

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

JAMES S. PARS	)	
	)	
Plaintiff,	)	Civil Action No.
	)	
v.	)	
	)	
CENTRAL INTELLIGENCE AGENCY,	)	
Washington, D.C. 20505	)	
	)	
and	)	
	)	
JOHN O. BRENNAN	)	
DIRECTOR	)	
CENTRAL INTELLIGENCE AGENCY	)	
	)	
Defendants	)	

**COMPLAINT**

Plaintiff, James S. Pars, by and through his undersigned counsel, complains of the Defendants as follows:

**INTRODUCTION**

1. Plaintiff brings this action against the Central Intelligence Agency (CIA) and John O. Brennan pursuant to the Administrative Procedure Act (APA), to challenge Defendants' failure to comply with Presidential Policy Directive 19 (PPD-19). Plaintiff seeks a declaration that Defendants are in violation of the APA due to their failure to comply with PPD-19. Plaintiff also asks the Court to order Defendants to fulfill their duties under PPD-19.

**JURISDICTION AND VENUE**

2. This Court has federal question jurisdiction under 28 USC S. 1331, and venue is

proper under 28 U.S.C. S 1391(e).

### **PARTIES**

3. Plaintiff James S. Pars is a resident of Loudoun County, Virginia and a CIA Intelligence Officer with over 16 years of federal service. The name “James S. Pars” is an alias given to Plaintiff by the CIA when he filed a complaint with the CIA’s office of Equal Employment Opportunity (EEO) in or about April 2015.

4. Defendant CIA is an agency of the U.S. government as defined by 5 U.S.C. § 701.

5. Defendant, John O. Brennan, is the Director of the CIA and is sued in his official capacity only.

### **FACTS**

#### **Plaintiff’s Assignment as Deputy Chief of Base**

6. On December 9, 2014, Plaintiff began a one-year Permanent Change of Station (PCS) assignment from the Washington Metropolitan Area (WMA) to a location hereinafter referred to as “the Base,” to serve in a management position as Deputy Chief of Base (DCOB). The assignment was scheduled to end on December 9, 2015.

7. The PCS assignment came with significant entitlements and benefits granted to Agency personnel serving in such locations. In addition, Plaintiff was told that if he completed the PCS assignment, he would likely receive a promotion.

8. The Base was located in a conflict zone. Plaintiff was well prepared for the assignment having had three and a half years of management experience in similar locations. Additionally, he had almost six years of field conflict zone experience in a variety of threat environments. By contrast, the Chief of Base (COB) had limited to no conflict zone experience prior to her assignment at the Base.

### **Issues with COB**

9. Shortly after arriving on Base, Plaintiff began observing unusual and inappropriate behavior by the COB. The COB's behaviors violated US laws and CIA headquarters mandated policies, procedures and direct orders articulated in CIA official message traffic. The COB ran the base like a college dormitory. Her behavior negatively impacted the Base's ability to meet its mission of assisting Intelligence Community (IC) and US military partners, and endangered the lives of personnel.
10. The COB admitted to Plaintiff that she was "wrecked" and "horribly depressed" because she missed her family.
11. The COB placed her personal needs of cooking, baking, socializing, entertainment, exercise and shopping above the needs of the mission often going days and sometimes more than a week without meeting with key personnel.
12. The COB continually put herself and personnel in danger by insisting that they travel in areas of indirect fire attack (IDF) when not operationally necessary—such as trips for food, shopping or to the gym—contrary to US Military personnel movement guidance. In one instance, the COB and her personnel traveled through the same area hit by a rocket about 10 minutes after transiting the area.
13. The COB adopted certain U.S. Military members to feed and entertain on base. She referred to these military members as her "adopted sons." The COB would frequently spend hours entertaining her adopted sons.
14. The COB gave preferential treatment to her adopted sons to the detriment of other personnel.
15. One of her adopted sons was the Base Officer in Charge (OIC).

16. The OIC supervised a CIA Technical Information Systems Officer (TISO) who was not an adopted son and therefore, did not receive any preferential treatment from the COB. Rather, the COB allowed the OIC to blatantly shirk his duties often with negative consequences for the TISO.

17. The COB allowed the OIC to watch television all day long and dump his assignments on the TISO.

18. The COB allowed the OIC to show up late for his shift on a consistent basis, causing the TISO to have to work part of the OIC's shift.

19. The COB ordered Plaintiff to write an award for the OIC even though the OIC did not deserve one, and falsely claimed that the OIC was a stellar officer.

20. The COB undermined Plaintiff's ability to supervise the OIC and other Base personnel.

#### **Plaintiff's Protected Disclosures Regarding the COB**

21. Beginning in mid to late January 2015, Plaintiff discussed in writing and in person his concerns regarding the COB with the Psychological Officer (PO) for the Base.

Plaintiff discussed the concerns enumerated in paragraphs 9 to 20.

22. The PO suggested that Plaintiff disclose his concerns to the next person in the chain of command, hereinafter referred to as the "Chief."

23. In early February 2015, while the COB was on Rest and Recuperation (R & R), Plaintiff wrote to the Chief regarding his concerns with the COB. He also had verbal discussions with the Chief regarding the concerns. The Chief's response was to accuse Plaintiff of not supporting the COB. He told Plaintiff that he was wrong to support the TISO. The Chief also reported Plaintiff's disclosures to the COB.

24. When the COB returned from R & R, Plaintiff attempted to speak to her about his concerns but she told him she did not want to hear about it.

25. The situation at the Base continued to deteriorate. The OIC, who was being encouraged by the COB, took advantage of the TISO. There were increased personnel moves through IDF zones for non-mission essential purposes. The COB continued to miss meetings with key US personnel. The COB insisted on increasing social activities on the Base, which had a negative impact on the Base's ability to support the IC and the US military. In one instance, the COB concluded a staff meeting with "Let's get back to cooking," which caused her to miss a meeting with a very senior US military official.

26. Due to the escalating conflict between the OIC and the TISO, on or about February 19, 2015, Plaintiff had two lengthy in-person conversations with the COB regarding the issues enumerated in paragraphs 14 to 18 and 25. Plaintiff told the COB he wanted to work with her to resolve the issues. Instead, the COB escalated the matter to the Chief who, on the following day during a heated telephone conversation, again accused Plaintiff of not supporting the COB. In addition, the Chief tried to coerce Plaintiff into making false accusations against the TISO in order to remove him from the Base.

27. The next day, the COB retaliated against Plaintiff by assigning him to be the compound "noise monitor"; excluding him from key military meetings; extreme micromanaging of all Plaintiff's work; and accusing Plaintiff of "failing miserably" at team building at the Base. The COB also exhibited belligerent and threatening behavior toward Plaintiff.

28. Because of the COB's retaliation and lack of support from the Chief, Plaintiff

reached out to the Chief of Station (COS) for assistance. Plaintiff communicated with the COS in writing and also via virtual teleconference (VTC). Plaintiff reported the issues enumerated in paragraphs 9 to 27. The COS recommended that Plaintiff take his R & R three weeks early on February 24, 2015. Plaintiff was supposed to return to the Base on or about March 17 or 18, 2015. The COS stated that Plaintiff's issues with the COB would be addressed while Plaintiff was on R & R.

29. Plaintiff departed the Base on February 24, 2015 and arrived in the Washington Metropolitan Area on February 25, 2015.

30. Before departing for R & R, Plaintiff contacted the Equal Employment Opportunity (EEO) office point of contact (POC) for the Base and forwarded emails regarding the COB's behavior that he had previously sent to the COS.

31. On March 9, 2015, Plaintiff had a meeting with the EEO POC to discuss his case. The EEO POC had no interest in hearing the details of the events at the Base. He told Plaintiff that it was good to get fired from a job and that Plaintiff should reinvent himself.

32. Also on March 9, 2015, Plaintiff had a meeting with the CIA Deputy Chief for Area Division in charge of the specific territory for the Base, the Chief of the Office for the special area of operation and the Chief of human resources for this specific division. They told Plaintiff that he would not be returning to the Base. Plaintiff inquired about a comparable position in the area of operation, but was told that no job was being offered as a replacement.

33. Unbeknownst to Plaintiff, the COS had sent a "short of tour cable" stating that the COS had lost all confidence in Plaintiff's leadership. The cable contained false and derogatory information about Plaintiff that was used to support the short of tour and send

Plaintiff home early.

34. A short of tour is a very negative career event. As a result of the short of tour, Plaintiff was stripped of the benefits granted to personnel serving in a PCS location. In addition, Plaintiff's career with the CIA has been severely impacted.

35. By contrast, no actions were taken against the COB who was allowed to complete her tour. Personnel and Base operations were modified to accommodate the COB's social and appetite needs. The ability of the Base to assist the IC and US Military partners was significantly degraded. To alleviate the friction between the OIC and the TISO, the TISO was sent to another location. No one replaced Plaintiff as DCOB until close to the end of the COB's tour.

36. The sole reason Plaintiff was sent home short of tour was because he complained about the COB's behavior and mismanagement of personnel and resources.

#### **Presidential Policy Directive 19**

37. President Obama issued PPD-19 on October 10, 2012, to ensure that employees serving in the Intelligence Community or who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information. (Exhibit 1).

38. PPD-19 prohibits retaliation against employees for reporting waste, fraud and abuse and requires covered agencies (of which CIA is one) to provide a review process under which the agency Inspector General shall issue a review to determine whether a Personnel Action violated 5 U.S.C. Section 2302(b)(8). (Exhibit 1).

39. The review process is to adhere to the policies and procedures used by the Office of Special Counsel to adjudicate alleged violations of 5 U.S.C. § 2302(b)(8). These

policies and procedures are found in 5 U.S.C. §§ 1213 and 1214. Under 5 U.S.C. § 1214(b)(2)(A), the OSC has 240 days to make a determination whether there are reasonable grounds to believe that a prohibited personnel practice has occurred.

Likewise, the IG's review process is limited to 240 days.

40. PPD-19 also provides for an external review by a three-member Inspector General panel (External Review Panel) chaired by the Inspector General of the Intelligence Community (IC IG). (Exhibit 1).

41. Pursuant to PPD-19, the IC IG issued external review panel procedures. Under these procedures, an employee seeking an external review pursuant to PPD-19 shall provide a formal written request for such a review directly to the IC IG Hotline Manager within forty-five (45) calendar days of receiving an agency's final written disposition on his/her alleged reprisal complaint. (Exhibit 2).

#### **Plaintiff's Complaints to CIA IG**

42. On or about April 3, 2015, Plaintiff complained to the CIA Inspector General's Office (CIA IG) that he was subjected to retaliation following his protected disclosures to the Chief, COB and COS about COB's mismanagement of personnel and resources and her reckless endangerment of personnel.

43. Plaintiff met with two CIA IG investigators on or about April 8 and 9, 2015 to discuss his written summary of events. The CIA IG office initially sent the case to the EEO office.

44. On or about July 8, 2015, Plaintiff met with the CIA IG and asked the CIA IG to conduct a reprisal investigation.

45. The CIA IG purportedly began a reprisal investigation in early October 2015.



Plaintiff provided additional information to the CIA IG in November and December 2015, including a complete list of documents to request or locate and personnel to interview.

46. Plaintiff has contacted the CIA IG multiple times since December 2015 regarding the status of his complaint but to his knowledge, no additional actions have been taken.

47. Plaintiff has refrained from contacting witnesses in order to avoid tampering with the investigation; however, one of Plaintiff's main witnesses informed him that as of July 2016, he had not been contacted by the CIA IG.

48. The CIA IG has not issued a final written disposition on Plaintiff's reprisal complaint pursuant to PPD-19 and the IC IG External Review Procedures. As a result, Plaintiff is unable to request review by the IC IG.

49. Additionally, the significant delay by the CIA IG in investigating Plaintiff's reprisal complaint could significantly damage Plaintiff's ability to substantiate his claims.

### **Count 1**

#### **Violation of the Administrative Procedure Act**

50. Plaintiff repeats and realleges the allegations set forth in paragraphs 1-49.

51. The Administrative Procedure Act (APA) provides a basis for suit where the federal government has unlawfully withheld or unreasonably delayed action. 5 U.S.C. §§ 555(b) and 706 (l).

52. Under PPD-19 and the IC IG External Review Procedures, the CIA IG was required to investigate whether the CIA retaliated against Plaintiff for reporting the COB's mismanagement of personnel and resources.

53. Under PPD-19 and the IC IG External Review Procedures, the CIA was required

to issue a final written disposition on Plaintiff's reprisal complaint within 240 days.

54. The CIA IG has had sufficient time to complete its investigation of Plaintiff's reprisal complaint and further delay is unreasonable given the importance the President of the United States has placed on the protection of whistleblowers with access to classified information by issuing PPD-19.

55. As of the date of this filing, the CIA IG has failed to issue a final written disposition on Plaintiff's reprisal complaint.

56. Accordingly, the CIA IG has unlawfully withheld or unreasonably delayed action on Plaintiff's reprisal complaint in violation of the Administrative Procedure Act.

WHEREFORE, Plaintiff prays that this Court:

- A. Declare Defendants' failure to complete the investigation of Plaintiff's reprisal complaint and issue a final written disposition to be in violation of the Administrative Procedure Act;
- B. Order Defendants to conclude the investigation of Plaintiff's reprisal complaint and issue a final written disposition by a date certain;
- C. Award attorney's fees and costs pursuant to 28 U.S.C. § 2412 and/or any other appropriate source; and
- D. Grant any other relief the Court deems appropriate and just.

Date: 12/20/2016

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JAMES S. PARS,

Plaintiff,

v.

CENTRAL INTELLIGENCE AGENCY, *et al.*,

Defendants.

Case No. 1:16-cv-02491 (TNM)

MEMORANDUM OPINION

Plaintiff James Pars,<sup>1</sup> an employee of defendant Central Intelligence Agency (“CIA” or the “Agency”), seeks a declaratory judgment and order requiring the Agency to complete its investigation into his reprisal complaint, which has been pending for nearly three years. Compl. ¶¶ 3, 42, 56. He alleges that Presidential Policy Directive 19 (“PPD-19” or the “Directive”), issued by President Obama in October 2012, requires that the CIA Inspector General (“IG”) conduct an investigation into his complaint, and that the office’s failure to do so can be rectified through the Administrative Procedure Act (“APA”). *Id.* ¶¶ 37, 51-56. The Agency has moved to dismiss the complaint for failure to state a claim upon which relief can be granted. Def.’s Mot. to Dismiss, ECF No. 12. Upon consideration of the pleadings, relevant law, and related legal memoranda in opposition and in support,<sup>2</sup> I find that the complaint fails to allege that a private right of action is established, either by statute or the Directive, to sustain judicial review of the

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<sup>1</sup> For national security purposes, the Plaintiff is proceeding under an alias. Mem. and Order, Dec. 20, 2016, ECF No. 2.

<sup>2</sup> Subject matter jurisdiction is proper under 28 U.S.C. § 1331, and the Defendant has not challenged litigating in this District. *See* Def.’s Mot. to Dismiss; *see also* 28 U.S.C. § 1391.

merits of this action. Accordingly, the Defendant's motion will be granted, and the complaint will be dismissed without prejudice.

## **I. Background**

Mr. Pars is a 16-year veteran of the CIA. Compl. ¶ 3. In December 2014, he began a one-year assignment as the Deputy Chief of Base, a management position, at a base located in a conflict zone. *Id.* ¶¶ 6, 8. In this position, he allegedly observed certain "unusual and inappropriate" behaviors of the Chief of Base ("COB") which he feared "negatively impacted the Base's ability to meet its mission of assisting Intelligence Community (IC) and US military partners, and endangered the lives of personnel." *Id.* ¶¶ 8-9. For example, the COB allegedly often spent time cooking, baking, socializing, entertaining, exercising, and shopping, and insisted on traveling in areas of indirect fire attack to perform certain of these activities, putting herself and other military personnel in danger. *Id.* ¶¶ 10-12. In one instance, the COB and her personnel allegedly traveled through an area that was hit by a rocket ten minutes later. *Id.* ¶ 12. In another instance, the COB allegedly missed a meeting with a senior U.S. military official in order to cook. *Id.* ¶ 25. The COB also allegedly told Mr. Pars that she was "horribly depressed" and missed her family. *Id.* ¶ 10. According to Mr. Pars, she selected certain individuals to become her "adopted sons," and gave preferential treatment to those individuals, entertaining them and permitting them to shirk their work responsibilities. *Id.* ¶¶ 13-18.

In or around January 2015, upon advice from the base's Psychological Officer, Mr. Pars disclosed his concerns to the "Chief," the next person in the chain of command. *Id.* ¶¶ 21-22. The Chief allegedly relayed Mr. Pars' disclosure to the COB, who allegedly retaliated against Mr. Pars by excluding him from key meetings, micromanaging his work, and exhibiting "belligerent and threatening behavior" towards him. *Id.* ¶¶ 23, 27. In March 2015, while on

previously scheduled leave for rest and recuperation, Mr. Pars was told that he would not be returning to the base. *Id.* ¶ 32. He alleges that the COB sent a “short of tour cable” stating that she had lost confidence in Mr. Pars’ leadership. *Id.* ¶ 33. Mr. Pars alleges that the sole reason he was “sent home short of tour was because he complained about the COB’s behavior and mismanagement of personnel and resources,” and that this very negative career event that has severely impacted his career at the CIA. *Id.* ¶¶ 34, 36.

In April 2015, Mr. Pars submitted a complaint to the CIA IG, alleging improper retaliation due to his protected disclosures about the COB. *Id.* ¶ 42. Between April and December 2015, Mr. Pars met twice with the CIA IG’s office about his complaint, and submitted evidentiary and witness information to the IG. *Id.* ¶¶ 43-45. Since then, however, Mr. Pars alleges that the IG has not taken any action on his complaint, including interviewing main witnesses and issuing a final written disposition. *Id.* ¶¶ 46-48. Mr. Pars challenges this inaction as a violation of PPD-19 and seeks that I order the Agency to conclude its investigation and issue a written disposition. *Id.* ¶ 56.

## II. Legal Standard

A party may move to dismiss a complaint on the ground that it “fail[s] to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A complaint must contain sufficient factual allegations that, if true, “state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In evaluating a motion to dismiss pursuant to Rule 12(b)(6), the Court must construe the complaint in the light most favorable to the plaintiff and accept as true all reasonable factual inferences drawn from well-pled factual allegations. *See In re United Mine Workers of Am. Emp. Benefit Plans Litig.*, 854 F. Supp. 914, 915 (D.D.C. 1994). In addition, “[i]n determining whether a complaint fails to state a claim, [the court] may consider

only the facts alleged in the complaint, any documents either attached to or incorporated in the complaint and matters of which [the court] may take judicial notice.” *Hurd v. District of Columbia Gov’t*, 864 F.3d 671, 678 (D.C. Cir. 2017) (quoting *EEOC v. St. Francis Xavier Parochial Sch.*, 117 F.3d 621, 624 (D.C. Cir. 1997)).

### III. Analysis

Presidential Policy Directive 19, signed on October 10, 2012 by President Obama, seeks to “ensure[] that employees [] serving in the Intelligence Community . . . can effectively report waste, fraud, and abuse while protecting classified national security information” and “prohibits retaliation against employees for reporting waste, fraud, and abuse.” Def.’s Mot. to Dismiss Ex. 1 (“PPD-19”) at 1, 8. In the Directive, President Obama ordered that intelligence agencies such as the CIA establish a process for employees to seek review of any personnel action allegedly made as a reprisal for a protected disclosure. *Id.* at 2, 6. The Directive requires the agency’s Inspector General to investigate and determine whether a personnel action complained of violated the Directive and, if so, to recommend appropriate corrective action including but not limited to reinstatement, reassignment, and the award of back pay, related benefits, expenses, and/or costs. *Id.* at 2. Employees who have exhausted this process can seek further external review by a three-member Inspector General panel. *Id.* at 4. Mr. Pars alleges that the CIA IG’s failure to investigate and issue a final written disposition regarding his complaint constitutes “agency action unlawfully withheld or unreasonably delayed,” and that this inaction prevents him from being able to seek external review. Compl. ¶¶ 51-56; *see also* 5 U.S.C. § 706(1).<sup>3</sup>

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<sup>3</sup> While Mr. Pars’ complaint alleges that the Agency failed to act pursuant to both PPD-19 and the IC IG External Review Procedures, he seeks relief only as related to the CIA IG’s alleged failure to investigate his complaint. *See* Compl. ¶¶ 52-56. To the extent that Mr. Pars’ claim alleges a violation of the IC IG External Review Procedures, this must be dismissed for failure to

Although the APA requires courts to compel agencies to act where the action is “unlawfully withheld or unreasonably delayed,” the complaint does not adequately establish that the CIA’s investigation into the Plaintiff’s reprisal complaint was legally required, nor does it allege that a private right of action exists to permit judicial review. As an initial matter, “the only agency action that can be compelled under the APA is action legally *required*,” *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 63 (2004), and “private rights of action to enforce federal law must be created by Congress.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Furthermore, as it pertains to executive orders, those “executive orders without specific foundation in congressional action are not judicially enforceable in private civil suits.” *In re Surface Mining Regulation Litig.*, 627 F.2d 1346, 1357 (D.C. Cir. 1980).<sup>4</sup>

The complaint does not sufficiently allege that the CIA IG’s action is legally required such that it can be compelled by the judiciary. Significantly, the complaint fails to identify any statute that makes PPD-19 have the force and effect of law—in other words, that the President issued PPD-19 pursuant to an authorization by Congress. Furthermore, the Plaintiff admits that “PPD-19 does not provide whistleblowers with a private right of action to enforce their rights.” Pl.’s Opp. to Def.’s Mot. to Dismiss 2. These shortcomings require that the complaint be dismissed for failure to state a claim.

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state a claim. As Mr. Pars recognizes, the CIA IG has not yet issued a final written disposition on his complaint, and therefore, he has not met the exhaustion requirement for external review. *See* Compl. ¶ 55; PPD-19 at 4.

<sup>4</sup> Though the order in this case is a Presidential Policy Directive, and not an Executive Order, Mr. Pars alleges, and the Defendant does not contest, that it is the substance of the document that is controlling. *See* Legal Effectiveness of a Presidential Directive, as Compared to an Executive Order, 24 Op. O.L.C. 29 (2000), ECF No. 14-1; Mem. of P. & A. in Reply to Pl.’s Opp. to Def.’s Mot. to Dismiss 3.



Although the Plaintiff argues that PPD-19 was later entirely codified in the Section 601 of the Intelligence Authorization Act for FY 2014, the statute does not authorize a private right of action by which I can adjudicate Mr. Pars' claim. *See id.*; 50 U.S.C. §§ 3234(b)-(c). The statute only codifies the prohibition on reprisals for disclosing information regarding mismanagement and abuses of authority to, *inter alia*, the inspector general for the employee's agency, and requires that the "President shall provide for the enforcement of this section." 50 U.S.C. §§ 3234(b)-(c). The statute is silent as to how the President should enforce the prohibition, and says nothing to permit or otherwise provide for judicial review. *See id.* Even assuming that PPD-19, which pre-dated Section 601, is a directive detailing the President's enforcement of Section 601, the Plaintiff's own admission that PPD-19 does not create a private right of action precludes judicial review of his claim. *See Meyer v. Bush*, 981 F.2d 1288, 1296 n.8 ("An Executive Order . . . which does not create any private rights-is not, for instance, subject to judicial review.").


The Plaintiff's fatal admission that PPD-19 does not create a private right of action echoes PPD-19 itself, which includes a clear disclaimer: "This directive is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person." Similar language has been found to not create any private right of action. For example, in *Meyer v. Bush*, the D.C. Circuit described an Executive Order issued by President Reagan stating that it was "not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States" as one that "created no private rights." 981 F.2d at 1290, 1296 n.8. Thus, a private right of action is neither created through the Directive nor Section 601, and Mr. Pars' claim, no matter how meritorious, cannot

proceed under the circumstances as alleged. “Without [a private remedy derived from Congressional authority], a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.” *Sandoval*, 532 U.S. 275, at 286–87.

**IV. Conclusion**

For the foregoing reasons, the Defendant’s Motion to Dismiss will be granted. A separate order will issue.

Dated: February 28, 2018

  
TREVOR N. MCFADDEN  
United States District Judge