

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED
OCT 30 2009
Clerk, U.S. District and
Bankruptcy Courts

LESTER JON RUSTON,)
)
 Plaintiff,)
)
 v.)
)
 CYNTHIA M. DEITLE,)
)
 Defendant.)

Civil Action No. **09 2039**

MEMORANDUM OPINION

This matter comes before the court on review of plaintiff's application to proceed *in forma pauperis* and *pro se* civil complaint. The court will grant the application, and dismiss the complaint.

The court must dismiss a complaint if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. 28 U.S.C. § 1915(e)(2)(B). In *Neitzke v. Williams*, 490 U.S. 319 (1989), the Supreme Court states that the trial court has the authority to dismiss not only claims based on an indisputably meritless legal theory, but also claims whose factual contentions are clearly baseless. Claims describing fantastic or delusional scenarios fall into the category of cases whose factual contentions are clearly baseless. *Id.* at 328. The trial court has the discretion to decide whether a complaint is frivolous, and such finding is appropriate when the facts alleged are irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992).

Plaintiff brings this action against Special Agent Cynthia Deitle of the Federal Bureau of Investigation under *Bivens v. Six Unknown Named Agents of the Fed. Bureau of Narcotics*, 403

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U.S. 388 (1971), and the Racketeer Influenced and Corrupt Organizations Act (“RICO”), see 18 U.S.C. § 1961 *et seq.* In a confused and rambling pleading, plaintiff alleges that Special Agent Deitle has conspired with others in order to entrap him, to effect his kidnapping and torture, and to obstruct his covert counter-intelligence operations with respect to the actions of Afghan nationals in Texas.

The court is mindful that complaints filed by *pro se* litigants are held to less stringent standards than those applied to formal pleadings drafted by lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). Having reviewed plaintiff’s complaint, it appears that its factual contentions are baseless and wholly incredible. For this reason, the complaint is frivolous and must be dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(i).

An Order consistent with this Memorandum Opinion is issued separately.


United States District Judge

Date: 10/16/09