UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDERICK O. SILVER, Plaintiff, v. MARCO ANTONIO RUBIO AND ROBERT F. KENNEDY, JR., Defendants.	CASE NO. 3:25-cv-05112-JNW ORDER

This matter comes before the Court on Plaintiff Frederick O. Silver's motion for leave to file a Third Amended Complaint. Dkt. No. 50. Silver's motion responds to the Court's order granting in part Defendants Marc Antonio Rubio and Robert F. Kennedy, Jr.'s motion to dismiss and granting Silver the opportunity to seek leave to amend under Federal Rule of Civil Procedure 15. Dkt. No. 43. Silver's original complaint alleged that Defendants violated his rights by denying his passport application for failure to pay past-due child support. Specifically, Silver raised four causes of action: (1) a claim against federal officials for allegedly violating his due process rights under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971); (2) a Section 1983 claim for violating the Administrative Procedure Act (APA); (3) a

claim for failing to grant him a hardship exception under 22 C.F.R. § 51.70 and 5 U.S.C. § 555; and (4) a claim for placing an "unlawful restriction on [his] employment and occupational licensing." Dkt. No. 8 ¶¶ 11–29.

The Court dismissed Silver's *Bivens* and APA claims for failure to state a claim against Defendants and dismissed Silver's third and fourth claims, finding sovereign immunity blocked such claims from proceeding. Dkt. No. 43 at 4–6. The Court noted it "remains skeptical that Silver will be able to overcome the deficiencies [it] identified" but provided him "one more chance [to] save his complaint by addressing the issues" the Court identified, i.e., failing to state a *Bivens* and APA claim as well as failing to identify a waiver of sovereign immunity.

Silver's proposed Third Amended Complaint does not address these deficiencies. Instead, it names entirely new defendants and new claims. Silver drops Rubio and Kennedy as defendants and instead names W. Kenneth Paxton, the Attorney General for Texas, and Richard Whitley, the Director of the Nevada Department of Health and Human Services Division of Welfare and Supportive Services. Dkt. No. 50 ¶¶ 4–8. Silver's claims against these new defendants are based on different allegations. Silver claims Paxton and Whitley violated the Fair Credit Report Act by furnishing disputed debt information, and violated Silver's procedural due process rights by "certifying [Silver] to [the Department of Health and Human Services] without providing constitutionally required notice and opportunity to be heard." Dkt. No. 50 ¶ 28.

Thus, Silver's proposed Third Amended Complaint is not an amendment at all within the meaning of Rule 15, as it is an entirely new lawsuit against different

defendants based on wholly different factual allegations and legal theories. By styling this new action as an amendment to his existing case, Silver attempts to circumvent the procedural requirements that govern the commencement of civil actions, including the payment of filing fees under 28 U.S.C. § 1914(a) and Local Civil Rule 3 (Commencement and Assignment of Actions). An action may proceed without the immediate payment of a filing fee only for parties proceeding IFP. *See* 28 U.S.C. § 1915. While Silver properly obtained IFP status for his original claims against Defendants Rubio and Kennedy, that authorization does not extend to what is effectively a separate lawsuit.

Accordingly, the Court DENIES Silver's motion to file a Third Amended Complaint. Dkt. No. 50. If Silver wishes to proceed with his claims against Paxton and Whitley, he must file a new case. The Court expresses no opinion on the merits of Silver's proposed claims against these defendants.

The Court DISMISSES this case and directs the Clerk to close this matter.

Dated this 29th day of August, 2025.

Jamal N. Whitehead
United States District Judge