

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-22574-CIV-MARTINEZ/BROWN

AISHA GOODISON,

Plaintiff,

vs.

ROBERT S. MUELLER, FEDERAL BUREAU  
OF INVESTIGATION, DEPARTMENT OF JUSTICE,

Defendants.

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**DEFENDANTS' MOTION TO DISMISS**  
**(with incorporated memorandum of law)**

Defendants, Robert S. Mueller and the Department of Justice ("DOJ"), and its component, Federal Bureau of Investigation ("FBI"), by and through the undersigned Assistant U.S. Attorney, respectfully move for dismissal of this action and, as basis for this motion, state as follows:

Plaintiff has filed a rambling 35-page Complaint which should be dismissed for failure to comply with FED. R. CIV. P. 8(a), lack of subject-matter jurisdiction, and failure to state a claim upon which relief can be granted.<sup>1</sup> See FED. R. CIV. P. 8(a), 12(b)(6), and 12(b)(1). Additionally, at this

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<sup>1</sup> Plaintiff filed a motion to correct her Complaint [D.E. 3], which was denied without prejudice [D.E. 10]. The Court's Order denying the motion advised plaintiff that she could file an amended complaint as a matter of law without leave of court. To date, plaintiff has not filed an amended complaint. Moreover, none of the amendments/corrections which plaintiff was proposing to make, as listed in her motion, would remedy the defects which are the basis for this motion.

time, there is lack of personal jurisdiction, insufficient process, and insufficient service of process.<sup>2</sup>

See FED. R. CIV. P. 12(b)(2), (4), and (5).

**Plaintiff's Complaint should be dismissed because it fails to comply with FED. R. CIV. P. 8(a).**

Plaintiff's Complaint fails to comply with FED. R. CIV. P. 8(a)(1) and (a)(2).

FED. R. CIV. P. 8(a)(1) requires a pleading to contain "a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support."

The sole jurisdictional basis cited in plaintiff's Complaint is the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. See Complaint ¶¶ 4-5. FOIA provides subject matter jurisdiction only for the district court "to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant." 5 U.S.C. § 552(a)(4)(B). While a small portion of plaintiff's Complaint refers to agency records and seeks an injunction and release of files and records (see Complaint ¶¶ 2, 4), the overwhelming majority of plaintiff's Complaint is unrelated to any FOIA claim. Further, the Complaint is seeking relief unavailable under FOIA, including punitive and compensatory damages (see Complaint ¶ 2), for which plaintiff has stated no jurisdictional basis.

FED. R. CIV. P. 8(a)(2) requires that a pleading contain a "short and plain statement of the claim showing that the pleader is entitled to relief." See *Ashcroft v. Iqbal*, \_\_\_ U.S. \_\_\_, 129 S.Ct.

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<sup>2</sup> The arguments herein focus on grounds for dismissal other than lack of personal jurisdiction and process and service deficiencies. However, defendants assert that, to date, they have not been properly served in this action since there has been no service on the United States Attorney for the Southern District of Florida as required by FED. R. CIV. P. 4(i). According to the Court's docket, there has been no summons issued to, or return of service upon, the United States Attorney. Therefore, there is no personal jurisdiction of any of the defendants.

1937, 1949 (2009); *Magluta v. Samples*, 256 F.3d 1282, 1284 & n.3 (11<sup>th</sup> Cir. 2001).

Plaintiff's Complaint is neither short nor plain but is, instead, a rambling 35-page discourse, from which it is impossible to distill the specific claims plaintiff is making against each defendant and the facts which support those claims.

Moreover, as discussed below, the Complaint fails to state facts showing that plaintiff is entitled to relief under any statutory or constitutional provision. Even the relatively short portion of plaintiff's Complaint which attempts to state a claim for relief under FOIA is lacking in specific factual allegations necessary to show that plaintiff is entitled to relief.

**Plaintiff's Complaint should be dismissed pursuant to FED. R. CIV. P. 12(b)(6) because it fails to state a claim upon which relief can be granted.**

Plaintiff's Complaint fails to state any claim upon which relief can be granted, even under FOIA, the only statute which plaintiff cites as a jurisdictional basis for her Complaint.

Plaintiff makes the conclusory allegation that DOJ and the FBI improperly refused to release records which she tried to obtain through administrative means. Complaint ¶ 4. However, plaintiff fails to allege when she presented a FOIA request and the records requested, whether she administratively appealed any alleged adverse determination and, if so, when she appealed and whether a determination has been made on the appeal.

An agency's obligation under FOIA to make records available to a person arises only upon its receipt of a request by that person for records "which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed." See 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A). If the agency makes an adverse determination with regard to the request, the requester has an administrative right of appeal of that

determination to the head of the agency. See 5 U.S.C. § 552(a)(6)(A). Exhaustion of administrative remedies is a condition precedent to bringing a FOIA action. *Taylor v. Appleton*, 30 F.3d 1365, 1367-68 (11<sup>th</sup> Cir. 1994).

Plaintiff's Complaint fails to allege facts sufficient to show that plaintiff properly presented a FOIA request to DOJ or the FBI or that she exhausted her administrative remedies under FOIA prior to filing this action.

In addition to her FOIA claim, plaintiff asserts that she has been subjected to multiple other statutory and constitutional violations. However, most of the alleged actions which appear to constitute the basis for plaintiff's claims are those of various non-parties rather than of one or more of the defendants. The only non-FOIA statute which plaintiff appears to be contending that the FBI violated is identified as "the Civil Rights Act" (see Complaint ¶ 35). Plaintiff does not cite the Act to which she is referring.

Plaintiff's Complaint fails to state any claim against any defendant upon which relief can be granted. However, it should be noted that the Complaint is particularly deficient as to any claim of constitutional violation by defendant Mueller in his personal capacity.<sup>3</sup>

Qualified immunity shields Government officials "from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights," *Iqbal*, 129

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<sup>3</sup> It is unclear whether plaintiff is suing defendant Mueller in his official capacity or his individual capacity. Allegations of constitutional violations against federal defendants are considered *Bivens*-type action. See *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971); *Fullman v. Graddick*, 739 F.2d 553, 560 (11<sup>th</sup> Cir. 1984). *Bivens* remedies have been allowed by the Supreme Court when alternative means of obtaining redress are not available and there are no "special factors counseling hesitation." *Bivens*, 403 U.S. at 396; see also *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988).

S.Ct. at 1946-47, quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). The shield of qualified immunity constitutes both a defense to liability and a limited “entitlement not to stand trial or face the other burdens of litigation.”<sup>4</sup> *Iqbal*, quoting *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985).

Plaintiff’s allegations pertaining to defendant Mueller are the type of bare, conclusory, and implausible assertions that the Supreme Court has held to be insufficient for the purpose of stating a claim of constitutional violation against a governmental official protected by qualified immunity. *See Iqbal*, 129 U.S. at 1949-50; *see also Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1268 (11<sup>th</sup> Cir. 2009)(“unwarranted deductions of fact in a complaint are not admitted as true for the purpose of testing the sufficiency of the allegations”and “the facts as pled must state a claim for relief that is plausible on its face”)(citations omitted).

Plaintiff’s Complaint is devoid of any specific factual allegations which would indicate that defendant Mueller acted beyond the shield of qualified immunity. Plaintiff asserts that the FBI has shown “indifference” “under Robert S. Mueller’s instructions” to her various complaints. Complaint ¶¶ 2, 6. She alleges that she submitted a complaint to Mueller and that he did not respond or take appropriate measures to address her complaint. Complaint ¶ 6. There is no allegation which would indicate that Mueller was ever personally or directly involved in reviewing plaintiff’s complaint or in any action or determinations made with regard to her complaint. It is implausible to assume that Mueller, the Director of the FBI, would be directly involved in reviewing and addressing a citizen’s

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<sup>4</sup> Qualified immunity is a threshold issue which should be resolved as early in litigation as possible so as to spare the defendant from the burdens of litigation. *Saucier v. Katz*, 533 U.S. 194, 200-01 (2001); *Siegert v. Gilley*, 500 U.S. 224, 232 (1991).

complaint merely because the complaint was addressed or forwarded to him.<sup>5</sup>

Defendant Mueller cannot be held personally liable, based solely upon his official position, for the actions or inactions of his subordinates. *See Id.* at 1948-49.

In *Iqbal*, the Supreme Court rejected the notion that supervisors can be held liable for mere knowledge and acquiescence in the unconstitutional actions of their subordinates. *Id.* at 1948-49; *see also Keating v. City of Miami*, 598 F. Supp.2d 1315, 1336 (S.D. Fla. 2009) (“It is [also] well established ... that supervisory officials are not liable under § 1983 for the unconstitutional acts of their subordinates ‘on the basis of respondeat superior or vicarious liability.’”(citations omitted)).<sup>6</sup> Since vicarious liability is inapplicable to a *Bivens* case, a Government official can only be held liable for constitutional violations through his or her own actions. *Iqbal*, 129 U.S. at 1948-49; *see also Keating*, 598 F. Supp.2d at 1336-37.

Plaintiff has failed to allege actions by defendant Mueller which would be sufficient to state a claim of constitutional violation.

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<sup>5</sup> The FBI’s official website, at [www.FBI.gov/](http://www.FBI.gov/), indicates that the FBI is a federal agency with approximately 32,700 employees, a budget of approximately \$6.8 billion, and offices and operations across the nation and worldwide. The responsibility of the Director, as head of the agency, would reasonably prohibit his direct involvement in reviewing and addressing every complaint received by his office.

<sup>6</sup> Section 1983, 42 U.S.C., applies when the alleged constitutional violations were by individuals “acting under color of state law” rather than by federal officers or employees. *See Fullman v. Graddick*, 739 F.2d 553, 560-61 (11<sup>th</sup> Cir. 1984); *Rosado v. Curtis*, 885 F. Supp. 1538, 1542 (M.D. Fla. 1995), *aff’d*, 84 F3d 437 (11<sup>th</sup> Cir. 1996), *cert. denied*, 519 U.S. 1058 (1997).

**Plaintiff's Complaint should be dismissed pursuant to FED. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.**

Pursuant to 5 U.S.C. § 552(a)(4)(B), FOIA actions should properly be brought against an “agency,” which, as defined at 5 U.S.C. § 552(a)(1), includes “executive departments.” Even if plaintiff were able to state a claim under FOIA, the only proper defendant in the action would be the Department of Justice. *See Trupei v. Drug Enforcement Agency*, No. 06-1162, 2007 WL 1238867, at \*1 n.1 (D.D.C. Apr. 27, 2007); *Pri-Har v. Dep’t of Justice*, No. 04-1448, 2005 WL 3273550, at \*1 n.1 (D.D.C. Sept. 27, 2005); *Brooks v. Bureau of Prisons*, No. 04-0055, 2005 WL 623229, at \*2 (D.D.C. Mar. 17, 2005). Any FOIA claim against the FBI or Mueller should be dismissed for lack of subject matter jurisdiction.

As to any non-FOIA claims plaintiff may be attempting to make against the DOJ, the FBI, or Mueller in his official capacity, there is no subject matter jurisdiction.

“[T]he United States, as sovereign, ‘is immune from suit save as it consents to be sued . . . and the terms of its consent to be sued in any court define that court’s jurisdiction to entertain the suit.’” *Hercules Inc. v. United States*, 516 U.S. 417, 422 (1996), quoting *United States v. Testan*, 424 U.S. 392, 399 (1976), *United States v. Sherwood*, 312 U.S. 584, 586-87 (1941); *Asociacion de Empleados del Area Canalera (ASEDAC) v. Panama Canal Comm’n*, 453 F.3d 1309, 1315 (11<sup>th</sup> Cir. 2006), quoting *United States v. Mitchell*, 463 U.S. 206, 212 (1983)) (“it is axiomatic that the United States may not be sued without its consent and that the existence of consent is a prerequisite for jurisdiction.”). This immunity extends to agencies of the United States. *See ASEDAC*, 453 F.3d at 1315, citing *FDIC v. Meyer*, 510 U.S. 471, 475 (1994).

A suit against a federal employee in his official capacity also is construed as an action against the United States. *See Brown v. General Services Administration*, 425 U.S. 820, 826-27 (1976)(a suit against a federal employee is an action against the United States if the decree or judgment would operate against the government, restrain or compel governmental action or interfere with the public administration, or if the judgment would expend itself on the public treasury or domain); *State of Fla. Dep't of Business Regulation v. U.S. Dep't of the Interior*, 768 F.2d 1248, 1251-52 (11<sup>th</sup> Cir. 1985), *cert. denied*, 475 U.S. 1011 (1986)(an action is deemed to be against the United States if the relief sought requires payment of monies from the Federal Treasury, interferes with public administration, or compels or restrains the government); *Swift v. United States Border Patrol*, 578 F. Supp. 35, 37 (S.D. Tex. 1983), *aff'd*, 731 F.2d 886 (5<sup>th</sup> Cir. 1984).

Thus, designating a government agency or officer as the party-defendant does not avoid sovereign immunity; a suit which is, in essence, against the United States is barred absent consent or a waiver of sovereign immunity. *See State of Fla. Dep't of Business Regulation*, 768 F.2d at 1251; *Swift*, 578 F. Supp. at 37; *Sprouse v. Federal Prisons Industries, Inc.*, 480 F.2d 1, 3 (5<sup>th</sup> Cir. 1973), *cert. denied*, 414 U.S. 1095 (1973).

Plaintiff has asserted no statutory waiver of sovereign immunity which would allow her to bring any non-FOIA claim against the United States by suing DOJ, the FBI, or defendant Mueller in his official capacity.

The United States has not waived its immunity to suits under the civil rights statutes. *See, e.g. United States v. Timmons*, 672 F.2d 1373, 1380 (11<sup>th</sup> Cir. 1982)(referring to 42 U.S.C. §§ 1981 and 1982). Likewise, *Bivens* does not constitute a waiver of sovereign immunity by the United States with respect to constitutional claims. *See Correctional Services Corp. v. Malesko*, 534 U.S. 61, 72

(2001)( prisoner may bring a *Bivens* claim against the offending individual officer, subject to the defense of qualified immunity, but may not bring a *Bivens* claim against the offending officer's employer, the United States, or the BOP); *Laswell v. Brown*, 683 F.2d 261, 267-68 (8<sup>th</sup> Cir. 1978), *cert. denied*, 459 U.S. 1210 (1983); *Scinto v. FBI*, 608 F. Supp.2d 4, 8 (D.D.C. 2009)(*Bivens* is not a waiver of sovereign immunity against the United States).

Thus, the Court lacks subject-matter jurisdiction of any claim of constitutional violation or “Civil Right Act” violation brought against defendants DOJ, the FBI, or Mueller.

**Conclusion**

For the foregoing reasons defendants respectfully request that the Court dismiss this action.

Dated: November 19, 2009  
Miami, Florida

Respectfully submitted,

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ACTING UNITED STATES ATTORNEY

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**Certificate of Service**

I HEREBY CERTIFY that, on November 19, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and served a true and correct copy of the foregoing document by U.S. mail to:

Aisha Goodison  
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*Plaintiff, pro se*

*s/ Carole M. Fernandez*  
\_\_\_\_\_  
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