NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 15, 2024*
Decided May 6, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2661

GEORGE GAIO MANO,
Plaintiff-Appellant,

v.

JANET YELLEN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:22-cv-01037-RLY-MJD

Richard L. Young,
Judge.

O R D E R

George Mano appeals the dismissal of his suit seeking to enjoin enforcement of a provision of the Bank Secrecy Act that requires U.S. citizens to report interests in certain foreign bank accounts. Because Mano fails to raise a claim arising under federal law and

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

lacks standing, we modify the district court's judgment to reflect that Mano's complaint is dismissed for lack of jurisdiction.

Congress enacted the Bank Secrecy Act to encourage tax compliance and facilitate criminal investigations by requiring U.S. citizens to report financial relationships and transactions with foreign banks. See 31 U.S.C. §§ 5311, 5314(a); *United States v. Xiao*, 77 F.4th 466, 469 (7th Cir. 2023). Any individual who has an interest in a foreign bank account with a balance that exceeded $10,000 at any point in the previous year must file a Report of Foreign Bank and Financial Accounts ("FBAR"). See 31 C.F.R. §§ 1010.306(c), 1010.350(a). In that filing, holders must disclose account balances, types, and numbers as well as the name and address of the financial institution. See Fin. Crimes Enf't Network, *FinCEN Form 114*. Failing to timely file an FBAR may result in civil and criminal liability. See 31 U.S.C. §§ 5321(a)(5), 5322(a).

Mano is a U.S. citizen who has lived in Japan since 2013. In 2022, his Japanese bank account balance exceeded $10,000, obligating him to file an FBAR within the next calendar year. Rather than file, Mano sued U.S. Treasury Secretary Janet Yellen, the Department of the Treasury, and the Internal Revenue Service, seeking to bar them from enforcing the FBAR filing requirement. Mano argued that the requirement constituted an unreasonable search and seizure under the Fourth Amendment, deprived him of due process in violation of the Fifth Amendment, infringed upon a right of privacy he claimed under the Ninth and Tenth Amendments, and violated the Fifth Amendment's privilege against self-incrimination.

The district court dismissed Mano's complaint for failure to state a claim. See FED. R. CIV. P. 12(b)(6). The court concluded that Mano's Fourth Amendment argument was foreclosed by *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 59–63 (1974), where the Supreme Court held that the Bank Secrecy Act's reporting requirements were not unreasonable searches. The district court further determined that Mano had not adequately developed his due process argument and failed to allege any violation of the privilege against self-incrimination. Finally, the court concluded that the Ninth and Tenth Amendments did not afford Mano any right to privacy. Mano appealed.

Before evaluating the substance of Mano's claims, we must first assure ourselves that our jurisdiction is proper. See *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 88–89 (1998). This requires, among other things, that Mano "point to an underlying source of federal law that supplies [him] with a cause of action" to bring his claim in federal court. *Okere v. United States*, 983 F.3d 900, 902–03 (7th Cir. 2020); see also *Gunn v. Minton*, 568 U.S. 251, 257 (2013). He fails to do so.

The statute conferring jurisdiction over federal questions, 28 U.S.C. § 1331, does not itself supply a cause of action. And neither side asserts that the Bank Secrecy Act creates a privately enforceable claim. While Mano's suit implicates several constitutional amendments, "[c]onstitutional rights do not typically come with a built-in cause of action to allow for private enforcement in courts." *DeVillier v. Texas*, 144 S. Ct. 938, 943 (2024). And Mano does not allege that this is one of the rare instances where the Constitution implies a cause of action. See *Egbert v. Boule*, 596 U.S. 482, 490–93 (2022).

The only plausible vehicle for Mano's claims is *Ex parte Young*, 209 U.S. 123 (1908), which permits a plaintiff to invoke the federal courts' ability to enjoin unconstitutional actions undertaken by federal officers in their official capacities. See *id.* at 150–51; *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326–27 (2015). But proceeding under that theory means the only proper defendant is Secretary Yellen. See *Armstrong*, 575 U.S. at 326–27.

Mano's claim against Secretary Yellen—even if we permitted it to proceed—faces another fatal hurdle: lack of Article III standing. A plaintiff must suffer an "injury in fact" that is "concrete and particularized," "actual or imminent, not conjectural or hypothetical," and redressable by a favorable verdict. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559–60 (1992) (cleaned up). Such injury must persist throughout the life of a case. See *Camreta v. Greene*, 563 U.S. 692, 701 (2011).

While this appeal was pending, Mano chose to file his FBAR. In doing so, he mooted any privacy-related harms he might have suffered from the initial filing, confining his injury to that which might arise from the government's continued possession of his information and the risk that he may have to file again.

Any potential harm from having to file a second FBAR is entirely speculative, however. Mano became subject to the FBAR filing requirement when he received an initial retirement bonus that put his Japanese bank account over $10,000 for the first time since moving to Japan in 2013. Nothing suggests he will receive another such bonus or that he intends to exceed the reporting threshold again. Indeed, Mano regularly wires money to a U.S. bank account to keep his Japanese account balance below $10,000. So Mano lacks standing to pursue further prospective relief. See *Crawford v. United States Dept. of Treasury*, 868 F.3d 438, 460–61 (6th Cir. 2017) (dismissing for lack of standing a pre-enforcement challenge to the FBAR filing requirement).

Mano also cannot point to any continuing injury from having filed an FBAR. He asserts that because he filed the FBAR, the government now can "rummage through"

and monitor his financial transactions. But this misapprehends the effect of filing the report. While the information in an FBAR may be used to help trace funds used for illicit purposes, *Bittner v. United States*, 598 U.S. 85, 89 (2023), nothing suggests that the government uses the information to actively monitor a bank account. Mano intimates that the information about his bank accounts could be used in a future criminal investigation, but that would be contingent upon him committing a crime—another speculative assumption. See *City of Los Angeles v. Lyons*, 461 U.S. 95, 102–03 (1983). Mano fails to show how he continues to be harmed by the government simply knowing identifying information about his bank account at a single point in time.

Because Mano fails to identify a proper cause of action with regard to at least two of the three named defendants, and because he has no standing to sue the third, we conclude that the district court lacked subject-matter jurisdiction to review his claims. So we modify the judgment of the district court to a dismissal without prejudice under Federal Rule of Civil Procedure 12(b)(1), see *White v. Ill. State Police*, 15 F.4th 801, 808 (7th Cir. 2021), and affirm the judgment as modified.