

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>Justin SHARRATT,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>CIVIL ACTION NO. 3:08-229</b>
	)	
v.	)	
	)	<b>JUDGE GIBSON</b>
<b>John MURTHA,</b>	)	
	)	<b>Electronically Filed</b>
<b>Defendant.</b>	)	

**DEFENDANT’S AND UNITED STATES’ MOTION TO DISMISS**

Under Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Congressman John Murtha and the United States move to dismiss all counts of Plaintiff’s complaint.<sup>1</sup> Counts I-III, which seek damages for alleged constitutional violations under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), should be dismissed because Congressman Murtha is entitled to qualified immunity, special factors preclude Plaintiff’s constitutional claims, and Plaintiff filed those claims beyond the statute of limitations. Counts I-III therefore fail to state a claim upon which relief can be granted and should be dismissed with prejudice under Fed. R. Civ. P. 12(b)(6).

Counts IV-VI, which seek damages for alleged slander per se, invasion of privacy, and intentional infliction of emotional distress, should be dismissed because Plaintiff has not fulfilled the administrative prerequisites of the Federal Tort Claims Act, and because the United States has not waived sovereign immunity for Plaintiff’s claims. The Court therefore lacks subject-matter jurisdiction over Counts IV-VI, which should be dismissed without prejudice under Fed.

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<sup>1</sup>Although the United States is not a named defendant in the action against Congressman Murtha, the United States has filed a motion for substitution of party with regard to Plaintiff’s state law claims. See United States’ Mot. for Substitution of Party.

R. Civ. P. 12(b)(1). A supporting memorandum is filed concurrently with this motion, and a proposed order accompanies this motion.

Dated: April 21, 2009

Respectfully submitted,

MARY BETH BUCHANAN  
United States Attorney

MICHAEL F. HERTZ  
Acting Assistant Attorney General  
Civil Division

JESSICA LIEBER SMOLAR  
Assistant United States Attorney  
Western District of Pennsylvania  
700 Grant Street, Suite 4000  
Pittsburgh, PA 15219  
(412) 894-7419 (phone)  
PA I.D. No. 65406

TIMOTHY P. GARREN  
Director, Torts Branch

C. SALVATORE D'ALESSIO  
Senior Trial Counsel, Torts Branch

s/ Paul E. Werner  
PAUL E. WERNER (MD Bar)  
Trial Attorney, Torts Branch  
UNITED STATES DEPARTMENT OF JUSTICE  
Torts Branch, Civil Division  
P.O. Box 7146  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-4152 (phone)  
(202) 616-4314 (fax)  
Paul.Werner@usdoj.gov

Attorneys for Defendant Congressman John  
Murtha and the United States

**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

**Noah Geary**  
Washington Trust Building  
Suite 225  
Washington, PA 15301  
(724) 222-3788  
noahgeary@ngearylwoffices.net

Dated: April 21, 2009

s/ Paul E. Werner  
PAUL E. WERNER (MD Bar)  
Trial Attorney, Torts Branch  
UNITED STATES DEPARTMENT OF JUSTICE  
Torts Branch, Civil Division  
P.O. Box 7146  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 616-4152 (phone)  
(202) 616-4314 (fax)  
Paul.Werner@usdoj.gov