

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

HENRY BARHITE,

Plaintiff,

v.

BRIANNE NADEAU,

Defendant.

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Civil Action No. 23-3594 (UNA)

MEMORANDUM OPINION

This matter is before the Court on review of *pro se* plaintiff's application to proceed *in forma pauperis* ("IFP") and his civil complaint. The IFP application is GRANTED and, for the reasons stated below, the Complaint and this civil action are DISMISSED without prejudice.

Plaintiff brings this action against Brianne Nadeau, who represents Ward 1 on the Council of the District of Columbia, alleging that defendant "committed prohibited acts," in violation of 18 U.S.C. § 1208, and engaged in mail fraud, in violation of 18 U.S.C. § 1341. Compl. at 3.¹ As alleged, defendant depicts plaintiff "as a crazy homeless person," *id.* at 4, and plaintiff says he has sustained injuries, *see id.* at 5, though this conclusory allegation provides no further support tying any injuries to defendant. Plaintiff demands "[r]estitution of all moneys paid or lost and 10 times the total for punitive." *Id.* at 5.

¹ Plaintiff's reference to "31 U.S.C. § 1341" is presumably an error, since that citation to the Anti-Deficiency Act, *see* 31 U.S.C. § 1341, carries no private right of action. *See Feldman v. Bowser*, 315 F. Supp. 3d 299, 305 (D.D.C. 2018) (citing *Thurston v. United States*, 696 F. Supp. 680, 683 (D.D.C. 1988)).

This Complaint fails to state claims upon which relief can be granted, as the criminal statutes on which plaintiff relies provide no basis for a civil cause of action. *See Allen v. Adams*, No. 21-3208, 2022 WL 680336, at *3 (10th Cir. Mar. 8, 2022) (affirming district court’s dismissal of “a claim under 18 U.S.C. § 1028, which criminalizes fraudulent and other activities relating to identification documents,” because “this statute does not provide a private right of action”), *cert. denied*, 142 S. Ct. 2889, (2022); *Kathrein v. McGrath*, 166 F. App’x 858, 863 (7th Cir. 2006) (concluding that there is no private right of action under federal mail fraud statute, *see* 18 U.S.C. § 1341); *see also Wagner v. Stout St. Fund I L.P.*, No. 13-cv-4256, 2013 WL 4679623, at *3 (E.D.N.Y. Aug. 30, 2013) (“Generally, violations of the Criminal Code may not serve as the basis for a civil cause of action unless the criminal statute includes an express or implied private right of action.”) (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283 (2002)).

An Order consistent with this Memorandum Opinion is issued separately.

DATE: December 28, 2023

BERYL A. HOWELL
United States District Judge