

FILED

MAR 19 2012

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STEVEN L. RUTHERFORD,

Plaintiff,

v.

KURT D. ENGELHARDT,

Defendant.

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Civil Action No.

12 0418

MEMORANDUM OPINION

This matter is before the Court on plaintiff's application to proceed *in forma pauperis* and *pro se* complaint. The application will be granted and the complaint will be dismissed.

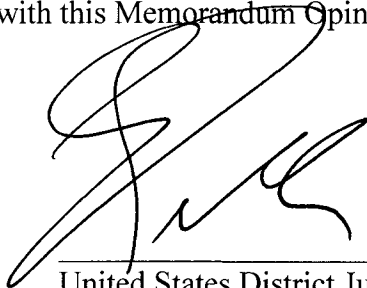
The Hon. Kurt D. Engelhardt, a United States District Judge, presided over and dismissed consolidated cases filed by the plaintiff in the United States District Court for the Eastern District of Louisiana. *See Order, Rutherford v. Employment Standard Admin.*, No. 09-5436 (E.D. La. filed Aug. 30, 2010). The plaintiff contends that the dismissal of his case was "unlawful." Compl. at 1. He alleges that Judge Engelhardt committed various criminal acts in connection with the dismissal, *see id.* at 1-2, and conspired with federal government officials "to Commit Criminal act against [him]," *id.* at 2. The plaintiff demands an "Emergency Grand Jury Investigation" and Judge Englehardt's removal. *Id.*

This Court is without authority to grant the relief the plaintiff demands. The decision to pursue a criminal case is left to the discretion of federal prosecutors, *see United States v. Nixon*, 418 U.S. 683, 693 (1974) (acknowledging that the Executive Branch "has exclusive authority and absolute discretion to decide whether to prosecute a case"); *Powell v. Katzenbach*, 359 F.2d 234, 234-35 (D.C. Cir. 1965) (per curiam), *cert. denied*, 384 U.S. 906 (1966) ("[T]he question of

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whether and when prosecution is to be instituted is within the discretion of the Attorney General. Mandamus will not lie to control the exercise of this discretion.”), and Judge Englehardt enjoys life tenure subject to removal by impeachment, *see N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 (1982) (explaining that “[t]he ‘good Behaviour’ Clause guarantees that Art. III judges shall enjoy life tenure, subject only to removal by impeachment”) (plurality opinion).

The complaint fails to state a claim upon which relief can be granted, and, therefore, it will be dismissed. An Order consistent with this Memorandum Opinion will be issued separately on this date.

A handwritten signature in black ink, appearing to be "J. Englehardt", written over a horizontal line.

United States District Judge

DATE:

3/14/12