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APPENDIX A

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOSEPH MARION RYWELSKI, Plaintiff - Appellant, JOSEPH R. BIDEN, JR., President, et al., Defendants - Appellees.	No. 23-5099 (D.C. No. 4:23-CV-00217-CVE-SH) (N.D. Okla.)

ORDER

Before **BACHARACH, BALDOCK**, and **MORITZ**, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court

CHRISTOPHER M. WOLPERT,
Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JOSEPH MARION RYWELSKI, Plaintiff - Appellant, JOSEPH R. BIDEN, JR., President, DEPARTMENT OF JUSTICE; MERRICK GARLAND, United States Attorney General; BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES, Defendants - Appellees.	No. 23-5099 (D.C. No. 4:23-CV-00217-CVE-SH) (N.D. Okla.)

ORDER AND JUDGMENT

Before **BACHARACH, BALDOCK**, and **MORITZ**, Circuit Judges.

The district court dismissed a complaint against President Biden, the Department of Justice, Attorney General Garland, and the Bureau of

Oral argument would not help us decide the appeal, so we have decided the appeal based on the briefing and the record. See Fed. R. App. P. 34(a)(2)(C); 10th Cir. R. 34.1(G). This order and judgment does not constitute binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. But the order and judgment may be cited for its persuasive value if otherwise appropriate. See Fed. R. App. P. 32.1(a); 10th Cir. R. 32.1(A). Alcohol, Tobacco, Firearms, and Explosives. The plaintiff, Mr. Joseph Marion Rywelski, appeals; and we affirm.

I. Mr. Rywelski bases his claim on the Declaration of Independence.

In the complaint, Mr. Rywelski challenged the validity of an administrative rule addressing registration requirements on firearms. For this challenge, he relied on the Declaration of Independence. The district court sua sponte concluded that subject-matter jurisdiction didn't exist. *See* Fed. R. Civ. P. 12(b)(1).

II. Standard of Review

We conduct de novo review of the dismissal. *Blue Valley Hosp., Inc. v. Azar,* 919 F.3d 1278, 1283 (10th Cir. 2019).

If a district court "determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). Courts "have an independent obligation to determine whether subjectmatter jurisdiction exists, even in the absence of a challenge from any party," *Arbaugh v. Y & H Corp.,* 546 U.S. 500, 514 (2006). So the district court appropriately considered whether subject-matter jurisdiction existed even though no one had questioned it. *Image Software, Inc.* v. *Reynolds & Reynolds Co.,* 459 F.3d 1044, 1048 (10th Cir. 2006).

"Federal courts are courts of limited jurisdiction," and "it is to be presumed that a cause lies outside this limited jurisdiction." *Becker v. Ute Indian Tribe of Uintah & Ouray Reservation, 770* F.3d 944, 946-47
(10th Cir. 2014) (brackets and internal quotation marks omitted). As the party seeking to invoke federal jurisdiction, Mr. Rywelski had to establish jurisdiction. *See id.* at 947. So Mr. Rywelski needed to allege a basis for

- diversity jurisdiction (under 28 U.S.C. §

1332) or

- federal-question jurisdiction (under 28 U.S.C. § 1331).

See Home Depot U.S.A., Inc. v. Jackson, 587 U.S. , 139 S. Ct. 1743, 1746 (2019).

In determining whether Mr. Rywelski met this burden, we credit all "well-pled factual allegations." Blue Valley Hosp., 919 F.3d at 1283. Conclusory allegations of jurisdiction are not enough. Peterson v. Martinez, 707 F.3d 1197, 1206 (10th Cir. 2013).

III. Diversity Jurisdiction

Federal courts have diversity jurisdiction if (1) the parties are citizens of different states or a foreign country and (2) the amount in controversy exceeds $75,000. See 28 U.S.C. § 1332(a). The United States is not a citizen for diversity purposes, and federal agencies and administrators cannot be sued in diversity. See Texas v. Interstate Comm.

Comm'n, 258 U.S. 158, 160 (1922) (concluding that diversity jurisdiction didn't exist over the ICC and Railroad Labor Board because they "are not citizens of any State"); Gen. Ry. Signal Co. v. Corcoran, 921 F.2d 700, 703-05 (7th Cir. 1991) (concluding that no diversity jurisdiction existed over the United States, a federal agency, and an agency administrator); Com. Union Ins. Co. v. United States, 999 F.2d 581, 584-85 (D.C. Cir. 1993) (concluding that the Secret Service lacks citizenship for purposes of diversity jurisdiction).

Because the defendants are not citizens of a state for diversity purposes, the district court correctly concluded that it lacked diversity jurisdiction.

IV. Federal-Question Jurisdiction

A plaintiff properly invokes federal-question

jurisdiction when he pleads "a colorable claim arising under the Constitution or laws of the United States." Arbaugh v. Y & H Corp., 546 U.S. 500, 513 (2006) (internal quotation marks omitted); see also McKenzie v. U.S. Citizenship & Immigration Servs., Dist. Dir., 761 F.3d 1149, 1156 (10th Cir. 2014) ("[J]urisdiction under § 1331 exists only where there is a colorable claim arising under federal law." (internal quotation marks omitted)).

Mr. Rywelski alleged that the rule violates the Declaration of Independence. The district court concluded that these allegations did not confer federal-question jurisdiction because "the Declaration of Independence does not create a private right of action enforceable against the federal government," R. at 48-49.

Mr. Rywelski disagrees, arguing that the Declaration of Independence is the foremost of the country's "Organic Laws," Appellant's Opening Br. at 2, and that "[n]o other founding document, or federal law, of the United States [can] amend, repeal, or replace the Declaration or the rights recited therein," id. at 3; see also id. at 6. He insists that the Declaration of Independence is "substantive law" creating "a legal basis for relief" and any "judicial opinions denying the Declaration as law should be made null and void."
Id. at 6, 15. But his arguments reflect a misunderstanding of the purpose of the Declaration of Independence.

The Declaration of Independence states the principles on which our government was founded. See United States v. Cruikshank, 92 U.S. 542, 553 (1875). The purpose was to guarantee the right of American colonies to seek independence from England, not to establish a government. See Inglis v. Trustees of

Sailor's Snug Harbor, 28 U.S. 99, 158-59 (1830). The Declaration of Independence is thus a statement of principles and ideas, not of law, and does not grant enforceable rights. See Schifanelli v. U.S. Gov't, 865 F.2d 1259 (4th Cir. 1989) (unpublished; per curiam) ("The Declaration of Independence is a statement of ideals, not law."); see also Rhode Island v. Massachusetts, 37 U.S. 657, 680 (1838) ("[U]nder the constitution [the court] is bound by events subsequent to the declaration of independence . . . Accordingly, the district court correctly concluded that Mr. Rywelski's allegations didn't confer federal-question jurisdiction.

Affirmed.

Entered for the Court
Robert E. Bacharach
Circuit Judge

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH MARION RYWELSKI,

Plaintiff,

JOSEPH R. BIDEN, JR., President, et al ,

Defendants

No. 23-5099
(Case No. 23-CV-00217-CVE-SH)

OPINION AND ORDER

On May 25, 2023, plaintiff Joseph Marion Rywelski filed this case challenging a new rule adopted by the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) concerning the definition of a "rifle" under federal law. The new rule was published in the Federal Register on January 31, 2023, and it concerns the circumstances under which a stabilizing brace converts a "firearm" into a "rifle" under the National Firearms Act of 1934 (NFA) and the Gun Control Act of 1968 (GCA). Factoring Criteria for Firearms with Attached "Stabilizing Braces," 88 Fed. Reg. 6487-01 (January 31, 2023) (to be codified at 27 CFR Parts 478 and 479). Plaintiff does not challenge the new rule under the Administrative Procedures Act, the United States Constitution, or any federal law or statute. Instead, plaintiff argues that the Declaration of Independence recognizes an absolute right to overthrow or replace the government, and he believes

that he must be permitted to possess weapons that are equal to or more powerful than those possessed by the federal government to enforce his right to overthrow the government. Dkt. # 1, at 8-11.

Plaintiff states that he is a citizen of the United States who resides in Oklahoma, and he has named President Joseph R. Biden, Jr., United States Attorney General Merrick Garland, the Department of Justice, and the ATF as defendants. Id. at 1-2. Plaintiff claims that he purchased a "pistol brace" before the new rule went into effect, and he must now comply with the registration requirements of the rule or potentially face a federal firearms charge. Id. at 4-6. Plaintiff acknowledges that the Second Amendment of the United States Constitution provides a right to bear arms, but he is not raising a Second Amendment challenge to the new rule. Id. at 8. Instead, plaintiff argues that his right to possess weapons is guaranteed by the Declaration of Independence, and that this is a source of "organic" or natural law that cannot be amended or limited by the United States Constitution or the laws of any government. Id. at 8-9. Although plaintiffs argument is often difficult to follow, it appears that he is arguing that the Declaration of Independence guarantees all citizens the unassailable right to overthrow their government, and this necessarily includes a right to be "armed in equal to, or greater-than, parity with Plaintiffs government." Id. at 8. Plaintiff seeks a permanent nationwide injunction prohibiting the new rule concerning "stabilizing braces" from being enforced, and he asks the Court to enter a declaratory judgment stating that the federal government shall not hinder plaintiff in the exercise of his "duty" to overthrow the government should he deem it necessary to do so. Id. at 23.

The Court addresses plaintiffs complaint sua sponte because "[fJederal courts 'have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party,' and thus a court may sua sponte raise the question of whether there is subject matter jurisdiction 'at any stage in the litigation.'" See l mage Software, Inc. v. Reynolds & Reynolds Co., 459 F.3d 1044,1048 (10th Cir. 2006) (quoting Arbaugh v. Y & H Corp., 546 U.S. 500, 501 (2006)); see also FED. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action."). Federal courts are courts of limited jurisdiction, and there is a presumption against the exercise of federal jurisdiction. Merida Delgado v. Gonzales, 428 F.3d 916, 919 (10th Cir. 2005); Penteco Corp. Ltd. Partnership—1985A v. Union Gas System, Inc., 929 F.2d 1519,1521 (10th Cir. 1991). The party invoking federal jurisdiction has the burden to allege jurisdictional facts demonstrating the presence of federal subject matter jurisdiction. McNutt v. General Motors Acceptance Corp. of Indiana, Inc., 298 U.S. 178,182(1936) ("It is incumbent upon the plaintiff properly to allege the jurisdictional facts, according to the nature of the case."); Montoya v. Chao, 296 F.3d 952, 955 (10th Cir. 2002) ("The burden of establishing subject-matter jurisdiction is on the party asserting jurisdiction."). The Court has an obligation to consider whether subject matter jurisdiction exists, even if the parties have not raised the issue.

In this case, plaintiff is proceeding pro se and, consistent with Supreme Court and Tenth Circuit precedent, the Court will construe his pro se pleadings liberally. Haines v. Kerner, 404 U.S. 519,520 (1972); Gaines v. Stenseng, 292 F.3d 1222,1224 (10th Cir.

2002). Plaintiff argues that the Court has diversity jurisdiction over this case, although the basis for this is unclear. The law is plainly established that federal agencies and government officials acting in their official capacity are not considered citizens of any state for the purpose of diversity jurisdiction. Texas v. ICC, 258 U.S. 158, 160 (1922); Whittaker v. Court Servs. and Offender Supervision Agency for District of Columbia, 401 F. Supp. 3d 170, 178-79 (D.D.C. 2019). The Court cannot exercise diversity jurisdiction over this case. Plaintiff is proceeding pro se and the Court will also consider whether it would be permissible to exercise federal question jurisdiction over this case. The Court will accept plaintiffs assertion that he is not asserting claims pursuant to the United States Constitution or any other federal or state law, and the Court will consider whether plaintiff is permitted to maintain a federal law claim based solely on the Declaration of Independence. The answer to this inquiry is unequivocally that the Declaration of Independence does not create a private right of action enforceable against the federal government. Swepi, LP v. Mora County, New Mexico, 81 F. Supp. 3 d 1075,1172 (D.N.M. 2015) ("The Declaration of Independence is a statement of ideals, not law"); Tompkins v. Hepp, 2008 WL 2002663, *1 (W.D. Wis. May 6, 2008) (claims based on the Declaration of Independence were "legally frivolous"); Coffey v. United States, 939 F. Supp. 185, 190-91 (E.D.N.Y. 1996) ("While the Declaration of Independence states that all men are endowed certain unalienable rights including 'Life, Liberty, and the pursuit of Happiness,' it does not grant rights that may be pursued through the judicial system"). Plaintiff may reference the Declaration of Independence as it pertains to his personal beliefs, but this document does not provide a

legal basis for plaintiff to challenge any action of the federal government. The Court finds no basis to exercise diversity or federal question jurisdiction over this case, and plaintiffs claims should be dismissed for lack of subject matter jurisdiction.

IT IS THEREFORE ORDERED that plaintiffs complaint (Dkt. # l) is dismissed for lack of subject matter jurisdiction, and plaintiffs claims are dismissed without prejudice. A separate judgment of dismissal is entered herewith.

DATED this 10th day of July, 2023.

CLAIRE V. EAGAN

UNITED STATES DISTRICT JUDGE