

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Wine v. Merit Systems Protection Board

No. 25-cv-03336-JCS (N.D. Cal. Oct. 7, 2025) · No. 25-cv-03336-JCS · Decided October 7, 2025

SUMMARY

The United States District Court for the Northern District of California grants defendants’ motions to dismiss Mitchell Wine’s challenge to Merit Systems Protection Board decisions and related claims. The court concludes that the challenged MSPB matters are not mixed cases subject to district-court review under 5 U.S.C. §§ 7702 and 7703, and addresses additional jurisdictional, sovereign-immunity, personal-jurisdiction, limitations, and pleading issues. The court denies Wine’s motion for declaratory and injunctive relief and denies as moot the motions for a stay and judicial action.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Joseph C. Spero
JURISDICTION	United States District Court for the Northern District of California
DECIDED	October 7, 2025
DOCKET	25-cv-03336-JCS
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff sought review of two Merit Systems Protection Board decisions and asserted related federal constitutional, civil-rights, whistleblower, and Rehabilitation Act claims. Defendants moved to dismiss under Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6); plaintiff moved for declaratory and injunctive relief. The court granted the motions to dismiss, denied plaintiff’s requested relief, and dismissed the action without prejudice.
STANDARD OF REVIEW	On Rule 12(b)(1), the plaintiff bears the burden of establishing subject matter jurisdiction; facial challenges accept complaint allegations as true, while factual challenges permit consideration of materials outside the pleadings. On Rule 12(b)(2), the plaintiff bears the burden of making a prima facie showing of personal jurisdiction when no evidentiary hearing is held. On Rule 12(b)(6), factual allegations are accepted as true and construed in the plaintiff’s favor, but conclusory allegations and formulaic recitations are insufficient.

PRECEDENTIAL VALUE	unpublished_nonprecedential
PARTIES	Mitchell Wine v. Merit Systems Protection Board, Department of the Interior, Chris Davidson, Department of Homeland Security, Adrian Henry, John Crisman, State of Arkansas

TOPICS

[motions to dismiss](#)
[subject matter jurisdiction](#)
[personal jurisdiction](#)
[sovereign immunity](#)
[federal employment law](#)

PRACTICE AREAS

[administrative law](#)
[federal employment law](#)
[civil procedure](#)
[civil rights](#)
[constitutional law](#)

QUESTIONS PRESENTED

1. Whether the district court had subject matter jurisdiction to review the MSPB decisions under the Civil Service Reform Act and the mixed-case provisions of 5 U.S.C. §§ 7702 and 7703.
2. Whether the Civil Service Reform Act preempted plaintiff's claims under 5 U.S.C. § 2302(b)(13) and (14).
3. Whether sovereign immunity barred plaintiff's constitutional, civil-rights, Rehabilitation Act, and related claims against federal agencies, federal officials sued officially, the State of Arkansas, and a state official sued officially.
4. Whether the court had personal jurisdiction over individual defendants sued in their personal capacities.
5. Whether plaintiff's claims against Crisman based on the December 2017 property entry were barred by the statute of limitations.
6. Whether plaintiff was entitled to declaratory or injunctive relief, a stay, judicial action under 18 U.S.C. § 3771, or leave to amend.

HOLDINGS

1. The court lacked subject matter jurisdiction over plaintiff's challenges to the MSPB decisions because neither administrative matter was a mixed case appealable in federal district court. An individual right of action whistleblower appeal is not a mixed case, and a challenge to enforcement or rescission of an MSPB settlement agreement is not an appealable agency action supporting mixed-case jurisdiction.
2. The Civil Service Reform Act provides an exclusive and preemptive remedial scheme for plaintiff's claims under 5 U.S.C. § 2302(b)(13) and (14), and the district court therefore lacked jurisdiction to adjudicate those claims outside the CSRA procedures.
3. Sovereign immunity barred plaintiff's claims against the federal agency defendants and against the State of Arkansas and Crisman in his official capacity. The alleged constitutional tort and § 1983 claims lacked an applicable waiver, and plaintiff did not establish an applicable exception to Eleventh Amendment immunity.

4. Plaintiff failed to establish personal jurisdiction over Davidson, Henry, and Crisman in their personal capacities because he did not show purposeful direction or purposeful availment related to California, and jurisdiction must be established separately as to each defendant.
5. Plaintiff's § 1983 and Fourth Amendment claims against Crisman based on the December 14, 2017 entry onto plaintiff's property were untimely under California's two-year limitations period.
6. Plaintiff was not entitled to declaratory or injunctive relief because he had not established subject matter jurisdiction, personal jurisdiction, or a likelihood of success on the merits. His request for judgment on the pleadings or summary judgment was also premature.
7. Dismissal without leave to amend was appropriate because amendment would be futile and plaintiff identified no amendment that could cure the jurisdictional defects.

KEY QUOTATIONS

“Subject matter jurisdiction can never be forfeited or waived and federal courts have a continuing independent obligation to determine whether subject-matter jurisdiction exists.” (at 8)

“The Court dismisses this case, in its entirety, without prejudice.” (at 21)

FACTUAL BACKGROUND

Wine worked for the Fish and Wildlife Service within the Department of the Interior until his removal or medical retirement in 2018. He challenged employment-related events and alleged that federal and Arkansas officials entered his Arkansas property in December 2017, retaliated against him for whistleblowing, and participated in misconduct involving his employment and MSPB proceedings. One MSPB matter involved a settlement agreement concerning his removal, while the other involved an individual right of action appeal based on the rejection of his application for a federal position. Wine sought review of the MSPB decisions, rescission of the settlement agreement, damages, discovery, declaratory relief, and an injunction against an Arkansas criminal proceeding.

PROCEDURAL HISTORY

Wine filed the action on April 15, 2025, and filed a first amended complaint on May 2, 2025. The amended complaint challenged MSPB decisions in an individual right of action appeal and a proceeding concerning enforcement or rescission of a settlement agreement. The court concluded that it lacked subject matter jurisdiction over the MSPB appeals and CSRA claims, that sovereign immunity barred claims against federal and state defendants in specified capacities, that personal jurisdiction was lacking over individual defendants sued personally, and that claims against Crisman were time-barred. The court dismissed the entire action without prejudice and without leave to amend.

DISPOSITION

dismissed

CASES CITED

- Leeson v. Transamerica Disability Income Plan, 671 F.3d 969, 975 n.12 (9th Cir. 2012)
- Kingman Reef Atoll Investments, LLC v. United States, 541 F.3d 1189, 1197 (9th Cir. 2008)
- White v. Lee, 227 F.3d 1214, 1242 (9th Cir. 2000)
- Miranda v. Reno, 238 F.3d 1156, 1157 n.1 (9th Cir. 2001)
- Colwell v. Department of Health & Human Services, 558 F.3d 1112, 1121 (9th Cir. 2009)
- St. Clair v. City of Chico, 880 F.2d 199, 201 (9th Cir. 1989)
- Pebble Beach Co. v. Caddy, 453 F.3d 1151, 1154 (9th Cir. 2006)
- Sher v. Johnson, 911 F.2d 1357, 1361, 1365 (9th Cir. 1990)
- Schwarzenegger v. Fred Martin Motor Co., 374 F.3d 797, 800, 802 (9th Cir. 2004)
- N. Star International v. Arizona Corporation Commission, 720 F.2d 578, 581 (9th Cir. 1983)
- Parks School of Business v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555, 562 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Crowe v. Wormuth, 74 F.4th 1011, 1022-23 (9th Cir. 2023)
- Kloeckner v. Solis, 568 U.S. 41, 44 (2012)
- Young v. Merit Systems Protection Board, 961 F.3d 1323, 1327 (Fed. Cir. 2020)
- King v. Reid, 59 F.3d 1215, 1218-19 (Fed. Cir. 1995)
- Amin v. Merit Systems Protection Board, 951 F.2d 1247, 1252 (Fed. Cir. 1991)
- Perry v. Department of the Army, 992 F.2d 1575, 1577 (Fed. Cir. 1993)
- Oja v. Department of the Army, 405 F.3d 1349, 1355 (Fed. Cir. 2005)
- Mangano v. United States, 529 F.3d 1243, 1246 (9th Cir. 2008)
- Rivera v. United States, 924 F.2d 948, 951 (9th Cir. 1991)
- United States v. Fausto, 484 U.S. 439, 455 (1988)
- United States v. Sherwood, 312 U.S. 584, 586 (1941)
- Consejo de Desarrollo Economico de Mexicali, A.C. v. United States, 482 F.3d 1157, 1173 (9th Cir. 2007)
- Lewis v. Clarke, 581 U.S. 155, 163 (2017)
- Ardalan v. McHugh, 2013 WL 6212710, at *10 (N.D. Cal. Nov. 27, 2013)
- Harris v. Holder, 885 F. Supp. 2d 390, 397 (D.D.C. 2012)
- Federal Deposit Insurance Corp. v. Meyer, 510 U.S. 471, 477 (1994)
- Jachetta v. United States, 653 F.3d 898, 908 (9th Cir. 2011)
- Barkley v. U.S. Marshals Service ex rel. Hylton, 766 F.3d 25, 34 (D.C. Cir. 2014)
- Virginia Office for Protection and Advocacy v. Stewart, 563 U.S. 247, 253-54 (2011)
- Will v. Michigan Department of State Police, 491 U.S. 58, 71 & n.10 (1989)
- Ex parte Young, 209 U.S. 123 (1908)
- Seven Up Pete Venture v. Schweitzer, 523 F.3d 948, 956 (9th Cir. 2008)
- Verizon Maryland, Inc. v. Public Service Commission of Maryland, 535 U.S. 635, 645 (2002)
- Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 296 (1997)

- Florida Department of State v. Treasure Salvors, Inc., 458 U.S. 670, 697 (1982)
- Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682, 689 (1949)
- Dole Food Co. v. Watts, 303 F.3d 1104, 1110-11 (9th Cir. 2002)
- Daimler AG v. Bauman, 571 U.S. 117, 125 (2014)
- Burger King Corp. v. Rudzewicz, Burger King Corp. v. Rudzewicz, 471 U.S. 462, 464, 476-78 (1985)
- Goodyear Dunlop Tires Operations, S.A. v. Brown, 564 U.S. 915, 919, 924 (2011)
- Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 nn. 8-9 (1984)
- Bancroft & Masters, Inc. v. Augusta National Inc., 223 F.3d 1082, 1086 (9th Cir. 2000)
- Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971)
- Daly-Murphy v. Winston, 837 F.2d 348, 355 (9th Cir. 1987)
- Wallace v. Kato, 549 U.S. 384, 387 (2007)
- Bagley v. CMC Real Estate Corp., 923 F.2d 758, 760 (9th Cir. 1991)
- Allen v. Gold Country Casino, 464 F.3d 1044, 1048 (9th Cir. 2006)
- Tyson v. ACRT Services Inc., 2024 WL 69073, at *7 (N.D. Cal. Jan. 5, 2024)
- Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir. 1995)
- Smith v. Pacific Properties and Development Corp., 358 F.3d 1097, 1101 (9th Cir. 2004)
- Frigard v. United States, 862 F.2d 201, 204 (9th Cir. 1988)

OPINION

Wine v. Merit Systems Protection Board

PER CURIAM.

1 2 3

4 UNITED STATES DISTRICT COURT

5 NORTHERN DISTRICT OF CALIFORNIA

6

MITCHELL WINE,

7 Case No. 25-cv-03336-JCS Plaintiff,

8 ORDER GRANTING DEFENDANTS’

v. MOTIONS TO DISMISS AND

9 DENYING PLAINTIFF’S MOTION

MERIT SYSTEMS PROTECTION FOR DECLARATORY AND

10 BOARD, et al., INJUNCTIVE RELIEF; AND DENYING

AS MOOT MOTION FOR STAY BY

11 Defendants. FEDERAL AGENCY DEFENDANTS

AND PLAINTIFF’S MOTION FOR

12 JUDICIAL ACTION

13 Re: Dkt. Nos. 22, 26, 29, 36, 53, 58 14

15 I. INTRODUCTION

16 Plaintiff Mitchell Wine brings this case challenging decisions of the Merit Systems 17 Protection Board (“MSPB”) and asserting related claims. Presently before the Court are three 18 motions to dismiss (collectively, “the Motions to Dismiss”): 1) a motion to dismiss by MSPB, 19 Department of the Interior (“DOI”), Chris Davidson in his official capacity, Department of 20 Homeland Security (“DHS”), and Adrian Henry in his official capacity (collectively, “the Federal 21 Agency Defendants”), dkt. no. 22 (“Federal Agency Defendants’ Motion”); 2) a motion to dismiss 22 by Defendant John Crisman, dkt. no. 26 (“Crisman Motion”); and 3) a motion to dismiss by the 23 State of Arkansas and Arkansas Governor Sarah Huckabee Sanders, dkt. no. 29 (“Arkansas 24 Motion”). In addition, Plaintiff has filed a Motion for Declaratory Judgment and Injunctive 25 Relief, dkt. no. 36 (“Declaratory Relief Motion”). The Court finds that these motions are suitable 26 for determination without a hearing and therefore vacates the October 15, 2025 hearing. For the 27 reasons stated below, the Court GRANTS the Motions to Dismiss and DENIES the Declaratory 1 Relief Motion.¹ Because the Court’s rulings on these motions render moot the administrative 2 motion by the Federal Agency Defendants to stay this case pending the government shutdown and 3 Plaintiff’s motion for judicial action pursuant to 18 U.S.C. § 3771, those motions are DENIED.

4 II. BACKGROUND

5 A. The Complaint 6 Plaintiff filed this case on April 15, 2025, seeking review of a final decision of the MSPB 7 in case number DA-0752- 18-0116-C-5 (“the 116 Case”). Dkt. no. 1, Compl. at ECF p. 1. On

8 May 2, 2025, Plaintiff filed a first amended complaint (“FAC”) seeking review of a different 9 MSPB decision, in case number DA-1221-24-0451-W-1 (“the 451 Case”). Dkt. no. 6, FAC at ECF 10 p. 1. In the FAC, Plaintiff sues the MSPB; DOI and DOI Supervisor Chris Davidson in his 11 “personal and professional capacities”; DHS and DHS Officer Adrian Henry in his “personal and 12 professional capacities”; and the State of Arkansas and state official John Crisman in his “personal 13 and professional capacities.” A summons attached to Plaintiff’s “Proof of Service,” dkt. no. 8, also 14 lists Arkansas Governor Sarah Sanders as a defendant. Dkt. no. 8 at ECF p. 10. 15 In violation of the Court’s local rules, Plaintiff purports to incorporate by reference the 16 original complaint into the FAC. FAC at ECF p. 2 (“Plaintiff adopts herein by reference his 17 original petition for review filed in this matter and brings forth that petition and its exhibits as if 18 pled in this complaint.”); Civ.LR. 10-1 (“Any party filing or moving to file an amended pleading 19 must reproduce the entire proposed pleading and may not incorporate any part of a prior pleading 20 by reference.”). He also requests that the Court “take judicial notice of Plaintiff case 23-cv-00158- 21 JEB in the U.S. District Court for the District of Columbia for additional factual background 22 information.” Id. 23 Plaintiff alleges in the FAC that he was “employed by Defendant Department of the 24 Interior as a wildlife biologist from May 2003 to April 2018 and the agency attempted to 25 unlawfully terminate [him] for his legitimate disclosures of waste, fraud, and abuse in December 26 2017.” FAC ¶ 2. According to Plaintiff, “[o]n December 14,

2017, Defendants Adrian Henry and 27 1 John Crisman disassembled Plaintiff's privacy gate at the entrance to Plaintiff's property in Stone 2 County, Arkansas to gain unlawful access to Plaintiff's residence and most recent telework duty 3 station in his former duties as a biologist for the U.S. Fish and Wildlife Service." Id. ¶ 3. Plaintiff 4 alleges that he "was an adjudicated whistleblower at that time, and both Henry and Crisman were 5 acting at the behest of Defendant Chris Davidson as well as unnamed managers for Defendant 6 Department of the Interior who were advising Davidson." Id. ¶ 4. Plaintiff alleges that the 7 "unlawful entry" into his home was a "violation of 5 U.S.C. 2302(b)(14) as Defendants had 8 accessed Plaintiff's medical records prior to the breaking and entering of Plaintiff's property and 9 knew such an action would threaten life and property as was indeed the case." Id. ¶ 5. He alleges 10 that his "life was threatened," that his dog was "almost shot" and that the entry was without a 11 warrant, probable cause or invitation. Id. ¶ 6. 12 According to Plaintiff, "Defendant MSPB conspired with other named Defendants to 13 coerce Plaintiff into a 2018 settlement agreement [in the 116 Case] that forced Plaintiff into 14 medical retirement by disallowing discovery of email documents detailing planning aspects of the 15 2017 break-in at Plaintiff's property." Id. ¶ 7. Plaintiff alleges that DOI's "own agency-approved 16 health professional informed the agency its actions related to the felonious armed home invasion 17 and defiance of her reasonable accommodation requests were contrary to her recommendations 18 and were causing severe harm to Plaintiff." Id. ¶ 8. He further alleges that "[r]ather than use the 19 aforementioned medical information to ensure a healthy workplace environment for Plaintiff, 20 Defendants conspired to terminate Plaintiff from his duties due to a medical condition they 21 purposely induced and inflicted upon Plaintiff in reprisal and with malice aforethought." Id. ¶ 9. 22 Plaintiff alleges that "Defendant MSPB final decision in [the 451 Case] lacks legitimacy 23 given the facts of this case and the fact the MSPB has actively engaged in conspiracy with other 24 named Defendants to facilitate malicious prosecution of Plaintiff and unlawful imprisonment in an 25 Arkansas state prison." Id. ¶ 11. 26 Plaintiff alleges that "[t]he MSPB is allowing other Defendants to use the 2018 settlement 27 agreement as a non-disclosure agreement regarding violations of law by Defendants prior to 1 medical condition(s) to preclude reinstatement to duty with the agency." Id. ¶ 12. 2 Plaintiff alleges that "[t]he state of Arkansas is conspiring with other Defendants to ensure 3 Plaintiff cannot access information described herein so that they may continue to maliciously 4 prosecute Plaintiff for disclosing waste, fraud, and abuse within federally funded state projects." 5 Id. ¶ 13. 6 Plaintiff requests that in this action, the Court "rescind the 2018 settlement agreement 7 between the parties of the agreement, allow full discovery, and conduct a jury trial regarding 8 Plaintiff's removal from his previous duties as a federal biologist, the legality of the 2018 9 settlement agreement, and the malicious prosecution described herein." Id. ¶ 14. "Alternatively, 10 Plaintiff requests the case be remanded to the MSPB for a hearing following full discovery of 11 documents presented as part this complaint and previous filings." 12 Id. Plaintiff alleges that he 12 "cannot obtain a fair hearing at the MSPB or within any Arkansas court as a result of the criminal 13 conspiracy detailed herein." Id. ¶ 16.

Plaintiff seeks damages, including “all costs of bringing this 14 action” and requests “an addendum hearing to determine any further compensatory, consequential, 15 and/or punitive damages” Id. ¶ 15. 16 The FAC does not enumerate the specific claims Plaintiff seeks to assert or identify which 17 defendants are named on any particular claim. However, Plaintiff invokes federal jurisdiction “in 18 accordance with 5 U.S.C. § 7703(b)(2), 5 U.S.C.2302(b)(13) and (14), 18 U.S.C. [§§] 241 and 19 242, 42 U.S.C. [§] 1983, Section 501 of the Rehabilitation Act (29 U.S.C [§]791) and the Fourth 20 Amendment of the Constitution in conjunction with a directly appealable action (suitability action) 21 as part of the MSPB appeal for which review is sought.” Id. at ECF p. 2. 22 B. D.C. Circuit Court Memorandum Opinion 23 Plaintiff has asked the Court to take judicial notice of case 23-cv-00158-JEB in the U.S. 24 District Court for the District of Columbia (“the D.C. action”)3 “for additional factual background 25 2 Numerous documents are attached to Plaintiff’s original complaint, including what appear to be 26 email communications produced in response to a Freedom of Information Act (“FOIA”) request, with redactions. 27 3Although the Court refers to this case as “the D.C. Action” for convenience, it should be noted 1 information.” FAC ¶ 1. In that case, Wine asserted claims that substantially overlap with the 2 claims he asserts in this case. On July 17, 2024, the Court issued a Memorandum Opinion 3 summarizing the underlying facts of the case. 4 Dkt. no. 10-3 (“Memorandum”). The court’s 4 summary of the factual background states as follows: 5 Between early 2003 and April 2018, Wine was employed as a biologist at the Fish and Wildlife Service within the Department of 6 Interior. See ECF No. 1 (Compl.), ¶¶ 2, 22. At some point during his tenure, he learned that Interior had (in his view) unlawfully permitted 7 a hog farm in the Buffalo National River Watershed of Arkansas despite risks to the environment and human safety. Id., ¶¶ 9, 22. After 8 making his concerns known to the Office of Special Counsel, Plaintiff was “forced into medical retirement.” Id., ¶¶ 10, 22. On December 9 14, 2017, just a few months prior to that untimely exit, federal and state officials — namely, Federal Protective Service Officer Adrian 10 Henry and Arkansas Game and Fish Commission Officer John Crisman— entered uninvited onto Wine’s private property in 11 Arkansas to retrieve government-owned computer equipment that he had refused to relinquish. Id., ¶¶ 2–3, 5–8. 12 These events spawned three prior lawsuits in the Federal Circuit and 13 our federal district court based on a range of grievances — including allegations of whistleblower retaliation by OSC and Interior’s 14 purportedly unsatisfactory response to his Freedom of Information Act request for records related to the December 2017 entry onto his 15 property. See *Wine v. Merit Systems Protection Board*, 815 F. App’x 518, 518 (Fed. Cir. 2020); *In re Wine*, 820 F. App’x 1025, 1026 (Fed. 16 Cir. 2020); *Wine v. Dep’t of Interior*, 2022 WL 3715799 (D.D.C. Aug. 29, 2022). In the instant action, which commenced in January 2023, 17 Plaintiff claims that that very intrusion violated the Fourth Amendment, federal civil-rights statutes (18 U.S.C. §§ 241, 242), and 18 an Arkansas criminal-trespassing law (Arkansas Code § 5-39-203). Id., ¶¶ 28–46. 19 20 Memorandum at 2.

21 The Court in that case dismissed all of Plaintiff's claims for lack of jurisdiction, finding, 22
inter alia, that Plaintiff's claims against the State of Arkansas, DHS and DOI were barred under 23
the doctrine of sovereign immunity; that his claims against Crisman, Davidson and Henry were 24
also barred under the doctrine of sovereign immunity to the extent they were sued in their official
25 claim challenging DOI's response to his FOIA request related to the 2017 alleged unlawful
entry 26 into his home based on failure to exhaust; it also dismissed a claim under the Civil
Service Reform Act on the basis that it was moot. See *Wine v. Dep't of the Interior*, No. 1:21-CV-
03349 (TNM), 27 2022 WL 17668791, at *2 (D.D.C. Dec. 14, 2022). 1 capacities; and that the
court did not have personal jurisdiction over any of the individual 2 defendants to the extent they
were sued in their personal capacities. The MSPB was not named as 3 a defendant in the D.C.
Action. The court in that case observed that the defendants had presented 4 "a veritable
smorgasbord of defenses to Plaintiff's suit" but that it would address "only a selection 5 of the
most obvious and dispositive arguments." Memorandum at 4. 6 C. Administrative Proceedings 7
Plaintiff has engaged in extensive litigation related to the underlying events in this case, 8
including administrative proceedings before the MSPB and court cases in the D.C. District Court,
9 the Federal Circuit and Arkansas State Court. The Court provides here only a brief summary of
10 the proceedings relevant to Plaintiff's allegations, drawn from summaries contained in the two
11 MSPB decisions Plaintiff challenges in this case, the 116 Case, *dkt. no. 22-3* (Feb. 5, 2025
MSPB 12 Decision ("Feb. 5 Dec.")) and the 451 Case, *dkt. no. 22-4* (Mar. 7, 2025 MSPB Decision
("Mar. 7 13 Dec.")). 14 Plaintiff worked for the Fish and Wildlife Service ("FWS") between July
2003 and April 15 2018. Mar. 7 Dec. at 2. On November 9, 2017, DOI proposed to remove
Plaintiff from his 16 position. Feb. 5 Dec. at 2. On December 8, 2017, DOI implemented the
removal. Feb. 5 Dec. at 17 2. On December 18, 2017, Plaintiff timely appealed the removal by
initiating the 116 Case before 18 the MSPB. *Id.* (citing *Wine v. Department of the Interior*, MSPB
Docket No. DA-0752-18-0116-I- 19 1). With the assistance of a settlement judge, the parties
entered into a settlement agreement in the 20 116 Case and submitted a Joint Motion to Cancel the
Hearing, which included the fully executed 21 settlement agreement that was to be effective April
27, 2017. *Id.* The administrative judge 22 therefore dismissed the appeal in the 116 Case on the
basis that the case was settled. *Id.* 23 Subsequently, Plaintiff filed numerous petitions for
enforcement of the settlement agreement in 24 the 116 Case and asserted in some of the later
petitions that the settlement agreement should be 25 rescinded because it was coerced. Feb. 5,
2025 Dec. at 2-4, 11-12. Plaintiff's requests to rescind 26 the settlement agreement were rejected.
Id. at 11-12.

27 The 451 Case involved a complaint related to DOI's rejection of Plaintiff's application for
1 docketed as an individual right of action ("IRA") appeal. *Id.* at 1. Plaintiff claimed that he was 2
rejected for the position due to his prior whistleblowing complaint. *Id.* at 9. Following a hearing, 3
the administrative judge ultimately dismissed the case as a sanction, finding that Plaintiff had 4
engaged in various forms of improper conduct during the course of the proceedings and that his 5

application for the FWS position was not “not a good faith application for a job that he would be 6 ready, willing, and able to perform if selected” but was, instead, a bad faith attempt to use the 7 litigation process to “obtain discovery of redacted materials related to the 2017 alleged home 8 invasion, despite repeatedly raising this issue in other Board appeals and in District Court.” Id. at 9 14-16. 10 D. Pending Motions 11 1. Federal Defendants’ Motion 12 The Federal Defendants contend this Court lacks subject matter jurisdiction over Plaintiff’s 13 challenges to the MSPB’s decisions in the 611 and 451 Cases under 5 U.S.C. § 7703 because 14 neither was a “mixed case” involving “ ‘an action which the employee or applicant may appeal to 15 the [MSPB]’ and an allegation ‘that a basis for the action was discrimination prohibited by’ 16 enumerated federal antidiscrimination statutes.” Agency Defendants’ Motion at 7-10. They 17 further assert that the Civil Service Reform Act (“CSRA”) preempts Plaintiff’s claims under 5 18 U.S.C. §§ 2302(b)(13) and (b)(14), thus depriving the Court of subject matter jurisdiction over 19 those claims. Id. at 10-11. Defendants argue that the doctrine of sovereign immunity also bars all 20 of Plaintiff’s claims against MSPB, DOI and DHS, as well as all of his official-capacity claims 21 against Davidson and Henry. Id. at 11-12. Finally, Defendants argues that this Court lacks 22 personal jurisdiction over Davidson and Henry and therefore, that Plaintiff’s personal capacity 23 claims against those defendants must also be dismissed. 24 2. Crisman Motion 25 Defendant Crisman is a former employee of the Arkansas State Game and Fish 26 Commission. Crisman Motion at 1. He asserts that Plaintiff’s claims should be dismissed with 27 prejudice based on lack of personal jurisdiction and, to the extent Plaintiff sues him in his official 1 Plaintiff’s fails to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure 2 because the allegedly unlawful entry onto his property was in 2017 and therefore, any claim based 3 on violation of his constitutional rights is barred by the applicable statute of limitations. Id. at 7. 4 In any event, Crisman asserts, Plaintiff’s allegations are not sufficient to establish that his 5 constitutional rights were violated because he alleges only that Crisman entered the curtilage of his 6 home. Id. at 7-8. Finally, Crisman argues that the claims against him should be dismissed under 7 the doctrine of forum non conveniens. Id. at 8-9. 8 3. Arkansas Motion 9 In the Arkansas Motion, Defendants assert, as a preliminary matter, that Governor Sarah 10 Sanders was not named as a defendant in the operative complaint and therefore, she should be 11 dismissed on that basis. Arkansas Motion at 4 n. 3. They further assert that Plaintiff’s claims 12 against the State of Arkansas and Governor Sanders (assuming she is properly named as a 13 defendant in this case) should be dismissed for lack of personal jurisdiction and under the doctrine 14 of sovereign immunity. Id. at 4-7. Defendants further assert that any claims against Sanders and 15 the State of Arkansas are time-barred and that Plaintiff fails to state any viable claim against them.

16 Id. at 7-8. Finally, they argue the claims against them should be dismissed under the doctrine of 17 forum non conveniens. 18 4. Declaratory Relief Motion 19 Plaintiff brings a motion seeking declaratory judgment that: 1) “Plaintiff’s administrative 20 remedies with the Office of Special Counsel (OSC) are precluded into perpetuity based on 21 indisputable material evidence provided

to this court; and 2) “material evidence of record 22 demonstrates that Defendant actions are directly related to and responsible for Plaintiff’s medical 23 condition(s).” Declaratory Relief Motion, ¶¶ 1, 5. He also seeks “injunctive relief in the form of a 24 court order ceasing the criminal prosecution of Plaintiff in Pulaski County Arkansas case LRCR- 25 25-3362,” where Plaintiff alleges he “is being maliciously prosecuted by Defendant State of 26 Arkansas in a case that is underlain by a parent case that was unlawfully transferred from district 27 to circuit court, and which is being used to deter and/or prevent the instant proceeding.” Id. ¶ 6. 1 to assert jurisdiction but reminds the court that this tribunal is the only forum of proper jurisdiction 2 given all material facts.” Id. ¶ 13.

3 III. ANALYSIS

4 A. Motions to Dismiss 5 1. Legal Standards Under Rule 12(b)(1) 6 Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, a district court must 7 dismiss an action if it lacks jurisdiction over the subject matter of the suit. See Fed. R. Civ. P. 8 12(b)(1). “Subject matter jurisdiction can never be forfeited or waived and federal courts have a 9 continuing independent obligation to determine whether subject-matter jurisdiction exists.” 10 *Leeson v. Transamerica Disability Income Plan*, 671 F.3d 969, 975 n.12 (9th Cir. 2012) (internal 11 quotation marks and citations omitted). On a motion to dismiss for lack of subject matter 12 jurisdiction under Rule 12(b)(1), it is the plaintiff’s burden to establish the existence of subject 13 matter jurisdiction. *Kingman Reef Atoll Invs., LLC v. United States*, 541 F.3d 1189, 1197 (9th Cir. 14 2008). 15 A party challenging the court’s subject matter jurisdiction under Rule 12(b)(1) may bring a 16 facial challenge or a factual challenge. See *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000). In 17 evaluating a facial challenge to subject matter jurisdiction, the court accepts the factual allegations 18 in the complaint as true. See *Miranda v. Reno*, 238 F.3d 1156, 1157 n.1 (9th Cir. 2001). Where a 19 defendant brings a factual challenge, on the other hand, “a court may look beyond the complaint to 20 matters of public record without having to convert the motion into one for summary judgment.” 21 *White*, 227 F.3d at 1242 (citation omitted). Once the moving party has made a factual challenge 22 by offering affidavits or other evidence to dispute the allegations in the complaint, the party 23 opposing the motion must “present affidavits or any other evidence necessary to satisfy its burden 24 of establishing that the court, in fact, possesses subject matter jurisdiction.” *Colwell v. Dep’t of 25 Health & Human Servs.*, 558 F.3d 1112, 1121 (9th Cir. 2009) (quoting *St. Clair v. City of Chico*, 26 880 F.2d 199, 201 (9th Cir. 1989)). 27 2. Legal Standards Under Rule 12(b)(2) 1 Procedure for lack of personal jurisdiction. “When a defendant moves to dismiss for lack of 2 personal jurisdiction, the plaintiff bears the burden of demonstrating that the court has jurisdiction 3 over the defendant.” *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). “Where, 4 as here, the motion is based on written materials rather than an evidentiary hearing, ‘the plaintiff 5 need only make a prima facie showing of jurisdictional facts.’” Id. (quoting *Sher v. Johnson*, 911 6 F.3d 1357, 1361 (9th Cir.1990)). “Although the plaintiff ‘cannot simply rest on the bare 7 allegations of its complaint,’ ... uncontroverted allegations in the

complaint must be taken as true.” *Schwarzenegger v. Fred Motor Corp.*, 374 F.3d 797, 800 (9th Cir. 1998) (quoting *Amba 9 Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir.1977)). favor.” 10 3. Legal Standards Under Rule 12(b)(6) 11 A complaint may be dismissed under Rule 12(b)(6) of the Federal Rules of Civil Procedure 12 for failure to state a claim on which relief can be granted. “The purpose of a motion to dismiss 13 under Rule 12(b)(6) is to test the legal sufficiency of the complaint.” *N. Star Int’l v. Ariz. Corp.* 14 Comm’n, 720 F.2d 578, 581 (9th Cir. 1983). Generally, a plaintiff’s burden at the pleading stage 15 is relatively light. Rule 8(a) of the Federal Rules of Civil Procedure states that a “pleading which 16 sets forth a claim for relief . . . shall contain . . . a short and plain statement of the claim showing 17 that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a). 18 In ruling on a motion to dismiss under Rule 12(b)(6), the court analyzes the complaint and 19 takes “all allegations of material fact as true and construe[s] them in the light most favorable to the 20 non-moving party.” *Parks Sch. of Bus. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995). A 21 complaint must “contain either direct or inferential allegations respecting all the material elements 22 necessary to sustain recovery under some viable legal theory.” *Bell Atl. Corp. v. Twombly*, 550 23 U.S. 544, 562 (2007) (citing *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 24 1984)). “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements 25 of a cause of action will not do.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 26 550 U.S. at 555). Rather, the claim must be “‘plausible on its face,’” meaning that the plaintiff 27 must plead sufficient factual allegations to “allow[] the court to draw the reasonable inference that

4. Whether this Court has Subject Matter Jurisdiction over Plaintiff’s MSPB

1 Appeals 2 The administrative regime that governs workplace protections for federal employees is

3 “highly complicated.” *Crowe v. Wormuth*, 74 F.4th 1011, 1022 (9th Cir. 2023). The Court does 4 not attempt to provide a comprehensive description of that regime but instead describes only the 5 aspects of it that are necessary to address Defendants’ challenges to subject matter jurisdiction in 6 this case. 7 The CSRA, 5 U.S.C. §§ 1101 et seq., “establishes a framework for evaluating personnel 8 actions taken against federal employees . . . [that] provides graduated procedural protections 9 depending on an action’s severity.” *Kloeckner v. Solis*, 568 U.S. 41, 44 (2012). For major 10 personnel actions, such as removal, an employee is entitled to appeal the agency’s decision 11 directly to the MSPB. 5 U.S.C. §§ 7512, 7513(d)). In general, if the employee does not prevail 12 before the MSPB, an appeal may be taken only to the United States Court of Appeals for the 13 Federal Circuit. 5 U.S.C. § 7703(b)(1)(A). There is an exception, however, when the employee 14 files a “mixed case complaint,” that is, “ ‘a complaint of employment discrimination filed with a 15 federal agency based on race, color, religion, sex, national origin, age, disability, or genetic 16 information related to or stemming from an action that can be appealed to the Merit Systems 17 Protection Board (MSPB).’ ” *Crowe*, 74 F.3d at 1023 (quoting 29 C.F.R. § 1614.302(a) (1)); see 18 also 5 U.S.C. § 7702(a)(1)(A) & (B) (providing that a mixed case is “an action which

the 19 employee or applicant may appeal to the [MSPB],” and that also includes an allegation that a basis 20 for the action was prohibited discrimination). In that case, an employee’s appeal must be filed in 21 federal district court. 5 U.S.C. §§ 7702(a)(1), 7703(b)(2). 22 To challenge less serious personnel actions categorized as “prohibited personnel 23 practices,” the employee must first file a complaint in the Office of Special Counsel (“OSC”) 24 before proceeding to the MSPB. 5 U.S.C. § 1214(a)(3). However, where the complaint alleges a 25 violation of the Whistleblower Protection Act (“WPA”), 5 U.S.C. § 1221, the employee may “seek 26 corrective action from the [MSPB]” via an IRA appeal even if the OSC does not act on a 27 complaint. 5 U.S.C. § 1221(a). The employee is then entitled to seek judicial review of the 1 competent jurisdiction.” 5 U.S.C. § 7703(b)(1)(B). 2 Here, neither of the administrative actions that are the subject of Plaintiff’s appeal is a 3 mixed case. As Plaintiff concedes in his Opposition, dkt. no. 24 ¶ 5, the 451 Case was docketed as 4 an IRA appeal. As a matter of law, an IRA whistleblower case cannot be a mixed case because in 5 such a case the MSPB’s “review is limited to the merits of allegations of violations of the 6 Whistleblower Protection Act. Discrimination claims may not be raised in that context.” *Young v. 7 Merit Sys. Prot. Bd.*, 961 F.3d 1323, 1327 (Fed. Cir. 2020) (citing 5 C.F.R. § 1209.2(c)). 8 Moreover, in the 451 Case, Plaintiff alleged that he was denied the DOI position due his 9 whistleblowing activity and not based on discrimination on the basis of race; color; religion; sex; 10 national origin; disability; age; genetic information; or pregnancy, childbirth, or related medical 11 conditions. Therefore, to the extent he seeks to appeal the decision in that case, this Court does not 12 have jurisdiction over his appeal. 13 Likewise, the 116 Case is not a mixed case and therefore cannot be appealed to this Court. 14 One of the requirements of a mixed case is that the action is one that the employee or applicant 15 may appeal to the MSPB. 5 U.S.C. § 7702(a)(1) (A). However, “breach of a settlement agreement 16 by the government it is not one of those agency actions described as being appealable to the 17 [MSPB]. It is not, therefore, an action described in 5 U.S.C. § 7702(a)(1)(A) which will support a 18 mixed case.” *King v. Reid*, 59 F.3d 1215, 1218 (Fed. Cir. 1995). In *King*, the court explained: 19 [The MSPB’s] jurisdiction over appealable actions is limited to those set out in a law, rule, or regulation. 5 U.S.C. § 1204(a)(1). Although 20 employees may petition the [MSPB] to exercise its preexisting jurisdiction to enforce settlement agreements already entered into the 21 record, the [MSPB] is not then acting under its § 1204(a)(1) authority. See *Amin v. Merit Sys. Protection Bd.*, 951 F.2d 1247, 1252 22 (Fed.Cir.1991) (distinguishing between appeals that are resolved by settlements and later filed petitions to enforce the settlements, but 23 recognizing the petitions may raise issues intertwined with the merits of the original appeal); see also *Perry v. Department of Army*, 992 24 F.2d 1575, 1577 (Fed.Cir.1993). Once a settlement agreement has been entered into the record, the original appealable action is 25 withdrawn or dismissed. The [MSPB] retains jurisdiction over a settlement agreement made part of the record pursuant to its power 26 under 5 U.S.C. § 1204(a)(2) to enter and enforce its own orders.

27 *Id.* at 1218. Thus, even if the agency’s noncompliance with the settlement agreement is alleged

to

1 action. *Id.* at 1219. Rather, the MSPB may only address whether the agency breached the 2
settlement agreement and therefore violated the MSPB's Order. *Id.*; see also *Oja v. Dep't of Army*,
3 405 F.3d 1349, 1355 (Fed. Cir. 2005) ("Our law on this issue is clear. '[A] claim of
discrimination 4 contained in a petition to enforce a settlement agreement does not give rise to
mixed case status.' 5 . . . This is so because a breach by the agency is not an action appealable to
the Board pursuant to 6 U.S.C. § 1204(a)(1) and is therefore not an action described in 7 U.S.C.
§ 7702(a)(1)(A) as [is] 8 needed to support a mixed case.") (citing *King*, 59 F.3d at 1218). Thus,
because Plaintiff's appeal 9 of the 116 Case involves a challenge to the validity of the settlement
agreement in that case, 10 Plaintiff's appeal cannot be a mixed case. 11 In sum, because the
administrative decisions by the MSPB that Plaintiff challenges are not 12 mixed cases, the Court
finds, as a matter of law, that this Court does not have jurisdiction over 13 Plaintiff's appeal of
those decisions. 14 5. Whether this Court has Subject Matter Jurisdiction Over Plaintiff's CSRA
Claims 15 Plaintiff alleges that Defendants violated 5 U.S.C. § 2302(b)(14), a subsection of the 16
provision of the CSRA that enumerates "prohibited personnel practices," on the basis that they 17
"accessed Plaintiff's medical records prior to the breaking and entering of Plaintiff's property" in
18 December 2017. FAC ¶ 5; see also *id.* at ECF p. 2 (invoking 5 U.S.C. § 2302(b)(13) and (14) in
19 support of federal jurisdiction). However, the remedial scheme established under the CSRA is
20 "both exclusive and preemptive because 'permit[ting] FTCA claims to supplant the CSRA's 21
remedial scheme' would defeat Congress' purpose of creating 'a single system of procedures and
22 remedies, subject to judicial review.'" *Mangano v. United States*, 529 F.3d 1243, 1246 (9th Cir.
23 2008) (quoting *Rivera v. United States*, 924 F.2d 948, 951 (9th Cir. 1991)). Thus, "where 24
Congress has provided a process for processing prohibited personnel practices, other potential
employee remedies are preempted." *Id.* (citing *United States v. Fausto*, 484 U.S. 439, 455 25
(1988)).

26 To the extent that Plaintiff asserts that Defendants violated Section 2302(b)(13) and (14), 27 he
is limited to the procedures set forth in the CSRA, such as filing a complaint with OSC under 5 1
U.S.C. § 1214. As discussed above, because Plaintiff does not bring a mixed case, the CSRA 2
does not provide for jurisdiction in this Court over Plaintiff's claims. 3 The letter that Plaintiff has
submitted reflecting that OSC may have refused to hear any 4 further complaints from Plaintiff
does not change the Court's conclusion. See *dk.* no. 24 at ECF 5 p. 7. The Ninth Circuit held in
Mangano that "a federal employee's personnel-related complaints 6 are preempted 'even if no
remedy [is] available . . . under the CSRA.'" 529 F.3d at 1246 (quoting 7 *Collins v. Bender*, 195
F.3d 1076, 1079 (9th Cir.1999)). Thus, Plaintiff's claim under the CSRA 8 may not be adjudicated
by this Court. 9 6. Whether Sovereign Immunity Bars Claims Against Federal Agency Defendants
10 Under the doctrine of sovereign immunity, "[t]he United States, as sovereign, is immune 11
from suit save as it consents to be sued." *United States v. Sherwood*, 312 U.S. 584, 586 (1941). 12
"[C]onsent may not be implied but must be 'unequivocally expressed.'" *Consejo de Desarrollo* 13

Economico de Mexicali, A.C. v. United States, 482 F.3d 1157, 1173 (9th Cir. 2007). “In an official-capacity claim, the relief sought is only nominally against the official and in fact is against the official’s office and thus the sovereign itself.” *Lewis v. Clarke*, 581 U.S. 155, 163 (2017). Thus, sovereign immunity protects not only government agencies but also federal employees acting in their official capacities for those agencies. *Id.* The United States has not waived its sovereign immunity for constitutional tort claims. *Ardalan v. McHugh*, No. 13-CV-01138-LHK, 2013 WL 6212710, at *10 (N.D. Cal. Nov. 27, 2013) (citing *Consejo de Desarrollo Economico de Mexicali, A.C.*, 482 F.3d at 1173); see also *Harris v. Holder*, 885 F. Supp. 2d 390, 397 (D.D.C. 2012) (“The United States has not waived its sovereign immunity for constitutional tort claims. . . . In addition, sovereign immunity extends to governmental agencies . . . and to their employees where such employees are sued in their official capacities) (citing *Fed. Deposit Ins. Corp. v. Meyer*, 510 U.S. 471, 477 (1994) (stating that sovereign immunity precludes damage claims against the United States government for constitutional violations brought under the Federal Tort Claims Act)). Furthermore, the Ninth Circuit has held that sovereign immunity bars claims against federal agencies under 42 U.S.C. § 1983. *Jachetta v. United States*, 653 F.3d 898, 908 (9th Cir. 2011) (“We find no evidence in either statute that Congress intended to subject federal agencies to § 1983 and § 1985 liability.”) Thus, to the extent Plaintiff asserts claims based on alleged violation of his Fourth Amendment rights, those claims are barred as to the Federal Agency Defendants under the doctrine of sovereign immunity.^{5 6} Sovereign immunity also bars Plaintiff’s claims against the Agency Defendants under the Rehabilitation Act. To sue under the Rehabilitation Act, an individual must first exhaust their administrative remedies by bringing their claim before the employing agency itself – here, DOI. *Barkley v. U.S. Marshals Serv. ex rel. Hylton*, 766 F.3d 25, 34 (D.C. Cir. 2014); 29 U.S.C. § 10794a(a)(1). Because the exhaustion requirement is a condition on the federal government’s waiver of sovereign immunity, it requires strict adherence. *Barkley*, 766 F.3d at 34. Here, Plaintiff has not alleged that he raised any Rehabilitation Act claim before DOI and therefore this Court lacks jurisdiction over that claim. See *Wine v. Dep’t of the Interior*, No. 1:21-CV-3349 (TNM), 2022 WL 3715799, at *5 (D.D.C. Aug. 29, 2022) (dismissing Rehabilitation Act claim for failure to exhaust administrative remedies). Accordingly, the Court finds that it lacks subject matter jurisdiction over all of Plaintiff’s claims against the Federal Agency Defendants.

7. Whether Sovereign Immunity Bars Claims Against Sanders and Crisman in their Official Capacities and the State of Arkansas

As a preliminary matter, the Court finds that Sarah Sanders was not named as a defendant in either the original complaint or the amended complaint. Accordingly, she is not now and never has been a defendant in this case. This issue was raised in the Arkansas Motion and Plaintiff did not argue in his Opposition brief that he intended to name Sanders as a Defendant. Therefore, the Court need not address the arguments in the Arkansas Motion as they relate to Sanders. As to the State of Arkansas and Crisman in his official capacity, the Court finds Plaintiff’s claims are barred.

⁵ Plaintiff also may be asserting claims under 18 U.S.C.

§§ 241 and 242 against the Agency Defendants. However, these are criminal statutes and do not give rise to a private cause of action. 27 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (“We affirm the dismissal of 1 under the doctrine of sovereign immunity. 2 The Supreme Court has “understood the Eleventh Amendment to confirm the structural 3 understanding that States entered the Union with their sovereign immunity intact, unlimited by Article 4 III’s jurisdictional grant.” *Virginia Off. for Prot. & Advoc. v. Stewart*, 563 U.S. 247, 253 (2011). 5 Therefore, “absent waiver” by a state itself, or “valid abrogation” by Congress, “federal courts may not 6 entertain a private person’s suit against a State.” *Id.* at 254. The same principles apply to state officials 7 sued in their official capacity for monetary damages. See *Will v. Michigan Dep’t of State Police*, 491 8 U.S. 58, 71 & n.10 (1989) (“[A] suit [for damages] against a state official in his or her official capacity 9 . . . is no different from a suit against the State itself.”). 10 There are two exceptions to this doctrine. First, under *Ex parte Young*, 209 U.S. 123 11 (1908), a plaintiff may maintain a suit for prospective relief against a state official in their official 12 capacity, when that suit seeks to correct an ongoing violation of the Constitution or federal law. 13 See *Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 956 (9th Cir. 2008). “In determining 14 whether the doctrine of *Ex parte Young* avoids an Eleventh Amendment bar to suit, a court need 15 only conduct a ‘straightforward inquiry into whether [the] complaint alleges an ongoing violation 16 of federal law and seeks relief properly characterized as prospective.’ ” *Verizon Maryland, Inc. v. 17 Pub. Serv. Comm’n of Maryland*, 535 U.S. 635, 645 (2002) (quoting *Idaho v. Coeur d’Alene Tribe 18 of Idaho*, 521 U.S. 261, 296 (1997)). 19 Second, under the *ultra vires* doctrine, the Eleventh Amendment does not apply to conduct 20 by a state official that is “undertaken without any authority whatever” where the plaintiff seeks 21 “specific relief” rather than monetary compensation. *Fla. Dep’t of State v. Treasure Salvors, Inc.*, 22 458 U.S. 670, 697 (1982); *Larson v. Domestic & Foreign Com. Corp.*, 337 U.S. 682, 689 (1949) 23 (“There may be, of course, suits for specific relief against officers of the sovereign which are not 24 suits against the sovereign. . . . [W]here the officer’s powers are limited by statute, his actions 25 beyond those limitations are considered individual and not sovereign actions. The officer is not 26 doing the business which the sovereign has empowered him to do or he is doing it in a way which 27 the sovereign has forbidden. His actions are *ultra vires* his authority and therefore may be made 1 Here, it appears that Plaintiff seeks to invoke both exceptions to Eleventh Amendment 2 immunity, asserting that conduct of Arkansas officials was *ultra vires* and that defendants are 3 involved in an ongoing conspiracy to deprive him of his constitutional rights that began with the 4 alleged unlawful break-in in 2017 and was followed by ongoing malicious prosecutions in 5 Arkansas state court. Dkt. no. 33 (Opposition to Arkansas Motion) ¶¶ 1-6. Plaintiff states that he 6 “intends to seek injunctive relief related to ongoing criminal prosecution(s) in state courts” (as 7 indeed, he has done in his Declaratory Relief Motion) and asserts that he should be permitted to 8 pursue discovery about Defendants’ ongoing constitutional violations. *Id.* ¶¶ 8-9. 9 The Court finds Plaintiff’s arguments unpersuasive. First, in the operative complaint 10 Plaintiff seeks monetary

compensation rather than other “specific relief.” Consequently, neither of 11 the exceptions to sovereign immunity discussed above applies. Second, Plaintiff’s allegations that 12 Arkansas state officials have engaged in an ongoing conspiracy to violate his constitutional rights 13 are entirely conclusory and do not meet the requirements of *Iqbal*, 556 U.S. at 678. Therefore, the 14 Court finds that Plaintiff’s claims against the State of Arkansas and Crisman in his official 15 capacity are barred by the Eleventh Amendment. 16 8. Whether the Court has Personal Jurisdiction of Davidson, Henry or Crisman 17 a. Legal Standards 18 “Where . . . there is no applicable federal statute governing personal jurisdiction, the 19 district court applies the law of the state in which the district court sits.” *Dole Food Company, Inc. v. Watts*, 303 F.3d 1104, 1110 (9th Cir. 2002). “Under California’s long-arm statute, 21 California state courts may exercise personal jurisdiction ‘on any basis not inconsistent with the 22 Constitution of this state or of the United States.’” *Daimler AG v. Bauman*, 571 U.S. 117, 125 23

(2014) (quoting Cal. Civ. Proc. Code § 410.10). Thus, the Court must determine whether the 24 exercise of personal jurisdiction over the individuals sued in their personal capacity “comports 25 with the limits imposed by federal due process.” *Id.* (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 464 (1985)). 27 “Opinions in the wake of the pathmarking *International Shoe* decision have differentiated 1 between general or all-purpose jurisdiction, and specific or case-linked jurisdiction.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (citing *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414, nn. 8, 9 (1984)). General jurisdiction 4 may be established when a defendant’s contacts with a state are “substantial” or “continuous and 5 systematic” such that the defendant “can be haled into court in that state in any action, even if the 6 action is unrelated to those contacts.” *Bancroft & Masters, Inc. v. Augusta Nat. Inc.*, 223 F.3d 7 1082, 1086 (9th Cir. 2000). “For an individual, the paradigm forum for the exercise of general 8 jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which 9 the corporation is fairly regarded as at home.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 10 564 U.S. at 924. Here, Plaintiff does not dispute that none of the individuals sued in their 11 personal capacities has “continuous systematic ties” to the State of California. Therefore, the 12 Court must determine whether there is specific jurisdiction over these individuals. 13 A court may exercise specific jurisdiction when the following requirements are met: 14 (1) the non-resident defendant must purposefully direct his activities or consummate some transaction with the forum or resident 15 thereof; or perform some act by which he purposefully avails himself of the privileges of conducting activities in the forum, 16 thereby invoking the benefits and protections of its laws; (2) the claim must be one which arises out of or relates to the 17 defendant’s forum-related activities; and 18 (3) the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable. 19 20 *Dole Food*, 303 F.3d at 1111 (internal quotations and citations omitted). “The plaintiff bears the 21 burden of satisfying the first two prongs of the test.” *Schwarzenegger v. Fred Martin Motor Co.*, 22 374 F.3d 797, 802 (9th Cir.

2004) (citing *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990)). 23 “If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the 24 forum state.” *Id.* If the plaintiff succeeds in satisfying both of the first two prongs, the burden 25 then shifts to the defendant to present a ‘compelling case’ that the exercise of jurisdiction would 26 not be reasonable.” *Id.* (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985)). 27 b. Discussion 1 individuals sued in their personal capacities purposefully directed any activities related to 2 Plaintiff’s claims towards California. Instead, Plaintiff argues only that this Court has jurisdiction 3 over his claims generally because “the federal government chose to move Plaintiff’s MSPB 4 hearing within the boundaries of the northern district of California to enlist the help of Judge 5 Borrowman in continuation of the conspiracy between all Defendants to deprive Plaintiff of his 6 rights under color of law.” Dkt. no. 24 (Opposition to Federal Agency Defendants’ Motion) ¶ 19; 7 see also dkt. no. 28 (Opposition to Crisman Motion) ¶ 11 (“The conspiracy detailed in Plaintiff’s 8 complaint(s) and herein was directed to the Northern District of California by Defendants, not by 9 Plaintiff, thus Crisman has sufficient ties to California as part of the conspiracy to deprive Plaintiff 10 of his rights under color of law, *inter alia*.”); dkt. no. 33 (Opposition to Arkansas Motion) ¶ 7 11 (“Plaintiff had no part in directing the MSPB case to the Northern District of California and this 12 was the work of Defendants in conspiracy with one another such that each party falls under the 13 jurisdiction of this court, thus there is no question that jurisdiction is appropriate in this tribunal.”). 14 Plaintiff’s argument fails, both because the allegations of a conspiracy are entirely conclusory, as 15 discussed above, and because “jurisdiction over each defendant must be established individually.” 16 *Sher v. Johnson*, 911 F.2d 1357, 1365 (9th Cir. 1990). Therefore, Plaintiff has failed to establish 17 that the Court has personal jurisdiction over any of the individual defendants to the extent Plaintiff 18 sues them in their personal capacities. 19 As to Adrian and Henry, Plaintiff has failed to establish that this Court may exercise 20 jurisdiction for the additional reason that Plaintiff has purported to serve them by sending certified 21 copies of the complaint to the Department of Homeland Security, which is insufficient. See dkt. 22 no. 21. Plaintiff’s claims for damages against Adrian and Henry, who are federal officials who 23 were acting under color of law, may only be asserted under *Bivens v. Six Unknown Narcotics 24 Agents*, 403 U.S. 388, (1971). *Daly-Murphy v. Winston*, 837 F.2d 348, 355 (9th Cir. 1987). 25 Furthermore, “where money damages are sought through a *Bivens* claim, personal service, and not 26 service at the place of employment, is necessary to obtain jurisdiction over a defendant in his 27 capacity as an individual.” *Id.* Therefore, Plaintiff has not properly served Adrian and Henry and 1 9. Whether Plaintiff’s Claims Against Crisman are Time-Barred 2 Even assuming this Court may exercise personal jurisdiction over Crisman, Plaintiff’s 3 claims against him fail because they are untimely. It appears that Plaintiff is seeking to assert a 4 claim under 42 U.S.C. § 1983 and the Fourth Amendment based on Crisman’s entry onto 5 Plaintiff’s property in December 2017. The applicable statute of limitations for a claim under 6 Section 1983 is the statute of limitations established by the forum state for personal injury torts.

7 Wallace v. Kato, 549 U.S. 384, 387 (2007). Hence, the statute of limitations for a Section 1983 8 claim brought in California is two years. See Cal. Code Civ. Proc. § 335.1 (establishing a two-year 9 statute of limitations for personal injury actions). 10 “Federal law determines when a cause of action accrues and the statute of limitations 11 begins to run for a § 1983 claim.” Bagley v. CMC Real Est. Corp., 923 F.2d 758, 760 (9th Cir. 12 1991). Under federal law, a § 1983 claim accrues when a plaintiff “knows or has reason to know 13 of the injury which is the basis of the action.” Id. (citation omitted). It is clear from the 14 allegations in the complaint that Plaintiff was aware of the alleged illegal entry onto his property at 15 the time it occurred and therefore, he was required to initiate this action within two years of the

16 December 14, 2017 events, that is, by December 14, 2019. Furthermore, Plaintiff’s assertion in 17 his opposition brief that his claims against Crisman were “well within the statute of limitations” 18 has no merit. See *dk. no. 28 (Opposition to Crisman Motion)* ¶ 4. According to Plaintiff, he 19 “litigated Defendant Crisman at the Arkansas State Claims Commission and in Stone County 20 Arkansas case 69CV-20-67 on November 25, 2020, well within the statute of limitations but the 21 case was dismissed after the judge illegally sentenced Plaintiff to jail for mere self representation.” 22 Id. Even assuming the Arkansas action tolled the two-year limitations period while it was 23 pending, that action was filed after the statute of limitations on Plaintiff’s claim against Crisman 24 had already run. Therefore, Plaintiff has not asserted any claim against Crisman that is not time- 25 barred. 26 B. Declaratory Relief Motion 27 As discussed above, in his Declaratory Relief Motion, Plaintiff asks this Court for 1 Defendants’ conduct is responsible for his medical condition. He also asks the Court to enjoin a 2 pending criminal proceeding against him in Arkansas State Court. The Court DENIES Plaintiff’s 3 requests. 4 First, to the extent that Plaintiff asks the Court to enter judgment on his claims on the 5 merits, the request is premature. In particular, if Plaintiff’s request is asserted under Rule 12(c) of 6 the Federal Rules of Civil Procedure, which allows a party to seek judgment on the pleadings once 7 the pleadings are closed, Plaintiff’s request is premature because the pleadings have not yet closed. 8 If Plaintiff is seeking summary judgment in his favor under Rule 56 of the Federal Rules of Civil 9 Procedure, the motion is premature because Plaintiff has not established that this Court has 10 jurisdiction over any claims or defendants, as discussed above. See *Tyson v. ACRT Servs. Inc.*,

11 No. 23-CV-01889-HSG, 2024 WL 69073, at *7 (N.D. Cal. Jan. 5, 2024) (denying motion for 12 summary judgment on the basis on the basis that it was premature where the plaintiff had “yet 13 to establish he [had] a viable claim” and no discovery had been conducted in the case). 14 Similarly, to the extent he seeks a preliminary injunction, Plaintiff has not met his burden. 15 “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the 16 merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the 17 balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. 18 Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Because Plaintiff has not established that there is 19 subject matter jurisdiction over this case or that this Court can exercise personal jurisdiction

over 20 the individuals sued in their personal capacities, Plaintiff has not demonstrated that he is likely to 21 succeed on the merits and therefore, entry of a preliminary injunction is inappropriate. 22 Finally, although Plaintiff asks that this case be transferred “to an appropriate court of 23 jurisdiction if this court refuses to assert jurisdiction[.]” Declaratory Relief Motion ¶ 13, Plaintiff 24 has identified no jurisdiction where jurisdiction would be proper and it is not clear what 25 jurisdiction, if any, would offer an appropriate forum for Plaintiff’s claims. Therefore, that request 26 is denied. 27 C. Whether Plaintiff Should Be Permitted to Amend or to Conduct Discovery Prior 1 to Dismissal 2 “Unless it is absolutely clear that no amendment can cure the defect ... a pro se litigant is 3 entitled to notice of the complaint’s deficiencies and an opportunity to amend prior to dismissal of 4 the action.” *Lucas v. Dep’t of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995); see also *Smith v. Pac. 5 Properties and Dev. Corp.*, 358 F.3d 1097, 1101 (9th Cir. 2004) (holding that under Rule 15 of the 6 Federal Rules of Civil Procedure, leave to amend should be “freely given” unless amendment will 7 result in undue prejudice to the opposing party or will be futile). Here, the Court finds that 8 amendment is futile because Plaintiff has pointed to no possible amendments to his complaint that 9 would establish that this Court has subject matter jurisdiction over his claims or personal 10 jurisdiction over the individual defendants. Further, although Plaintiff contends he should be 11 permitted to conduct discovery that he believes would provide further evidence of an alleged 12 conspiracy among the defendants in this case, he has not identified discovery that would have any 13 bearing on the jurisdictional defects identified herein. Therefore, the Court concludes that 14 dismissal if this case, in its entirety and without leave to amend, is appropriate.⁶

15 IV. CONCLUSION

16 For the reasons stated above, the Court GRANTS the Motions to Dismiss and DENIES the 17 Declaratory Relief Motion. The Court dismisses this case, in its entirety, without prejudice. The 18 Clerk is instructed to enter a separate judgment reflecting that this case is dismissed without 19 prejudice for the reasons stated herein. In addition, because Sarah Huckabee Sanders was 20 21 22 23 24 25 6 The Court declines, however, the invitation of the Arkansas defendants to dismiss Plaintiff’s claims with prejudice. See Arkansas Motion at 10; Crisman Motion at 9. “Ordinarily, a case 26 dismissed for lack of subject matter jurisdiction should be dismissed without prejudice so that a plaintiff may reassert his claims in a competent court.” *Frigard v. United States*, 862 F.2d 201, 27 204 (9th Cir. 1988). While it is not clear what court might be able to hear Plaintiff’s claims, it is 1 erroneously listed on the docket of this case as a defendant, the Clerk shall terminate Sarah 2 Huckabee Sanders as a defendant. 3 IT IS SO ORDERED. 4 5 Dated: October 7, 2025

JOSEP . SPERO

7 United*States Magistrate Judge 8 9 10 ll a 12 13 14 15 16 € = 17 6 Zz 18 19 20 21 22 23 24 25 26 27 28

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