

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 5 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DENNIS M. BUCKOVETZ, an individual,

No. 23-55284

Plaintiff-Appellant,

D.C. No.

and

3:21-cv-00640-WQH-KSC

LYNNE M. BIRD, an individual,

MEMORANDUM*

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
THE NAVY,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of California
William Q. Hayes, District Judge, Presiding

Argued and Submitted March 27, 2024
Pasadena, California

Before: GRABER, IKUTA, and FORREST, Circuit Judges.

Plaintiff Dennis M. Buckovetz appeals from the judgment in favor of
Defendant United States Department of the Navy (Navy) in this Freedom of

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

Information Act (FOIA) action. We vacate the judgment and remand with the instruction that the district court dismiss the action as nonjusticiable. See Gonzales v. Gorsuch, 688 F.2d 1263, 1267 (9th Cir. 1982) (“It is a prerequisite of justiciability that judicial relief will prevent or redress the claimed injury, or that there is a significant likelihood of such redress.”); see also Arizonans for Official English v. Arizona, 520 U.S. 43, 73 (1997) (“When the lower federal court lacks jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit.” (cleaned up) (citations omitted)).

When all documents responsive to a FOIA request have been produced, a party’s FOIA claim ceases to present a live case or controversy. Eventual production, “however belatedly, moots FOIA claims.” Papa v. United States, 281 F.3d 1004, 1013 (9th Cir. 2002) (citation and internal quotation marks omitted). “That result obtains because once the defendant agency has fully complied with the FOIA’s production mandate, the plaintiff is no longer suffering or threatened with ‘an actual injury traceable to the defendant’ that is ‘likely to be redressed by a favorable judicial decision.’” Yonemoto v. Dep’t of Veterans Affs., 686 F.3d 681, 689 (9th Cir. 2012) (citation omitted), overruled in part on other grounds by Animal Legal Def. Fund v. U.S. FDA, 836 F.3d 987, 989 (9th Cir. 2016) (en banc) (per curiam).

Plaintiff filed this action in district court years after the Navy produced the responsive documents. Despite Plaintiff's speculative contention that there may exist additional documents that were either destroyed or concealed, nothing in the record supports a reasonable inference that there were unproduced responsive documents at the time Plaintiff filed this action. Accordingly, the district court lacked jurisdiction at the time the case was filed. See, e.g., Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 180 (2000) (noting that courts have "an obligation to assure . . . that [the plaintiff] had Article III standing at the outset of the litigation"); see also id. at 191 ("Standing admits of no . . . exception; if a plaintiff lacks standing at the time the action commences, . . . the complainant [is not entitled] to a federal judicial forum.").

The judgment of the district court is vacated, and the case is remanded with the instruction to dismiss the action as nonjusticiable.

VACATED and REMANDED.