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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

AMR MOHSEN,)	
)	
Plaintiff(s),)	No. C 09-2166 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
UNITED STATES, et al.,)	(Doc # 3 & 4)
)	
Defendant(s).)	
_____)	

Plaintiff, a federal prisoner currently incarcerated at the Federal Correctional Institution in Safford, Arizona, has filed a pro se complaint for damages under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 ("FTCA"), and Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), alleging various wrongdoing on the part of federal employees and private individuals which he claims resulted in his unlawful arrest, prosecution and conviction. Plaintiff also invokes the court's diversity and supplemental jurisdiction under 28 U.S.C. §§ 1332 and 1367.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 B. Legal Claims

7 In order to recover damages under 42 U.S.C. § 1983 for allegedly
8 unconstitutional conviction or imprisonment, or for other harm caused by actions
9 whose unlawfulness would render a conviction or sentence invalid, a plaintiff
10 must prove that the conviction or sentence has been reversed on direct appeal,
11 expunged by executive order, declared invalid by a state tribunal authorized to
12 make such determination, or called into question by a federal court's issuance of a
13 writ of habeas corpus. Heck v. Humphrey, 512 U.S. 477, 486-87 (1994). A
14 claim for damages bearing that relationship to a conviction or sentence that has
15 not been so invalidated is not cognizable under § 1983. Id. at 487.

16 When a plaintiff seeks damages in a § 1983 suit, the district court must
17 therefore consider whether a judgment in favor of the plaintiff would necessarily
18 imply the invalidity of his conviction or sentence; if it would, the complaint must
19 be dismissed unless the plaintiff can demonstrate that the conviction or sentence
20 has already been invalidated. Id.

21 Although Heck involved a claim under § 1983, the Ninth Circuit has held
22 that the rationale of Heck applies in cases brought under FTCA and Bivens. See
23 Erlin v. United States, 364 F.3d 1127, 1133 (9th Cir. 2004) (FTCA); Martin v.
24 Sias, 88 F.3d 774, 775 (9th Cir. 1996) (Bivens). Accordingly, because a
25 judgment in favor of plaintiff here would necessarily imply the invalidity of his
26 conviction, see, e.g., Guerrero v. Gates, 442 F.3d 697, 703 (9th Cir. 2006) (Heck

1 barred plaintiff's claims of wrongful arrest, malicious prosecution and conspiracy
2 among police officers to bring false charges against him); Cabrera v. City of
3 Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998) (Heck barred plaintiff's false
4 arrest and imprisonment claims until conviction was invalidated); Smithart v.
5 Towery, 79 F.3d 951, 952 (9th Cir. 1996) (Heck barred plaintiff's claims that
6 defendants lacked probable cause to arrest him and brought unfounded criminal
7 charges against him), and because said conviction has not already been
8 invalidated, plaintiff's FTCA and Bivens claims must be dismissed without
9 prejudice. See Edwards v. Balisok, 520 U.S. 641, 649 (1997); Trimble v. City of
10 Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995).

11 The same rationale applies to plaintiff's state law claims under 28 U.S.C.
12 §§ 1332 and 1367 because, even if the claims accrued earlier under state law,
13 "where the litigation would potentially force release of a prisoner, Heck imposes
14 an additional requirement." Erlin, 364 F.3d at 1132.

15 CONCLUSION

16 For the foregoing reasons, the complaint is DISMISSED for failure to
17 state a claim under the authority of 28 U.S.C. § 1915A(b). The dismissal is
18 without prejudice to reasserting the claims in a new complaint if a cause of
19 actions later accrues.

20 The clerk shall enter judgment in accordance with this order, terminate all
21 pending motions as moot (see doc # 3 & 4) and close the file.

22 SO ORDERED.

23 DATED: Sept. 29, 2009

24 

25 CHARLES R BREYER
26 United States District Judge