

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-1304

ERIC HARNETT,
Appellant

v.

CENTER FOR DISEASE CONTROL AND PREVENTION OF THE UNITED STATES
FEDERAL GOVERNMENT; THE STATE OF NEW JERSEY OFFICE OF THE
GOVERNOR; THE NEW JERSEY COURT SYSTEM

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2:22-cv-05671)
District Judge: Honorable Michael E. Farbiarz

Submitted Pursuant to Third Circuit LAR 34.1(a)
May 11, 2026
Before: KRAUSE, RESTREPO, and PORTER, *Circuit Judges*

(Opinion filed: August 25, 2026)

OPINION*

PER CURIAM

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Eric Harnett appeals pro se from the District Court’s dismissal of his complaint. For the following reasons, we will affirm the District Court’s judgment.

In September 2022, Harnett, a residential landlord and small business owner, filed a complaint in the United States District Court for the District of New Jersey against the Centers for Disease Control and Prevention (CDC), the State of New Jersey Office of the Governor, and the New Jersey Judiciary (improperly identified by Harnett as the New Jersey Court System), alleging violations of his First, Fourth, Ninth, Tenth, and Fourteenth Amendment rights and “the Civil Rights Act of 1964.” ECF No. 1 at 2. The claims stemmed from eviction moratoriums imposed by the CDC and New Jersey, as well as restrictions imposed by the State, during the COVID-19 pandemic. *See, e.g.*, 86 Fed. Reg. 43244-01 (Aug. 6, 2021); 52 N.J.R. 549(a) (Apr. 6, 2020); *see also* N.J. Stat. Ann. § 2A:18-59.3.

By order entered January 16, 2024, the District Court granted the New Jersey defendants’ motion to dismiss. Harnett subsequently amended his complaint to add the former director of the CDC as a defendant.¹ The CDC defendants moved to dismiss the complaint. The District Court entered an order on November 20, 2024, dismissing without prejudice the claims against the CDC on immunity grounds. The Court indicated

¹ Harnett also sought to add state officials as defendants, but as the District Court noted, the complaint against the state defendants already had been dismissed, *see* Fed. R. Civ. P. 15(a). In any event, for the reasons discussed below, those state officials were immune from suit.

that it would not close the case to give Harnett time to find an attorney, and to “(a) develop[] an argument as to waiver or (b) fil[e] a claim against another defendant, who may not be shielded by immunity.” ECF No. 37. The Court advised that if Harnett did not take either of those steps by January 21, 2025, it would close the case. Harnett did not respond to the District Court’s order, and the District Court closed the case by text order entered January 21, 2025. Harnett filed a notice of appeal on February 14, 2025. Subsequently, at Harnett’s request, the District Court entered another order, dismissing the complaint with prejudice.

We have jurisdiction pursuant to 28 U.S.C. § 1291.² We exercise de novo review over legal determinations regarding immunity. *See Dotzel v. Ashbridge*, 438 F.3d 320, 324-25 (3d Cir. 2006).

The claims were properly dismissed because the defendants are immune from suit. The Eleventh Amendment protects a state or state agency from suit, unless Congress has specifically abrogated the state’s immunity or the state has waived its own immunity. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 100 (1984); *Laskaris v.*

² Even if there was an argument that there was no final order at the time that Harnett filed his notice of appeal, *see* 28 U.S.C. § 1291; *cf. Papotto v. Hartford Life & Acc. Ins. Co.*, 731 F.3d 265, 275 (3d Cir. 2013) (explaining that administrative closure of a case “does not end the proceeding”), no question remained when the District Court entered, at Harnett’s request, another order dismissing the case. *See Marshall v. Comm’r Pa. Dep’t of Corr.*, 840 F.3d 92, 96 (3d Cir. 2016) (*per curiam*) (holding that a premature notice of appeal may ripen “from a decision that is not immediately appealable but that becomes appealable before we take action on the appeal”).

Thornburgh, 661 F.2d 23, 25-26 (3d Cir. 1981). New Jersey has not waived its Eleventh Amendment immunity, *see Allen v. N.J. State Police*, 974 F.3d 497, 505 (3d Cir. 2020), and Harnett has not identified a federal statute abrogating the state’s immunity.³ *See generally Quern v. Jordan*, 440 U.S. 332, 345 (1979). Both the Governor’s office, as a state agency, *see Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 70-71 (1989), and the New Jersey Judiciary, as an “arm of the state,” *see* N.J. Const. Art. VI, § 1, are entitled to Eleventh Amendment immunity. *Fitchik v. N.J. Transit Rail Operations, Inc.*, 873 F.2d 655, 658 (3d Cir. 1989) (en banc) (recognizing that a state agency or department is an “arm of the state” when a judgment against it “would have had essentially the same practical consequences as a judgment against the State itself” (citation omitted)).

Accordingly, the claims against the New Jersey defendants were properly dismissed.

Also, contrary to Harnett’s arguments on appeal, the federal government generally enjoys immunity from suit for money damages. *See United States v. Testan*, 424 U.S. 392, 399 (1976). As a federal agency, the CDC is entitled to sovereign immunity. *See Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 484 (2006); *cf. Mazur v. Merck & Co., Inc.*, 964 F.2d 1348, 1365 (3d Cir. 1992) (referring to the CDC as an agency). As is its director, who was sued in her official capacity. *See Lewis v. Clarke*, 581 U.S. 155, 162 (2017) (recognizing that “[i]n an official-capacity claim, the relief sought is only

³ Harnett cited the Civil Rights Act of 1964, but he did not specify a provision much less one that waives sovereign immunity.

nominally against the official and in fact is against the official's office and thus the sovereign itself").

Harnett argues that the District Court erred in failing to grant him a waiver of immunity. *See* Appellant's Br. at 5. However, only Congress has the power to waive the federal government's immunity. *See Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024). Harnett had the burden of demonstrating that the CDC waived its immunity with respect to his claims. *See Lancaster v. Sec'y of Navy*, 109 F.4th 283, 293 (4th Cir. 2024); *see also Baker v. United States*, 817 F.2d 560, 562 (9th Cir. 1987). He did not meet this burden, as he points to no statute evidencing Congress's intent to waive federal immunity. *See Kirtz*, 601 U.S. at 49 (recognizing that "a waiver of sovereign immunity must be 'unmistakably clear in the language of the statute'" (citation omitted)).⁴

Based on the foregoing, the District Court properly dismissed the complaint, as it lacked subject matter jurisdiction. *See FDIC v. Meyer*, 510 U.S. 471, 475 (1994) (recognizing that "[s]overeign immunity is jurisdictional in nature").

Accordingly, we will affirm the District Court's judgment.

⁴ On appeal, Harnett argues that the District Court dismissed his claims "without regard to the Administrative Procedure Act, the Tort Claim Act, and the Tucker Act, a Bivens action or Civil Right[s] Act [,] 42 U.S.C. [§] [indecipherable]." Appellant's Br. at 18. However, he forfeited these arguments by failing to raise them in the District Court. *See DLJ Mortgage Capital, Inc. v. Stevens*, 167 F.4th 632, 635 (3d Cir. 2026).