

LAWRENCE L. KELLY,

Plaintiff,

V.

MYRTLE WILSON, et al.,

Defendants.

**CIVIL ACTION
No. 09-2188-KHV**

MEMORANDUM AND ORDER

Lawrence L. Kelly, pro se, filed this action against the United States Department of Housing and Urban Development (“HUD”) and HUD employees Myrtle Wilson and Bryan Green. Plaintiff alleges that defendants violated the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and seeks damages in excess of \$3,000,000. On June 30, 2010, the Court dismissed the case without prejudice for failure to properly serve defendants. See Doc. #30. On October 4, 2010, the Court overruled plaintiff’s motion to reconsider, and ordered plaintiff to show cause why the Court should not dismiss the case with prejudice. See Memorandum And Order To Show Cause (Doc. #45) filed October 4, 2010. This matter comes before the Court on Plaintiff’s Response To Court Order To Show Cause (Doc. #47) filed October 15, 2010. For reasons set forth below, the Court finds that the case should be dismissed with prejudice for lack of subject matter jurisdiction.

In prior memoranda and orders, which the Court incorporates by reference, the Court has set forth the factual allegations and procedural background. See Memorandum And Order (Doc. #30) filed June 30, 2010; Memorandum And Order To Show Cause (Doc. #45) filed October 4, 2010. In response to the Court's order to show cause, plaintiff does not address the issue of subject matter

jurisdiction. See Doc. #47.¹

As defendants noted in support of their motion to dismiss, the Fair Housing Act does not provide for private actions against HUD for alleged failure to adequately investigate claims of discrimination. See Marinoff v. U.S. Dep't of Housing & Urban Dev., 892 F. Supp. 493, 496 (S.D.N.Y. 1995), *aff'd*, 78 F.3d 64 (2d Cir. 1996). Although the complaint asserts subject matter jurisdiction through diversity of citizenship under 28 U.S.C. §§ 1332 and 1343, the United States is not a citizen for purposes of diversity jurisdiction. See Gen. Ry. Signal Co. v. Corcoran, 921 F.2d 700, 703 (7th Cir. 1991) (United States not citizen for diversity purposes; agencies of United States likewise cannot be sued in diversity); Weeks Constr., Inc. v. Oglala Sioux Hous. Auth., 797 F.2d 668, 676 n.10 (8th Cir. 1986) (as instrumentality of United States, HUD not citizen of any state for diversity purposes). In addition, to establish subject matter jurisdiction over the United States, plaintiff must show that Congress has explicitly waived sovereign immunity. See O'Brien v. United States, 18 F. Supp.2d 1356, 1358 (N.D. Ga. 1998). Plaintiff has not done so in this case. See Buaiz v. United States, 471 F. Supp.2d 129, 134-135 (D. D.C. 2007) (plaintiff must overcome defense of sovereign immunity to establish jurisdiction). Further, as defendants asserted in support of their motion to dismiss, sovereign immunity bars Bivens claims against defendants in their official capacities. See Simmat v. U.S. Bureau of Prisons, 413 F.3d 1225, 1231 (10th Cir. 2005) (citing Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388, 395-97 (1971)); see also Cogswell v. United States, 353 Fed. Appx.175, 176 (10th Cir. 2009) (in bringing suit against public official in official capacity, plaintiff improperly asserted jurisdiction based on Bivens).

¹ Plaintiff states that “[t]he United States of America has no legal right to falsely accuse me or any U.S. Citizen of any illegal [sic] or wrongdoing without proof or evidence.” Doc. #47 at 2. Plaintiff attaches a police report, a letter from the Topeka Housing Authority and a letter from HUD.

IT IS THEREFORE ORDERED that the case be and hereby is **DISMISSED WITH PREJUDICE**.

Dated this 8th day of December, 2010 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge