

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 22, 2024*

Decided October 31, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 24-1606

WELBY THOMAS COX,
Plaintiff-Appellant,

v.

UNITED STATES DEPARTMENT OF
JUSTICE and ZACHARY AUGUSTUS
MYERS,

Defendants-Appellees.

Appeal from the United States District
Court for the Southern District of
Indiana, Indianapolis Division.

No. 1:23-cv-01601-JPH-MJD

James Patrick Hanlon,
Judge.

ORDER

Welby Cox, a former federal prisoner, sued the United States Department of Justice and the United States Attorney for the Southern District of Indiana. The district court screened and dismissed the complaint and Cox's motion for a preliminary

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

injunction, which contained allegations about the conditions of Cox's confinement, the propriety of his past incarceration, and the collection of his restitution debt via the Treasury Offset Program, for failure to state a claim. Because Cox's allegations about the collection of his restitution debt through the Treasury Offset Program state a claim, we reverse and remand.

In 2010, Cox was convicted of 30 counts of transporting stolen money interstate, 18 U.S.C. § 2314, in the Western District of Kentucky. The court imposed 75 months' imprisonment, 3 years' supervised release, and a restitution obligation of \$285,000. The judgment instructed that the restitution payment was due immediately in a lump sum. It also established a payment schedule while Cox was in prison, requiring him to pay either \$25 or \$60 quarterly. Within 60 days of Cox's release from prison, the judgment ordered the probation agent to submit to the court a new proposed payment schedule after reviewing Cox's financial circumstances. As a condition of supervised release, Cox was required to make restitution payments consistent with any payment schedule.

In 2012, Cox was released onto supervision, but the record is not clear about whether a new payment schedule was approved by the court. Two years later, in 2014, Cox's supervision was transferred to the Southern District of Indiana. Cox asserts that he made monthly payments toward his restitution obligation while on supervised release. Cox completed his term of supervised release in 2015.

Cox says that he continued to make regular restitution payments until August 2023, when he received a letter from the Office of the United States Attorney for the Southern District of Indiana, informing him that a new payment agreement was needed. The letter explained that the \$25 quarterly payment plan was only valid while Cox had been incarcerated. Because the U.S. Attorney's Office had been unable to reach an agreement with Cox to establish a new payment schedule, it sent Cox's account to the Treasury Offset Program for collection of the remainder of his debt. Soon after, Cox noticed that the government was offsetting his Social Security checks.

Cox initially filed this suit against the United States Department of Justice and the United States Attorney for the Southern District of Indiana in the Southern District of Ohio, but the court transferred the case to the Southern District of Indiana. In his complaint, in which he also moved for a preliminary injunction, Cox argued that he had been unlawfully incarcerated and subjected to unconstitutional conditions of confinement while in prison. He also argued that the U.S. Attorney's Office wrongly sent his restitution debt to the Treasury Offset Program, causing the federal government

to improperly offset his Social Security payments. He sought damages, a cessation of the offset, and the expungement of his criminal record.

Soon after, Cox moved for recruited counsel and again for a preliminary injunction, reiterating the arguments in his complaint. When the government did not respond, Cox moved for a default judgment. The court denied the motion, reasoning that Cox had not served either defendant, and, in any event, the government had appeared in the case the same day Cox had moved for default judgment.

The district court then screened Cox's complaint. 28 U.S.C. § 1915(e). Because Cox's convictions had not been overturned, it concluded that any monetary relief for time Cox spent incarcerated would be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). The court then rejected Cox's conditions-of-confinement claim because he had not (and could not) allege that either defendant was personally involved in any aspect of his incarceration. The court then disposed of Cox's restitution arguments by explaining that it did not have authority to resolve them. The court explained that the proper forum to seek changes to any restitution payment schedule is the Western District of Kentucky, where Cox had been convicted. Finally, the court denied Cox's motions for a preliminary injunction and for recruited counsel.

Cox moved for reconsideration, asserting that the government had been untimely in its responses and demanding that his Social Security money be returned to him. The court denied the motion and entered a final judgment.

Cox appeals. We review the screening order *de novo*, accepting the complaint's factual allegations as true and drawing all reasonable inferences in the plaintiff's favor. *Schillinger v. Kiley*, 954 F.3d 990, 994 (7th Cir. 2020).

Cox first argues that the district court committed certain tort offenses against him and was biased in favor of the government. But Cox offers as evidence only the court's denial of his motion for default judgment against the government. Adverse judicial rulings alone will almost never suffice to establish judicial bias. *Liteky v. United States*, 510 U.S. 540, 555 (1994).

The bulk of Cox's brief on appeal focuses on the government's collection of his restitution debt. The district court understood Cox's allegations about the restitution payments to be a request to modify a court-established payment plan that presumably would have been put in place during his supervised release. But Cox completed his supervised release in 2015. And he clarifies in his appellate brief that he is objecting to

the U.S. Attorney's Office's decision to refer his debt to the Treasury Offset Program and to the lack of notice he received before his Social Security benefits were offset. In the claim that survives, he appears to demand only injunctive relief for this harm in the form of stopping or at least reducing the offset.

The Treasury Offset Program provides the government with statutory authority to offset funds payable by the United States to any individual who owes delinquent federal debt. *Astrue v. Ratcliffe*, 560 U.S. 586, 589–90 (2010); 31 U.S.C. §§ 3711, 3716. Before collecting a debt by administrative offset, the agency that is owed the debt must provide the debtor with written notice and opportunity for review. 31 U.S.C. § 3716(a). Once an agency has concluded that a debt is valid, delinquent, and legally enforceable, it refers the debt to the Department of the Treasury to apply the offset. 31 C.F.R. § 285.5(d)(6).

The district court incorrectly concluded that it lacked the authority to resolve these claims. No caselaw demands that Cox challenge an offset in his court of conviction, and our precedent suggests that the Administrative Procedure Act, 5 U.S.C. § 702, permits such challenges. *See Harrington v. Berryhill*, 906 F.3d 561, 568 (7th Cir. 2018). True, Cox does not invoke the Act in his filings. But notice pleading does not require that Cox identify in his complaint the specific statutes or regulations he argues the defendants violated. *Zimmerman v. Bornick*, 25 F.4th 491, 493 (7th Cir. 2022).

Nor has he failed to state a claim. Cox has alleged that he received inadequate notice before his account was referred to the Treasury Offset Program. The statutes governing the Program require written notice *before* collecting a debt via administrative offset. 31 U.S.C. § 3716(a)(1). Though Cox received a letter from the U.S. Attorney's Office explaining that it had referred his restitution debt to the Program, this does not defeat his claim. The letter does not establish that Cox received written notice before his debt was referred for collection, and it did not make the disclosures required by the statute, such as an explanation of Cox's rights. *Id.* Moreover, § 3716(a)(3) requires that Cox receive "an opportunity for review within the agency of the decision of the agency related to the claim." Cox asserts he never had an opportunity for such a review. Taking Cox's factual allegations as true, we conclude that he plausibly alleged that the Department of Justice failed to comply with the notice and review requirements in the offset statute, 31 U.S.C. § 3716(a).

Cox does not challenge the district court's dismissal of his claims related to the conditions of his confinement or his alleged unlawful incarceration. Nor does he address the court's denial of his motion for counsel or his motion for a preliminary

injunction. Accordingly, any argument along those lines is waived. *Bradley v. Village of University Park*, 59 F.4th 887, 897 (7th Cir. 2023).

REVERSED and REMANDED