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CENTRAL DISTRICT OF CALIFORNIA
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

PLANNED

Case No. CV 04-7787-RGK (MCx) Date January 31, 2005

Title PIERRE GENEVIER v. U.S. DEPARTMENT OF HOMELAND SECURITY

Present: The R. GARY KLAUSNER, U.S. DISTRICT JUDGE
Honorable

<u>Sharon L. Williams</u> Deputy Clerk	<u>Not Reported</u> Court Reporter / Recorder	<u>N/A</u> Tape No.
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Attorneys Present for Plaintiffs:
Not Present

Attorneys Present for Defendants:
Not Present

Proceedings: (IN CHAMBERS) DEFENDANTS MOTION TO DISMISS (DE 11)

I. INTRODUCTION

Based on a review of the Complaint, it appears that Plaintiff Pierre Genevier ("Plaintiff"), proceeding *pro se*, has sued the Department of Homeland Security ("Defendant") for alleged "intentional misrepresentations" made when denying him refugee status benefits.] ←

Defendant moves for dismissal of Plaintiff's Complaint. For the following reasons, this Court grants Defendant's Motion to Dismiss.

II. JUDICIAL STANDARD

Federal courts are courts of limited jurisdiction, and are "presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, when a defendant brings a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1), the plaintiff bears the burden of establishing jurisdiction. See Kokkonen v. Guardian Life Ins., 511 U.S. 375, 377 (1994).

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A Rule 12(b)(1) motion may be based on a challenge to jurisdiction appearing from the face of the complaint, or based on a challenge to jurisdiction as a matter of fact. In considering a Rule 12(b)(1) motion based on a matter of fact, the court is not limited to considering the allegations of the complaint. The court may consider extrinsic evidence, and if the evidence is disputed, it may weigh the evidence and determine the facts in "evaluating for itself the merits of [the] jurisdictional claims." Roberts v. Corrothers, 812 F.2d 1173, 1177 (9th Cir. 1987). Where the court chooses not to conduct an evidentiary hearing to resolve issues of credibility or disputed materials, and chooses instead to resolve such issues on declarations alone, the complaint's factual allegations must be accepted as true. See McLachlan v. Bell, 261 F.3d 908, 909.

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III. DISCUSSION

According to Defendant, Plaintiff's Complaint should be dismissed for the following reasons: (1) Plaintiff's claim is barred by the doctrine of sovereign immunity; (2) Plaintiff failed to exhaust his administrative remedies, and therefore, the Court lacks subject matter jurisdiction; and (3) Plaintiff's Complaint violates the Federal Rules of Civil Procedure 8 and 10.

It is well-established that the United States, as sovereign, is immune from suit unless it consents to be sued, and such waiver of immunity is unequivocally expressed, or the actions alleged by the plaintiffs are included within the statutory exceptions to immunity. United States v. Mitchell, 463 U.S. 206 (1983).

As stated above, Plaintiff seeks damages against Defendant, a department or agency of the United States, for alleged misrepresentations made by employees with regard to Plaintiff's purported refugee status. The Federal Tort Claims Act generally provides causes of action against the United States for injury caused by the negligent or wrongful acts or omissions of any government employee while acting in the scope and course of his or her employment. See 28 U.S.C. § 2679, et. seq. However, the exceptions to the general provisions of the Federal Tort Claims Act expressly preserves the United States' sovereign immunity for claims of misrepresentation and deceit. See 28 U.S.C. 2680(h). Plaintiff's Complaint squarely falls within this exception.

In opposition, Plaintiff argues that the word "misrepresentation," as used in his Complaint, has a different legal meaning that fits within the exception to the exception stated in Section 2680(h). Plaintiff also argues his claim falls within 18 U.S.C. § 1519, which makes it a crime to alter or destroy any record, with the intent to obstruct or influence the administration of any matter within the jurisdiction of any department or agency of the United States. Plaintiff's arguments are not well-taken, as they are completely unsupported by the facts as stated in the Complaint or set forth extrinsically, and the criminal statute to which Plaintiff cites does not provide civil remedy to private citizens.

Based on the above, this Court finds that Plaintiff's claim against Defendant is barred by the doctrine of sovereign immunity. Therefore, this Court lacks subject matter jurisdiction to hear this matter.

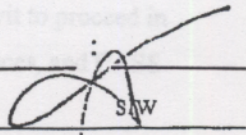
IV. CONCLUSION

In light of the foregoing, Defendant's Motion to Dismiss is **granted**.

IT IS SO ORDERED.

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