UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ACONARTIST, **Plaintiff,** **v.** **UNITED STATES OF AMERICA, ex rel. CONJMAN,** **Defendant.**	**Civil Action No. 4:20-2209** **Hon. Frosty_TheSn0wman**

MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM OF POINTS AND AUTHORITIES

The United States, through its undersigned attorneys, hereby moves for summary judgment on all claims in the Plaintiff's Complaint. The reasons in support of Defendants' Motion are set forth in the attached Memorandum of Points and Authorities.

I. Background

On August 25th, 2020, plaintiff initiated proceedings against the Federal Government alleging they have been illegally terminated, in disagreement with the procedures outlined by Pub. Law Pub. Law 81-7. See Civil Complaint. The Department of Justice, as the legal representative of the Federal Government, appeared to represent the Federal Government and hereinafter moves to dismiss for lack of subject matter jurisdiction.

II. Argument

A. THE UNITED STATES IS IMMUNE TO THE SUIT IN QUESTION

1. THE OFFICIAL IN QUESTION HAS QUALIFIED IMMUNITY

The doctrine of qualified immunity protects government officials from lawsuits insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Pearson* v. *Callahan,* 555 U. S. 223, 231 (2009), *Harlow* v. *Fitzgerald,* 457 U. S. 800, 813 (1982). The protection of qualified immunity applies regardless of whether the government official's error is a mistake of law, a mistake of fact, or a mistake based on mixed questions of law and fact. *Callahan, supra* (quoting *Groh* v. *Ramirez,* 540 U. S. 551, 567 (2004) (Kennedy, J., dissenting)).

In this case, plaintiff has not proven that the United States and its officers would not have qualified immunity of this case. On the other hand, the United States can easily prove that Conjman would easily have qualified immunity, whether he terminated plaintiff or not.

To determine whether an official has qualified immunity, a court must consider two factors: first, whether the facts alleged show the officer's conduct violated a [statutory or] constitutional right. *Saucier* v. *Katz,* 533 U. S. 194, 201 (2001). Second, the court would have to determine whether the right was clearly established at the time of the suit. *Ibid.* Originally, this procedure was strict in requiring courts to describe Despite this, as the Supreme Court held in *Callahan,* while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory. 555 U. S., at 236. As such, this court is free to first determine whether the right alleged in plaintiff's civil complaint was "clearly established."

As the Supreme Court has held, the term "clearly established" has been construed to require that "the contours of the right must be sufficiently clear that a reasonable official would understand

that what he is doing violates that right." *Wilson* v. *Layne*, 526 U. S. 603, 615 (1999). While this does not mean an official action is "protected by qualified immunity unless the very action in question has previously been held unlawful," in the light of preexisting law "the unlawfulness must be apparent." *Ibid* (quoting *Anderson* v. *Creighton*, 483 U. S. 635, 640 (1987)). Petitioners can demonstrate clear establishment through "any cases of controlling authority in their jurisdiction at the time of the incident that clearly established the rule on which they seek to rely," or through "a consensus of cases of persuasive authority such that a reasonable officer could not have believed that his actions were lawful." *Id.,* at 617. In other words, "existing precedent must have placed the statutory or constitutional question beyond debate." *Reichle* v. *Howards*, 566 U. S. 658, 664 (2012) (quoting *Ashcroft* v. *al-Kidd*, 563 U. S. 731, 735 (2011)).

Therefore, the Court would only be able to determine that the right pressed by plaintiff was clearly established if there was precedent supporting such a decision. But because there is no precedent clearly establishing the right to challenge a termination based on the lack of a notice to appeal said termination, this Court must hold that Conjman's actions were protected by qualified immunity and that the United States would be immune to any suits.

2. THE UNITED STATES IS NOT LIABLE FOR THE ACTIONS OF ONE OF ITS OFFICIALS

It would also be "uncommonly silly" if the United States was liable for the allegedly unlawful actions of one official. *Lawrence* v. *Texas*, 539 U. S. 558, 605 (2001) (Thomas, J., dissenting) (quoting *Griswold* v. *Connecticut*, 381 U. S. 479, 527 (1965) (Stewart, J., dissenting). One might even describe the notion as "pure applesauce." *King* v. *Burwell*, 576 U. S. ___, ___ (2015) (slip op. at 10) (Scalia, J., dissenting), *Qolio v. United States*, 2 U. S. 11, 17 (2017) ("To believe that would be...pure applesauce").

First, the Supreme Court recognizes that under the due process clause, Americans have a "fundamental right to seek employment." *Tools v. United States,* 9 U. S. 113, 116 (2020). We can therefore construe that argument to apply to plaintiff's case; he sues because his right to seek employment at the exact time and position was violated. And as such, we should consider plaintiff's case a suit filed under both the Worker's Protection Act AND 42 U.S.C. § 1983.

Similar to how plaintiffs who "seek to impose liability on local governments… must prove that 'action pursuant to official municipal policy' caused their injury," *Connick* v. *Thompson,* 563 U. S. 51, 60 (2011) (quoting *Monell* v. *New York City Dept. of Social Servs*., 436 U. S. 658, 691 (1978), if plaintiff wants to prove that filing suit against the United States federal government was appropriate, he should prove that his termination was based off of policy assigned in either the federal government or the Department of Justice. This he has not proven to the court.

In *Connick,* the Supreme Court dealt with the issue of a former convict freed from his death sentence because of new exonerating evidence revealed. Previously, the prosecutor assigned had withheld the evidence in order to convict Thompson, but after he was stricken with terminal cancer, he revealed his secret to other prosecutors. Thompson filed suit against the entire district attorney's office. He argued that he was entitled to damages due to the fact that he was on death row for years while his conviction was still unlawful.

The Supreme Court disagreed with Thompson. It held that a pattern of similar constitutional violations by untrained employees is "'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick, supra,* at 62 (quoting *Board of Comm'rs of Bryan Cty*. v. *Brown,* 520 U. S. 397, 410 (1997)). In sum, the Court essentially held an individual could *not* sue an entire district attorney's office for the misconduct of one of its prosecutors. Similarly, it would be unreasonable for plaintiff to continue a suit against the

Department of Justice, and especially the United States, for actions that he alleges are unlawful by only one or two of its officials.

III. Conclusion

For the reasons stated above, this court should grant defendants summary judgment.

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