

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

Clarence Ganaway,)	CASE NO. 1:12 CV 1009
)	
Plaintiff,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	
)	<u>Memorandum of Opinion and Order</u>
United States of America,)	
)	
Defendant.)	

INTRODUCTION

Pro se Plaintiff Clarence Ganaway filed this action against the United States. In the Complaint, Plaintiff claims the federal government is not adequately supervising the individual states, particularly the State of Ohio. He seeks no relief from the Court.

BACKGROUND

Plaintiff’s Complaint is not coherent. He questions whether the United States government is adequately supervising the individual fifty states and the “states [sic] colonies” to ensure that they are complying with the Bill of Rights. (ECF No. 1 at 3.) He claims that the Fourteenth Amendment protects United States citizens from hostile state laws. He alleges, “We have a problem with a state that is out of complete control.” (ECF No. 1 at 3.) He contends the State of Ohio must “measure up to America, not America stooping down two [sic] be like [the]

state.” (ECF No. 1 at 4.) He claims the United States is guilty “for not piercing the states [sic] veil.” (ECF No. 1 at 4.) He asserts that “this Complaint is for allowing yielding [sic] a State two [sic] not only violate the U.S.C. also the United States Federal citizens as well.” (ECF No. 1 at 4.) He alleges “this state is killing your U.S. citizens and now you conspire with [the] state.” (ECF No. 1 at 4.) He lists several differences he perceives between the Ohio Constitution and the United States Constitution and claims Ohio’s laws are hostile to those of the United States. He concludes by asking, “Why is this America?” (ECF No. 1 at 5.)

STANDARD OF REVIEW

Although *pro se* pleadings are liberally construed, *Boag v. MacDougall*, 454 U.S. 364, 365 (1982) (per curiam); *Haines v. Kerner*, 404 U.S. 519, 520 (1972), the district court is required to dismiss an *in forma pauperis* action under 28 U.S.C. §1915(e) if it fails to state a claim upon which relief can be granted, or if it lacks an arguable basis in law or fact.¹ *Neitzke v. Williams*, 490 U.S. 319 (1989); *Lawler v. Marshall*, 898 F.2d 1196 (6th Cir. 1990); *Sistrunk v. City of Strongsville*, 99 F.3d 194, 197 (6th Cir. 1996).

A claim lacks an arguable basis in law or fact when it is premised on an indisputably meritless legal theory or when the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. A cause of action fails to state a claim upon which relief may be granted when it lacks “plausibility in the Complaint.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A

¹ An *in forma pauperis* claim may be dismissed *sua sponte*, without prior notice to the Plaintiff and without service of process on the Defendant, if the Court explicitly states that it is invoking 28 U.S.C. §1915(e) [formerly 28 U.S.C. § 1915(d)] and is dismissing the claim for one of the reasons set forth in the statute. *McGore v. Wigglesworth*, 114 F.3d 601, 608-09 (6th Cir. 1997); *Spruytte v. Walters*, 753 F.2d 498, 500 (6th Cir. 1985), *cert. denied*, 474 U.S. 1054 (1986); *Harris v. Johnson*, 784 F.2d 222, 224 (6th Cir. 1986); *Brooks v. Seiter*, 779 F.2d 1177, 1179 (6th Cir. 1985).

pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” *Ashcroft v. Iqbal* , 129 S.Ct. 1937, 1949 (2009). The factual allegations in the pleading must be sufficient to raise the right to relief above the speculative level on the assumption that all the allegations in the Complaint are true. *Bell Atl. Corp.*, 550 U.S. at 555. The Plaintiff is not required to include detailed factual allegations, but must provide more than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S.Ct. at 1949. A pleading that offers legal conclusions or a simple recitation of the elements of a cause of action will not meet this pleading standard. *Id.* In reviewing a Complaint, the Court must construe the pleading in the light most favorable to the Plaintiff. *Bibbo v. Dean Witter Reynolds, Inc.*, 151 F.3d 559, 561 (6th Cir.1998).

DISCUSSION

The United States, as a sovereign, cannot be sued without its prior consent, and the terms of its consent define the Court’s subject matter jurisdiction. *McGinness v. U.S.*, 90 F.3d 143, 145 (6th Cir. 1996). A waiver of sovereign immunity must be strictly construed, unequivocally expressed, and cannot be implied. *U.S. v. King*, 395 U.S. 1,4 (1969); *Soriano v. U.S.*, 352 U.S. 270, 276 (1957). Plaintiff does not provide a legal basis for his claim. Principles requiring generous construction of *pro se* pleadings are not without limits. *See Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1277 (4th Cir. 1985). A Complaint must contain either direct or inferential allegations respecting all the material elements of some viable legal theory to satisfy federal notice pleading requirements. *See Schied v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 437 (6th Cir. 1988). District courts are not required to conjure up questions never squarely presented to them or to construct

full blown claims from sentence fragments. *Beaudett*, 775 F.2d at 1278. Even liberally construed, none of the allegations in the Complaint suggest a viable cause of action for which the United States has waived sovereign immunity. This Court lacks subject matter jurisdiction to consider the concerns raised in the Complaint.

CONCLUSION

Accordingly, this action is dismissed pursuant to 28 U.S.C. §1915(e). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
United States District Judge

Dated: 8/28/12