



*Cunningham I* Op. at 1–2; Pl.’s Resp. to Order, ECF No. 7 [hereinafter Pl.’s Resp.], at 1 (alleging “[j]udicial [m]isconduct was committed while conspiring and colluding with the Department of Labor (DoL) counsel”); *Cunningham I* Notice of Removal, Compl., ECF No. 1-2, at 3 (alleging Wright “can be clearly heard lying to” Plaintiff). The court also lacks jurisdiction because Plaintiff has failed to exhaust administrative remedies under the FTCA. *See McNeil v. United States*, 508 U.S. 106, 113 (1993) (affirming dismissal of the plaintiff’s FTCA claim for lack of subject matter jurisdiction because “[t]he FTCA bars claimants from bringing suit in federal court until they have exhausted their administrative remedies”).

*Second*, dismissal is warranted because Plaintiff’s tort claim was previously dismissed on jurisdictional grounds in *Cunningham I* and therefore is barred on the ground of *res judicata*. *See GAF Corp. v. United States*, 818 F.2d 901, 912 (D.C. Cir. 1987) (stating a “judgment ordering dismissal[] will . . . preclude relitigation of the precise issue of jurisdiction that led to the initial dismissal”). Plaintiff identifies no basis for having “cure[d]” the jurisdictional deficiencies identified in *Cunningham I*. *See id.* at 912–13.

*Third*, to the extent Plaintiff asserts a claim under the Fifth Amendment against Wright in his individual capacity, that claim is dismissed for two reasons. As an administrative law judge, Wright is immune from suit. The Supreme Court long ago “extended absolute immunity” to administrative law judges performing judicial acts. *Cleavinger v. Saxner*, 474 U.S. 193, 200 (1985) (citing *Butz v. Economou*, 438 U.S. 478, 513 (1978)). In addition, the court lacks jurisdiction over Wright because Plaintiff has failed to serve him with process. *See* 28 U.S.C. § 1448; Fed. R. Civ. P. 4(i)(3); Pl.’s Resp. at 2 (conceding failure to serve).

*Finally*, to the extent Plaintiff brings a claim under 42 U.S.C. § 1983, that claim is likewise dismissed because Wright is immune from suit for his judicial acts and because Plaintiff has not served Wright.

For the foregoing reasons, Defendant's Motion to Dismiss, ECF No. 5, is granted. A final, appealable order accompanies this Memorandum Opinion.

Dated: July 13, 2021

A handwritten signature in black ink that reads "Amit Mehta". The signature is written in a cursive style with a large initial "A" and a long horizontal stroke at the end.

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Amit P. Mehta  
United States District Court Judge