


of Brian P. Hudek, Notice of Removal, Westfall Certification, ECF No. 1-2, the United States is substituted as the proper defendant. *See* 28 U.S.C. §§ 2679(b), (d)(1); *Osborn v. Haley*, 549 U.S. 225, 230–31 (2007); *Jacobs v. Vrobel*, 724 F.3d 217, 219–20 (D.C. Cir. 2013). The United States, however, has not waived its sovereign immunity with respect to the claim asserted. Under the Federal Tort Claims Act (“FTCA”), the United States does not waive its sovereign immunity for any tort claim “arising out of . . . abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights,” except with respect to conduct not applicable here. 28 U.S.C. § 2680(h). Plaintiff’s intentional infliction of emotional distress claim fits within this non-wavier provision. As noted, Plaintiff contends that Beason “colluded” with the ALJ and engaged in acts involving “[d]ishonesty.” Compl. at 6–7. Plaintiff’s claim thus arises from alleged acts of “abuse of process,” “misrepresentation,” and “deceit,” for which the United States has not waived sovereign immunity.

Additionally, Plaintiff’s claim is barred because he failed to exhaust his administrative remedies before filing suit. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) (affirming dismissal of the plaintiff’s FTCA claim for lack of subject matter jurisdiction because “[t]he FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies”).

For the foregoing reasons, Defendant’s Motion to Dismiss, ECF No. 3, is granted. A separate final order accompanies this Memorandum Opinion.

Dated: July 13, 2021



Amit P. Mehta
United States District Court Judge