

FILED

MAR 31 1999

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WESTERN CENTER FOR JOURNALISM,)
 d/b/a WESTERN JOURNALISM)
 CENTER,)
)
 Plaintiff,)
)
 v.)
)
 THOMAS CEDERQUIST, MARGARET)
 MILNER RICHARDSON, JOHN DOES)
 1-3 AND JANE DOE NO.4)
)
 Defendants.)

CIV S-98-0872 GEB JFM

ORDER

CLOSED

DATE MAR 31 1999

Defendants Thomas Cederquist and Margaret Milner Richardson move under Federal Rule of Civil Procedure 12(b) to dismiss Plaintiff Western Journalism Center's ("WJC") action for failure to state a claim upon which relief can be granted. WJC opposes the motion. For the reasons stated below, the motion is granted.¹

¹ Because of the ruling herein, the remaining motions before this Court need not be reached, save WJC's motion for an "Order to Show Cause Concerning Threatened Retaliation Against Counsel." Although WJC vigorously argued the need for an OSC, its argument neither implicated the named Defendants in wrongdoing nor stated a sufficient basis for issuance of the order against any other individual or entity. WJC's motion for an OSC is accordingly denied.

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1 I.

2 BACKGROUND

3 Plaintiff WJC, a tax-exempt, educational and investigative
4 reporting organization, was audited by the Internal Revenue Service
5 ("IRS") for the tax years 1994 and 1995. Defendant Richardson was the
6 Commissioner of the IRS during the time of the audit, and Defendant
7 Cederquist conducted a portion of the audit. WJC alleges that
8 Cederquist and Richardson undertook "an unlawful, politically-inspired
9 tax audit of Plaintiff for the years 1994 and 1995" in violation of
10 the First and Fourth Amendments of the United States Constitution. It
11 seeks damages from Cederquist and Richardson in their individual
12 capacities pursuant to Bivens v. Six Unknown Named Agents of Federal
13 Bureau of Narcotics, 403 U.S. 388 (1971).

14 II.

15 ANALYSIS

16 Defendants argue that WJC's claims should be dismissed
17 because a Bivens remedy is not available "for constitutional
18 violations that occur in connection with the audit, assessment, or
19 collection of federal tax liabilities," and that even if WJC had
20 actionable Bivens claims, they would be time-barred. WJC responds
21 that a Bivens remedy is available for First Amendment and Fourth
22 Amendment violations and that its claims are not time-barred.

23 In Bivens, the Supreme Court recognized that claims against
24 federal agents for constitutional violations may be implied directly
25 under the Constitution where no statute specifically creates such a
26 remedy. Bivens, 403 U.S. at 397. However, the Court has refused to
27 create a Bivens remedy "[w]hen the design of a Government program
28 suggests that Congress has provided what it considers adequate

1 remedial mechanisms for constitutional violations that may occur in
2 the course of its administration." Schweiker v. Chilicky, 487 U.S.
3 412, 423 (1988) (finding no Bivens remedy for improper denial of
4 Social Security disability benefits). The Internal Revenue Code is
5 such a program. See Wages v. Internal Revenue Service, 915 F.2d 1230,
6 1235 (9th Cir. 1990) (finding that the remedies provided by Congress,
7 particularly the right to sue the government for a refund of taxes
8 improperly collected, foreclosed a due process damage action under
9 Bivens). For example, the Code provides the right to sue the
10 government for a refund of taxes improperly collected, see 26 U.S.C.
11 § 7422; to sue any officer or employee of the IRS who recklessly or
12 intentionally disregards any provision of Title 26 for civil damages,
13 see id. at § 7433; to sue the government for declaratory relief
14 concerning an organization's tax-exempt status, see id. at § 7428; and
15 to decline to turn over information requested by the government prior
16 to judicial enforcement of a summons, see id. at § 7602.² These

17
18 ² Section 7602 is particularly applicable to this case. WJC
19 asserts that it was targeted for an audit for improper political
20 reasons and that its First Amendment rights were violated because it
21 "was subjected to an onerous and burdensome audit to retaliate against
22 it for its prior reporting . . . and because [it] was forced to devote
23 its limited personnel and resources to the audit instead of to its
24 journalistic endeavors." Pl.'s Opp'n at 2. WJC could have challenged
25 the propriety of the audit by refusing to turn over the requested
26 information. See, e.g., United States v. Church of Scientology of
27 California, 520 F.2d 818 (9th Cir. 1975). To obtain judicial
28 enforcement of a summons under § 7602 the IRS must show: "(1) that the
investigation will be conducted pursuant to a legitimate purpose; (2)
that the inquiry may be relevant to the purpose; (3) that the
information sought is not already within the Service's possession; and
(4) that the administrative steps required by the Internal Revenue
Code have been followed." Id. at 821. WJC nonetheless contends that
since it seeks damages, which are not available under § 7602, it
should be permitted to proceed on a Bivens claim. To the contrary,

(continued...)

1 remedies are just part of a comprehensive remedial scheme which
2 permits taxpayers to challenge the actions of the IRS and its agents.
3 Accordingly, a Bivens action is unavailable in this case, and
4 Plaintiff's claims must be dismissed.

5 WJC's Complaint should be dismissed with prejudice only if,
6 taking the allegations of the Complaint as true, it is clear that WJC
7 cannot allege facts which would entitle it to relief. See Pink v.
8 Modoc Indian Health Project, Inc., 157 F.3d 1185, 1189 (9th Cir.
9 1998); Parks School of Business, Inc. v. Symington, 51 F.3d 1480, 1484
10 (9th Cir. 1995). Here, since the remedies provided by Congress in the
11 Internal Revenue Code foreclose a damage action under Bivens,
12 amendment would be futile. WJC's Complaint is therefore dismissed
13 with prejudice and the Clerk of Court is directed to enter Judgment in
14 favor of Defendants.

15 IT IS SO ORDERED.

16 DATED: March 30, 1999

17 
18 GARLAND E. BURRELL, JR.
19 UNITED STATES DISTRICT JUDGE
20
21
22

23 _____
24 ²(...continued)

25 the fact that WJC cannot attain damages under § 7602 is inapposite.
26 See Bush v. Lucas, 462 U.S. 362, 388 (1983) (finding complex
27 administrative scheme precluded Bivens action even though "existing
28 remedies do not provide complete relief for the plaintiff"); see also
Chilicky, 487 U.S. at 427 ("Whether or not we believe that its
response was the best response, Congress is the body charged with
making the inevitable compromises required in the design of a massive
and complex welfare benefits program.").

United States District Court
for the
Eastern District of California
March 31, 1999

* * CERTIFICATE OF SERVICE * *

2:98-cv-00872

Western Center

v.

Cederquist

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on March 31, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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