NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 07-6461

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BARRETT N. WEINBERGER,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**ON APPEAL FROM THE UNITED**
	)	**STATES DISTRICT COURT FOR THE**
BAILEY GRIMES, et al.,	)	**EASTERN DISTRICT OF KENTUCKY**
	)	
Defendants-Appellees.	)	
	)	
	)	
	)	

Before: GIBBONS and McKEAGUE, Circuit Judges; SHADUR, District Judge.*

JULIA SMITH GIBBONS, Circuit Judge. Plaintiff-appellant Barrett N. Weinberger appeals from orders of the district court dismissing his claims against defendants-appellees Bailey Grimes, George E. Snyder, Jr., Robin Blair, and Drew Tomberlin. The defendants were employees at the Federal Correctional Institution in Manchester, Kentucky, while Weinberger was incarcerated there in 2001. Weinberger alleges that the defendants violated his rights under the Free Exercise Clause of the First Amendment to the United States Constitution and the Religious Freedom Restoration Act ("RFRA") by failing to provide him with kosher meals and religious accommodations. Weinberger also claims that the defendants conspired to violate his rights contrary to state law. The United States District Court for the Eastern District of Kentucky granted a motion

*The Honorable Milton I. Shadur, United States District Judge for the Northern District of Illinois, sitting by designation.

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to dismiss the constitutional and RFRA claims against all defendants but Grimes. After the close of discovery, the district court granted the defendants' motion for summary judgment on all remaining claims. For the reasons that follow, we affirm the judgment of the district court.

I.

This case arises out of Weinberger's period of imprisonment for mail fraud, tax evasion, and interstate transportation of funds. Weinberger was initially assigned to the Federal Prison Camp at Eglin Air Force Base in Florida ("FCP Eglin"). After he requested a transfer to be closer to his family, Weinberger was reassigned to the Federal Correctional Institution in Manchester, Kentucky ("FCI Manchester"). He remained at FCI Manchester until his transfer to a halfway house and release in July 2001.

Following his release, Weinberger filed a civil action in the United States District Court for the Southern District of Ohio against various Bureau of Prisons employees, individually and in their official capacities. Pursuant to a joint stipulation, an order was entered transferring the claims against the FCP Eglin defendants in their individual capacities to the Northern District of Florida and the claims against the FCI Manchester defendants in their individual capacities to the Eastern District of Kentucky. The claims against all defendants in their official capacities proceeded in the Southern District of Ohio. The Kentucky action is the subject of this appeal.

Weinberger is "a practicing, traditional Jew, observant of the dietary laws of the Jewish faith, [and] the prayer rituals and practices of Judaism." Weinberger continued to practice Judaism in many respects while incarcerated at FCI Manchester. He received meals through the "Common Fare" program for prisoners who kept kosher or halal diets; he kept religious clothing and prayer

items not generally allowed in prison; and he observed the Jewish Sabbath and holy days. For example, Weinberger wore a yarmulke and prayed daily using permitted religious items including a Torah, prayer book, prayer shawl, and tefillin. He was allowed additional prayer items–including candles, grape juice, and bread–for the Saturday Sabbath. Weinberger also received a furlough to attend Yom Kippur services in the community.

Nonetheless, Weinberger alleges that the defendants violated his rights under the Free Exercise Clause and the Religious Freedom Restoration Act, 42 U.S.C. § 2000bb *et seq.* ("RFRA").[1] Weinberger alleges that defendants Snyder, Tomberlin, and Grimes failed to provide him with appropriate meals in that they used contaminated, non-kosher utensils and food preparation areas to prepare Common Fare meals, served him non-Common Fare meals as Common Fare meals, and failed to train or supervise inmate workers who prepared Common Fare meals. Weinberger also claims that defendants Snyder, Tomberlin, and Blair violated his rights by:

(a) Not arranging for clergy visits from rabbis;
(b) Discriminating against Jewish inmates by not allowing family visitation during religious services while such visitation is allowed for Christian faiths;
(c) Not providing appropriate times and locations for prayer services;
(d) Scheduling band practice at the same time as Jewish services in an adjoining room;
(e) Locking [Weinberger] out of his scheduled location for prayer services;
(f) Prohibiting the use of musical instruments by Jewish inmates and only allowing such instruments to be used by the Christian inmate choir;
(g) Allowing outside volunteers to be told [Weinberger's] name, registration number, and faith for the purpose of leaving proselytizing materials at the prison for [Weinberger];

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[1]Although RFRA was declared unconstitutional as applied to the states, *see City of Boerne v. Flores*, 521 U.S. 507, 532-36 (1997), it remains good law as applied to the federal government. *Cutter v. Wilkinson*, 423 F.3d 579, 582 (6th Cir. 2005).

(h) Maintaining a large mural of Jesus in an all-purpose room wherein [Weinberger] was required to attend various activities; and
(i) Maintaining pictures of Jesus on the walls of the inmate leisure library.

The complaint seeks monetary damages from the defendants individually under the doctrine announced in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Weinberger further alleges that the defendants conspired to violate his rights in violation of state law.

The defendants filed a motion to dismiss or, in the alternative, a motion for summary judgment. The district court found that Weinberger had stated a claim with respect to the Common Fare allegations. *Weinberger v. Sawyer*, No. 03-CV-114, slip op. at 11 (E.D. Ky. Sept. 29, 2006). However, the district court determined that Snyder and Blair[2] were entitled to qualified immunity because they were not involved with the Common Fare program. *Id.* Tomberlin, who allegedly served Weinberger a non-kosher ceremonial meal, was also entitled to qualified immunity because he did not knowingly violate Weinberger's rights. *Id.* at 11-14. The court concluded that Grimes, who served as Food Services Administrator, was not entitled to qualified immunity. *Id.* at 14-15.

With respect to the remainder of Weinberger's claims, the district court found that they did not amount to violations of the Free Exercise Clause or RFRA. *Id.* at 11. It noted that some of the restrictions utilized by the prison were reasonably related to legitimate penological interests. *Id.* at 10. In addition, it noted that Weinberger had not alleged a substantial burden on his exercise of his religion. *Id.* at 11.

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[2]Weinberger did not allege any Common Fare-related claims against Blair.

Finally, the district court found that Weinberger sufficiently pled a civil conspiracy claim under Kentucky law. *Id.* at 15. Accordingly, the district court denied the motion to dismiss the *Bivens* claim against Grimes, granted the motion to dismiss the *Bivens* claims against Snyder, Tomberlin, and Blair, and denied the motion to dismiss the civil conspiracy counts against all defendants. *Id.* at 17.

After approximately ten months, the district court granted the defendants' motion for summary judgment on all remaining claims. *Weinberger v. Grimes*, No. 03-114-REW, slip op. at 14 (E.D. Ky. Oct. 25, 2007). The court noted that Weinberger failed to conduct any discovery, relying solely on his own affidavit. *Id.* at 8. Because the court found that the affidavit was speculative, conclusory, and devoid of specific allegations, it held that Weinberger had not overcome the detailed declarations furnished by Grimes regarding the Common Fare program. *Id.* at 10, 12. Additionally, the court found that Weinberger failed to offer any evidence of an unlawful agreement between the defendants that would support a civil conspiracy claim. *Id.* at 13.

Weinberger now appeals the partial grant of the defendants' motion to dismiss and the grant of summary judgment in the defendants' favor. He also raises a claim under the Privacy Act of 1974. We address each claim in turn.

II.

The district court granted in part the defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), finding that Weinberger failed to state a claim under the First Amendment or RFRA except for the alleged violations of the Common Fare program by Grimes. We review that decision *de novo*. *Nader v. Blackwell*, 545 F.3d 459, 470 (6th Cir. 2008). In

analyzing a Rule 12(b)(6) motion to dismiss, we must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). However, we "need not accept as true legal conclusions or unwarranted factual inferences." *Mixon v. Ohio*, 193 F.3d 389, 400 (6th Cir. 1999) (citing *Morgan v. Church's Fried Chicken*, 829 F.2d 10, 12 (6th Cir. 1987)).

A.

Pursuant to *Bivens*, an individual may "recover money damages for any injuries . . . suffered as a result of [federal] agents' violation of" his constitutional rights. *See* 403 U.S. at 397; *Baranski v. Fifteen Unknown Agents of Bureau of Alcohol, Tobacco & Firearms*, 452 F.3d 433, 438 (6th Cir. 2006). To recover under *Bivens*, Weinberger must overcome the defendants' claim of qualified immunity by showing that (1) prison officials violated his constitutional rights and (2) the constitutional rights at issue were clearly established. *Baranski*, 452 F.3d at 438. If Weinberger fails on either prong, the federal defendants are entitled to qualified immunity. *See Pearson v. Callahan*, ___S. Ct.___, 2009 WL 128768 (Jan. 21, 2009).

B.

Weinberger claims that defendants Snyder, Tomberlin, and Blair violated the rights guaranteed him by the Free Exercise Clause in the ways enumerated in the complaint. It is well-settled that prisoners' rights under the Free Exercise Clause may be subject to reasonable restrictions. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 352 (1987); *Abdur-Rahman v. Mich. Dep't of Corr.*, 65 F.3d 489, 491 (6th Cir. 1995). Accordingly, Weinberger's First Amendment rights were not violated if the challenged policies were reasonably related to legitimate penological interests. *See*

Turner v. Safley, 482 U.S. 78, 89 (1987); *Harbin-Bey v. Rutter*, 420 F.3d 571, 578 (6th Cir. 2005). Prisoners are not entitled to the "best possible means of exercising their religio[n]." *A'la v. Cobb*, 208 F.3d 212 (6th Cir. 2000) (table). Rather, prison officials receive "wide-ranging deference in the adopting and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Flagner v. Wilkinson*, 241 F.3d 475, 481 (6th Cir. 2001) (quoting *Bell v. Wolfish*, 441 U.S. 520, 547 (1979)).

As an initial matter, Weinberger's complaint is insufficient because it fails to allege that the prohibited practices, such as use of a musical instrument, were required by his religion. *See Spies v. Voinovich*, 173 F.3d 398, 405 (6th Cir. 1999) (finding that prisoner could "freely exercise his religion without [prohibited] items, for he has not contended that his religion *requires* the use of these articles during worship"); *Pearce v. Sapp*, 182 F.3d 918 (6th Cir. 1999) (table) (affirming dismissal of complaint where prisoner failed to allege that possession of prohibited items was "mandated by his religion").

Moreover, the challenged practices here are comparable to the kinds of restrictions that we have found to be reasonably related to legitimate penological interests. *See Fisher v. McGinnis*, 238 F.3d 420 (6th Cir. 2000) (table) (denying relief where prisoners alleged that they were denied use of a prayer rug and not permitted to hold prisoner-led religious services although other religious groups were allowed to do so); *Mabon v. Campbell*, 205 F.3d 1340 (6th Cir. 2000) (table) (denying relief where prisoners alleged, *inter alia*, that they were denied religious videos and their Korans and prayer rugs were "defiled"); *McElhaney v. Elo*, 202 F.3d 269 (6th Cir. 2000) (table) (denying relief where prisoner alleged that he was denied access to various religious items including a ceremonial

pipe and materials to make a medicine bag); *Burridge v. McFaul*, 181 F.3d 100 (6th Cir. 1999) (table) (denying relief where prisoner alleged that he was denied visits by a rabbi). Therefore, the restrictions imposed on Weinberger fell within the discretion accorded to prison officials.[3]

Because Weinberger failed to allege a violation of his religious rights by Snyder, Tomberlin, and Blair, these defendants are entitled to qualified immunity. *See Marvin v. City of Taylor*, 509 F.3d 234, 244 (6th Cir. 2007) (citing *Scott v. Harris*, 550 U.S. 372, 127 S. Ct. 1769, 1774 (2007)).

C.

Weinberger also alleges that defendants Snyder, Tomberlin, and Blair violated his religious rights under RFRA. RFRA imposes strict scrutiny where the government "substantially burden[s] a person's exercise of religion, even if the burden results from a rule of general applicability." 42 U.S.C. § 2000bb-1(a); *see also Cutter v. Wilkinson*, 423 F.3d 579, 582 (6th Cir. 2005). Where a substantial burden is found, the challenged policy survives only if the government shows that it furthers a "compelling governmental interest" and is the "least restrictive means" of doing so. 42 U.S.C. § 2000bb-1(b). RFRA only applies, however, if the plaintiff makes an "initial showing" that the challenged policy "imposes a substantial burden on his religious exercise." *See Hoevenaar v. Lazaroff*, 422 F.3d 366, 368 (6th Cir. 2005). Here, Weinberger cannot make such a showing. As noted above, Weinberger failed to allege that the prohibited practices–such as clergy visits and use of musical instruments–were mandated by his religion. Moreover, Weinberger was allowed to

[3]To the extent that Weinberger claims he was treated differently than prisoners of other faiths, such a claim would be properly brought under the Equal Protection Clause, not the Free Exercise Clause. At oral argument, however, counsel for Weinberger disavowed any claim to relief under the Equal Protection Clause.

continue his practice of Judaism daily–using religious items he was permitted to keep–and on holy days–such as the Saturday Sabbath and Yom Kippur. Consequently, he has not alleged that the denial of the prohibited items and activities imposed a substantial burden on his religious practice.

Because the challenged policies were reasonably related to legitimate penological interests and did not impose a substantial burden on Weinberger's religious rights, the district court properly dismissed his First Amendment and RFRA claims against Snyder, Tomberlin, and Blair.

D.

The district court found that the alleged violations of the Common Fare program made out claims under the First Amendment and RFRA. However, the court determined that defendants Snyder,[4] Tomberlin,[5] and Blair[6] were entitled to qualified immunity on those claims. Weinberger now challenges that finding with respect to defendant Tomberlin, a question we review *de novo*.

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[4]Snyder served as Warden of FCI Manchester in 2001, had no personal involvement with food preparation, and cannot be responsible on a theory of *respondeat superior*. *See Okoro v. Scibana*, 63 F. App'x 182, 184 (6th Cir. 2003).

[5]We note that the complaint alleged Common Fare violations by defendants Snyder and Grimes but not by defendant Tomberlin. Compl. at ¶¶ 68-77. The basis for the Common Fare claim against Tomberlin appears to be Tomberlin's own declaration, in which he states that Weinberger "received a special ceremonial meal" to commemorate a holy day. Tomberlin Decl. at ¶ 17. Weinberger then filed his own affidavit stating that Tomberlin had served him a ceremonial meal on the first night of Passover but that "the ceremonial meal extended to [him] was not kosher and thus could not be eaten." Weinberger Aff. at ¶ 14(I). Thus, although the district court was entitled to take notice of the new allegations against Tomberlin, it was not required to do so. *See Maiden v. North Am. Stainless*, 183 F. App'x 485, 487 (6th Cir. 2005).

[6]As previously noted, Weinberger did not allege any Common Fare-related claims against Blair. In any event, Blair was the Unit Manager at FCI Manchester and had no involvement with food preparation.

Barrett v. Steubenville City Schs., 388 F.3d 967, 970 (6th Cir. 2004). Tomberlin, who was the prison chaplain at FCI Manchester while Weinberger was incarcerated there, was not involved in food preparation at the prison. However, Tomberlin did serve Weinberger a ceremonial meal for the first night of Passover. Weinberger alleges that the meal was prepared by "an outside, non-Orthodox source" and was non-kosher.

While Weinberger had a right to a kosher diet while in prison–subject to reasonable restrictions–it is less clear whether that right was violated by being served a non-kosher meal on a single occasion. We therefore assume without deciding that it was, and proceed to determine whether Tomberlin is nevertheless entitled to qualified immunity. *See Pearson*, 2009 WL 128768, at *10-13. "The qualified immunity standard gives ample room for mistaken judgments by protecting all but the plainly incompetent or those who knowingly violate the law." *Hunter v. Bryant*, 502 U.S. 224, 229 (1991) (*per curiam*) (internal quotation marks omitted); *Dorsey v. Barber*, 517 F.3d 389, 400 (6th Cir. 2008). Here, there is no evidence that Tomberlin acted knowingly in serving Weinberger a non-kosher meal. The evidence tends to establish instead that FCI Manchester was an accredited provider of kosher meals and that Tomberlin was not personally involved in food preparation. Therefore, Tomberlin held a reasonable belief that the Passover meal presented to Weinberger was kosher. Likewise, there is no evidence that Tomberlin was incompetent. Accordingly, Tomberlin was entitled to qualified immunity, as the district court correctly concluded. *See Brower v. Nuckles*, 182 F.3d 916 (6th Cir. 1999) (table); *Cochran v. Schotten*, 172 F.3d 47 (6th Cir. 1998) (table).

III.

The district court granted the defendants' motion for summary judgment on those claims that survived the motion to dismiss: the *Bivens* claim against Grimes for violation of the First Amendment and the RFRA claim as well as the state law civil conspiracy claim against all defendants. We review the grant of summary judgment *de novo*. *Miller v. Admin. Office of Courts*, 448 F.3d 887, 893 (6th Cir. 2006). The defendants are entitled to summary judgment "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the [defendants] are entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). Although the evidence need not be "in a form that would be admissible at trial," *Tinsley v. Gen. Motors Corp.*, 227 F.3d 700, 703 (6th Cir. 2000) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986)), any affidavits "must be made on personal knowledge [and] set out facts that would be admissible in evidence." Fed. R. Civ. P. 56(e)(1); *Alpert v. United States*, 481 F.3d 404, 409 (6th Cir. 2007). Hearsay may not be considered. *Tinsley*, 227 F.3d at 703 (citing *Wiley v. United States*, 20 F.3d 222, 224 (6th Cir. 1994)). Furthermore, the nonmoving party "may not rely merely on allegations or denials in its own pleading." Fed. R. Civ. P. 56(e)(2); *Leary v. Livingston County*, 528 F.3d 438, 444 (6th Cir. 2008). Rather, the nonmoving party must come forward with "specific facts showing a genuine issue for trial." Fed. R. Civ. P. 56(e)(2); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

A.

Weinberger claims that Grimes violated his rights under the Free Exercise Clause by failing to serve him kosher meals. Grimes served as Food Services Administrator and Acting Associate Warden of the Operations Division while Weinberger was incarcerated at FCI Manchester. Grimes's declaration states that he had a wide variety of oversight responsibilities but did not personally oversee the Common Fare program or prepare Weinberger's meals. Further, Grimes was not personally responsible for training prisoners who performed food service work. Grimes's office was at the main FCI Manchester facility some distance from the satellite minimum security camp where Weinberger was housed; Grimes allegedly visited the satellite camp only one to four times per month. Nonetheless, Grimes describes in great detail Common Fare policies and procedures to be followed by staff and prisoner workers. According to Grimes, compliance with Common Fare policies was established by outside Bureau of Prisons oversight, and FCI Manchester was accredited by the American Correctional Association. These statements, unless rebutted, tend to establish that kosher meals were properly prepared.

Weinberger, in opposing the motion for summary judgment, relied solely on his previously submitted affidavit. In his affidavit, Weinberger states in general terms that Grimes failed to train properly his staff or inmate food service workers on how to prepare kosher meals. Weinberger also claims that food service staff under Grimes's supervision failed to comply fully with Common Fare policies and procedures. Weinberger does not challenge the policies themselves.

Weinberger's claim against Grimes fails for two reasons. First, Grimes has asserted that he was not personally responsible for the Common Fare program, and Weinberger has not rebutted that

assertion in any way. Weinberger cannot maintain an action against Grimes in his supervisory capacity because the doctrine of *respondeat superior* is not a basis of liability in a *Bivens* action. *See Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691 (1978); *Kesterson v. Luttrell*, 172 F.3d 48 (6th Cir. 1998) (table).

Second, Weinberger's allegations regarding Grimes appear to be based on hearsay or speculation, not personal knowledge as required by Fed. R. Civ. P. 56(e). He did not conduct discovery or submit any other materials. Consequently, Weinberger did not and cannot provide any specific facts regarding where, when, how, or by whom the Common Fare policies were violated. He relies instead on general allegations that his meals were not properly prepared. These general assertions are not evidence, however, because nowhere does Weinberger set forth his basis of knowledge as to how meals were prepared at FCI Manchester. The burden was on Weinberger to "show affirmatively" that he is competent to testify regarding the food services at FCI Manchester, which he has not done. *See Alpert*, 481 F.3d at 409 (quoting Fed. R. Civ. P. 56(e)); *Sperle v. Mich. Dep't of Corr.*, 297 F.3d 483, 495 (6th Cir. 2002). For this reason alone, Grimes is also entitled to summary judgment. *See Alpert*, 481 F.3d at 409 (affirming grant of summary judgment where plaintiffs failed to present admissible evidence in support of their allegations); *Knox v. Neaton Auto Prods. Mfg., Inc.*, 375 F.3d 451, 458-59 (6th Cir. 2004) (same); *Sperle*, 297 F.3d at 495-96 (same).

B.

Weinberger also alleges that the defendants conspired to violate his rights in violation of state law. Under Kentucky law, civil conspiracy is "a corrupt or unlawful combination or agreement between two or more persons to do by concert of action an unlawful act by unlawful means."

Peoples Bank of N. Ky., Inc. v. Crowe Chizek & Co., __S.W.3d__, 2008 WL 2312737, at *3 (Ky. App. June 6, 2008) (quoting *Smith v. Bd. of Educ. of Ludlow*, 94 S.W.2d 321, 325 (Ky. 1936)). To prevail on a civil conspiracy claim, therefore, Weinberger must show an agreement between the defendants. *See id.* (citing *Montgomery v. Milam*, 910 S.W.2d 237, 239 (Ky. 1995)).

Although Weinberger adequately alleged conspiracy in his complaint, he failed to provide any evidence of unlawful agreement in the record. As noted above, the only material submitted by Weinberger was his own affidavit. As a result, the only "support" in the record for the conspiracy count is Weinberger's own assertion that "[t]o my knowledge and belief, [defendant] discussed, coordinated, and conspired his wanton and intentional actions against my First Amendment rights with others at FPC Manchester," which is repeated against each of the four defendants. Weinberger has not provided any details as to where or when the alleged discussion took place or what actions the defendants agreed to take. In short, Weinberger has not provided any evidence of unlawful agreement. His conclusory allegations fall far short of the "specific facts" contemplated by Fed. R. Civ. P. 56(e). *See Ctr. for Biological Diversity v. Lueckel*, 417 F.3d 532, 537-38 (6th Cir. 2005). Rule 56(e) requires Weinberger to go beyond the pleadings, which he has failed to do. *See Horton v. Potter*, 369 F.3d 906, 912 (6th Cir. 2004) (citing *Celotex*, 477 U.S. at 324). Therefore, the civil conspiracy count was properly dismissed.

IV.

Finally, Weinberger claims that the district court violated the Privacy Act of 1974 ("Act") by releasing his Bureau of Prisons file to government lawyers who represent the defendants. In reviewing this claim, "[w]e review the district court's legal conclusions de novo and the findings of fact for clear error." *Cardamone v. Cohen*, 241 F.3d 520, 524 (6th Cir. 2001).

Under the Act, the Bureau of Prisons files of federal prisoners are protected from disclosure unless the prisoner's consent is obtained. *See* 5 U.S.C. § 552a(b). The Act authorizes an individual to bring a civil action against "any agency" that fails to comply with the Act. 5 U.S.C. § 552a(g)(1)(D). The Act thus authorizes suit against an agency, not against an individual. *Perry v. Bureau of Prisons*, 371 F.3d 1304, 1305 (11th Cir. 2004). Since this action is brought solely against Bureau of Prisons employees in their individual capacities, Weinberger's claim is not authorized under the Act.

Even if it were properly before us, Weinberger's claim would fail because the challenged disclosure was permissible under the Act as a "routine use." *See* 5 U.S.C. § 552a(b)(3). Routine use includes disclosure to federal law enforcement agencies for "court-related purposes" including "civil court actions." *See* 67 Fed. Reg. 31371, 31372 (May 9, 2002). Because the disclosure would have been proper under the Act even absent a court order, the district court did not err in permitting access to Weinberger's file.

V.

For the foregoing reasons, we affirm the judgment of the district court.