

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

VARNADOR SUTTON,)	
)	
Plaintiff,)	
)	
vs.)	1:12-cv-531-TWP-DML
)	
UNITED STATES OF AMERICA, et)	
al.,)	
)	
Defendants.)	
)	

Entry Discussing Selected Matters

I.

The clerk shall not issue the summons tendered by the plaintiff unless it is determined that a viable claim has been asserted against one or both of the defendants. This process is required by 28 U.S.C. § 1915A(b) because of the plaintiff's status as a prisoner as defined in 28 U.S.C. § 1915(h). Pursuant to § 1915A(b), "[a] complaint is subject to dismissal for failure to state a claim if the allegations, taken as true, show that plaintiff is not entitled to relief." *Jones v. Bock*, 127 S. Ct. 910, 921 (2007); see also *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990) ("Dismissal under Rule 12(b)(6) can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory.").

II.

A.

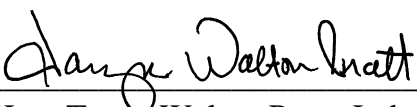
The complaint announces that the plaintiff's claims are asserted against Assistant United States Attorney Winfield Ong and against the United States pursuant to the theory recognized in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 38 (1971). The claim against defendant Ong would appear to be barred by prosecutorial immunity, see *Fields v. Wharrie*, 672 F.3d 505, 510 (7th Cir. 2012) ("A prosecutor is absolutely immune from suit for all actions and decisions undertaken in furtherance of his prosecutorial duties.") (citing *Imbler v. Pachtman*, 424 U.S. 409, 410 (1976)), whereas no *Bivens* claim can be asserted against the United States. See *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit.")

B.

In light of the foregoing, and because the complaint must be dismissed if it fails to state a claim upon which relief can be granted, *Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006), the plaintiff shall have **through July 18, 2012**, in which to show cause why the action should not be dismissed for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

06/26/2012
Date: _____



Hon. Tanya Walton Pratt, Judge
United States District Court
Southern District of Indiana

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