s name – ***or by a party personally if the party is unrepresented.*** The paper must state the signer’s address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney’s or party’s attention.

Fed. R. Civ. P. 11(a)(emphasis added).

However, as the Court has noted, Myra Christensen is not an attorney, and, therefore, she could only bring an action on behalf of herself. *Davenport v. Lee*, 348 Ark. at 160, 72 S.W. 3d at 92 (2002). Her Complaint and Amended

Complaint on behalf of Reed Christensen, whether he gave her the right to sign documents for him or not, constitutes the unauthorized practice of law. *Id.* Stated differently, Mr. Christensen may have authorized it, but the Court's rules, Arkansas's rules, and caselaw does not. *Id.*; Fed. R. Civ. P. 11(a); *see also* Ark. Code Ann. § 16-22-206.

Other jurisdictions have held that a *pro se* plaintiff must sign for himself. *See, e.g., Carillo v. Hickenlooper*, 2013 WL 444614. *1 (D. Colo. Feb. 5, 2013)(holding that each of the thirty-four plaintiffs must sign a motion and could not delegate authority to one of the other plaintiffs); *Johnson v. O'Donnell*, 2001 WL 34372892, *11 (W.D. Wis. Aug. 24, 2001)(ruling that Fed. R. Civ. P. 11(a) makes no exception to the requirement that "the party" must sign all documents, even with a power of attorney); *Laurie v. Maxwell*, 2008 WL 894408 (D. Mont. April 1, 2008)(dismissing a complaint signed by a non-attorney holding power of attorney for another).

Although "amendability" is matter of federal procedure, the United States Court of Appeals for the Eighth Circuit has adopted Arkansas's reasoning in *Davenport v. Lee. Jones ex rel. v. Jones*, 401 F.3d 950, 952 (8th Cir. 2005). Thus, any Complaint of Myra Christensen brought on behalf of Reed Christensen was a nullity. *Id.*; *Williams v. Bradshaw*, 459 F.3d 846, 849 (8th Cir. 2006). If a complaint is rendered a nullity, it "never existed," has no legal effect, and there is nothing to amend. *Id.* Thus, the "Amended" Complaint filed by Reed Christensen fails procedurally here. *Id.* He has never properly commenced an action on his behalf against Defendants. Fed. R. Civ. P. 3, 11(a). He cannot

amend a nullity. *Jones ex rel, supra*; *Williams, supra*. His “Amended” Complaint should be dismissed in its entirety. *Id.*

**B. Allegations Occurring in Washington, D.C (Counts 1 – V, VII):
Improper Venue; Fed. R. Civ. P. 12(b)(3)**

Should the Court entertain Christensen’s Amended Complaint on the merits, the crux of Christensen’s Amended Complaint pertains to his September 2023 criminal jury trial in Washington, D.C. Document No. 27 at ¶s 40 – 71, 91 – 103, 107 – 109. In Counts I, II, III, IV, V, and VII of Christensen’s Amended Complaint, he seeks nonmonetary relief for alleged violations of his First, Fifth, Sixth, Eighth and Fourteenth Amendment rights for conduct of the prosecutors and judge in his Washington, D.C. criminal case. *Id.* However, any constitutional claim for conduct by the United States should be brought in a judicial district in which: “(A) a defendant in the action resides, (B) a substantial part of the events or omissions giving rise to the claim occurred . . . , or (C) the plaintiff resides if no real property is involved in the action.” 28 U.S.C. § 1391(e)(1); *Brimer v. Levi*, 555 F.2d 656, 658 (8th Cir. 1977). Christensen’s Amended Complaint fails to establish proper venue for his Washington, D.C. allegations. Document No. 27 at ¶s 4 – 8. Christensen lives in the state of Idaho. *Id.* at ¶ 8. The conduct during his criminal trial for which he complains occurred in Washington, D.C. *Id.* at ¶s 40 – 71, 91 – 103, 107 – 109. Thus, for those allegations, venue is not proper here. 28 U.S.C. §1391(e). Christensen’s Amended Complaint should be dismissed without prejudice. *Id.*; Fed. R. Civ. P. 12(b)(3).

**C. Allegations Occurring in Forrest City Arkansas (Count VI):
Lack of Subject Matter Jurisdiction; Fed. R. Civ. P. 12(b)(1)**

1. Substituted Party Defendants

Christensen's Amended Complaint substitutes the United States Department of Justice and the United States District Court of the District of Columbia as party Defendants. Document No. 27. "An amended complaint supercedes an original complaint and renders the original complaint without legal effect." *In re Atlas Van Lines, Inc.*, 209 F. 3d 1064, 1067 (8th Cir. 2000). On May 14, 2025, the Court directed the Clerk to remove the Federal Correctional Institution – Low and Chad Garrett, former warden as party Defendants. Docket Entry No. 30. As such, the party Defendants are now the United States Department of Justice and the United States District Court, District of Columbia. *Id.* Against them, Christensen requests a declaratory judgment that the FCC – Forrest City Arkansas prison conditions violated his Eighth Amendment constitutional right. Document No. 27 at ¶s 104 – 106; *Id.* at 34.

2. Standard of Review

The United States of America moves for dismissal for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Motions under Fed. R. Civ. P. 12(b)(1) may assert either a "facial" or "factual" attack on jurisdiction. *Moss v United States*, 895 F.3d 1091, 1097 (8th Cir. 2017). This is a facial attack on Christensen's Amended Complaint. However, if necessary, the Court may look outside the pleadings to determine facts necessary to establish subject matter jurisdiction.

Id.; *Two Eagle v. United States*, 57 F.4th 616, 620 (8th Cir. 2023). The party seeking to invoke federal jurisdiction bears the burden of proving jurisdictional facts by a preponderance of the evidence. *Moss*, 895 F.3d at 1097 (citing *OnePoint Solutions, LLC v. Borchert*, 486 F.3d 342, 347 (8th Cir. 2007)).

3. Article III: No Case or Controversy

Article III of the United States Constitution allows the federal courts to consider only cases and controversies. U.S. CONST. art. III § 2. “A plaintiff seeking relief in federal court must first demonstrate he has standing to do so, including that he has a personal stake in the outcomes, distinct from a generally available grievance about government.” *Gill v. Whitford*, 585 U.S. 48, 54 (2018). To establish standing, a plaintiff must have “(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable decision.” *Riemer v. United States Marshals Service, et al.*, 2024 WL 3050381, at *4 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)).

Viewing Christensen’s allegations in the light most favorable to him, he fails to establish a case or controversy required for subject matter jurisdiction. U.S. CONST. art. III § 2. Christensen pleads that he is no longer in custody at FCC – Forrest City Low. Document No. 27 at ¶ 8. Because he is no longer in custody, he therefore fails to establish how any injury he suffered in the past would be remedied by a favorable declaratory judgment here. *Spokeo, supra*. Thus, there is no case or controversy through which Christensen has established standing. U.S. CONST. art. III § 2. His Amended Complaint fails to establish

subject matter jurisdiction and should be dismissed, on this basis, with prejudice. Fed. R. Civ. P. 12(b)(1).

4. Even if Christensen Had Standing to Bring His Arkansas Allegations, They Fall Outside the Administrative Procedures Act and the United States Retains Sovereign Immunity

Generally, sovereign immunity shields the United States of America from suit. *Mader v. United States of America*, 654 F.3d 794, 797 (8th Cir. 2011)(quoting *Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 475 (1994)). The United States can only be sued when it, through Congress, has given express consent to be sued. *Coleman v. Espy*, 986 F.2d 1184, 1191 (8th Cir. 1993). Sovereign immunity is jurisdictional. *Fed. Deposit Ins. Corp v. Meyer*, 510 U.S. 471, 475 (1994); *United States v. Mitchell*, 463 U.S. 206, 212 (1983). If sovereign immunity is applicable, the court lacks subject matter jurisdiction. *Id.*

Usually, constitutional claims are not cognizable against the United States of America or its agencies. *Martin v. Gourneau*, 2025 WL 687032 (8th Cir. March 4, 2025); *Buford v. Runyon*, 160 F.3d 1199, 1203 (8th Cir. 1998). However, the Administrative Procedures Act (“APA”) waives sovereign immunity of the United States in actions for nonmonetary relief. 5 U.S.C. § 702; *see also, Raz v. Lee*, 343 F.3d 936, 938 (8th Cir. 2003). Here, Christensen requests a declaratory judgment¹ from this Court stating his FCC – Forrest City conditions of

¹ Although not specifically pled, the Declaratory Judgment Act, 28 U.S.C. § 2201, is “an enabling act, which confers a discretion on the courts rather than an absolute right upon the litigant.” *Roark v. South Iron R-1 School District*, 573 F.3d 556, 561-62(8th Cir. 2009)(quoting *Public Serv. Comm’n of Utah v. Wycoff Co.*, 344 U.S. 237, 241 (1952)). Nonetheless, a declaratory judgment is a remedy, not a legal vehicle through which he can bring suit. *See Davis v. United States*, 499 F.3d 590, 594 (6th Cir. 2007). It does not provide an independent basis for subject matter jurisdiction against the United States or its agencies. *Skelly Oil, Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950).

confinement violated his Eighth Amendment constitutional right while he was imprisoned. Document No. 27 at ¶s 104 – 106; *Id.* at 34.

Yet, to avail himself of the APA’s waiver, Christensen must plead facts that establish jurisdiction. *Moss*, 895 F. 3d 17 at 1097. According to the APA, a person suffering a legal wrong by a federal *agency action* is entitled to judicial review if he seeks nonmonetary relief. 5 U.S.C. § 702 (emphasis added). Here, however, Christensen does not really assert any specific agency action. Document No. 27 at ¶s 77 – 87. Rather, he describes prison conditions to which he takes exception, but he does not describe any specific agency action or conduct that amounts to cruel and unusual punishment in violation of the Eighth Amendment. *Id.* In addition, the APA requires that any mandatory or injunctive relief specify the federal officers who are “personally responsible for compliance” of the particular agency action, and Christensen’s Amended Complaint fails to assert any here. 5 U.S.C. § 702; Document No. 27 at ¶s 77 – 87.

Further, the APA’s waiver of sovereign immunity is not absolute. 5 U.S.C. § 701(a)(2). It does not apply to any “agency action [which is] committed to agency discretion by law.” 5 U.S.C. § 701(a)(2). Under 18 U.S.C. § 4042(a)(2), the Bureau of Prisons is directed to “provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States” While this statute addresses a general duty, it lacks “specific guidelines of appropriate conduct by BOP officials in administering these duties [and] leaves judgment or choice to BOP officials.”

Harrison v. Federal Bureau of Prisons, 464 F. Supp. 2d 552, 557-58 (E.D. Vir. 2006)(quoting *Scrima v. Hast*y, 1998 WL 6614787, at *3 (S.D.N.Y. 1998); *see also*, *Stiley v. United States*, 2016 WL 5799040, at *6 – 7 (E.D. Ark. 2016).

In the instant case, Christensen’s allegations note a long distance to the dining hall, delay in medical care of his left foot, time standing in pill line, poor nutrition, and gastrointestinal issues while he was incarcerated. Document No. 27 at ¶s 77 – 87. While these issues might be encompassed in the general duty to provide suitable quarters, care, and subsistence to inmates, the law allows the Bureau of Prisons discretion in carrying out these duties. 18 U.S.C. § 4042. As such, the broad discretion given to the Bureau of Prisons renders these issues unreviewable under the APA. *Harrison, supra*; *Stiley, supra*. Thus, the Arkansas allegations contained in Count VI of Christensen’s Amended Complaint fall outside the APA’s waiver, and the United States retains its sovereign immunity here. Fed. R. Civ. P. 12(b)(1). Count VI of the Amended Complaint must be dismissed with prejudice.

Conclusion

For the foregoing reasons, the United States of America, including named Defendants United States Department of Justice and the United States District Court, District Court of Columbia, respectfully requests that its Motion to Dismiss be granted and that the amended Complaint be dismissed.

Respectfully submitted,

JONATHAN D. ROSS

United States Attorney
Eastern District of Arkansas

By:



Lindsey Mitcham Lorence
Arkansas Bar No. 96183
Assistant United States Attorney
425 W. Capitol Avenue, Suite 500
Little Rock, Arkansas 72201
(501) 340-2600
lindsey.lorenc@usdoj.gov

CERTIFICATE OF SERVICE

I certify that a copy will be mailed to the following individual, United States
mail, postage prepaid, on the 16th day of May 2025:

Reed Christensen
3929 E. 20 N
Rigby, ID 83442

By:



Lindsey Mitcham Lorence