

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5214

September Term, 2017

1:17-cv-01106-UNA

Filed On: April 18, 2018

Earl Reyes,

Appellant

v.

Michael Duggan, Assistant Court Clerk/Case
Analyst to the Office of the Clerk for the
United States Supreme Court and United
States,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Henderson and Katsas, Circuit Judges, and Ginsburg, Senior
Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). Upon consideration of the foregoing and the motion to appoint counsel, it is

ORDERED that the motion to appoint counsel be denied. In civil cases, appellants are not entitled to appointment of counsel when they have not demonstrated sufficient likelihood of success on the merits. It is

FURTHER ORDERED AND ADJUDGED that the district court's September 6, 2017 order dismissing appellant's complaint for failure to state a claim be affirmed. "A complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2008) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). Appellant's complaint

United States Court of Appeals
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No. 17-5214

September Term, 2017

alleged that appellees returned his petition for writ of certiorari to him and directed him to re-file it "for no valid reason." The district court correctly concluded that appellant has shown no constitutional violation giving rise to a claim under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), and further that the district court lacks "supervisory authority" over the staff of the United States Supreme Court, see In re Marin, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5214

September Term, 2017

1:17-cv-01106-UNA

Filed On: July 17, 2018

Earl Reyes,

Appellant

v.

Michael Duggan, Assistant Court Clerk/Case
Analyst to the Office of the Clerk for the
United States Supreme Court and United
States,

Appellees

BEFORE: Henderson and Katsas, Circuit Judges, and Ginsburg, Senior
Circuit Judge

ORDER

Upon consideration of the petition for rehearing, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5214

September Term, 2017

1:17-cv-01106-UNA

Filed On: July 17, 2018

Earl Reyes,

Appellant

v.

Michael Duggan, Assistant Court Clerk/Case
Analyst to the Office of the Clerk for the
United States Supreme Court and United
States,

Appellees

BEFORE: Garland, Chief Judge, and Henderson, Rogers, Tatel, Griffith,
Kavanaugh, Srinivasan, Millett, Pillard, Wilkins, and Katsas, Circuit
Judges, and Ginsburg, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a
request by any member of the court for a vote, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

* Circuit Judge Kavanaugh did not participate in this matter.

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17-5214

September Term, 2017

1:17-cv-01106-UNA

Filed On: July 25, 2018 [1742279]

Earl Reyes,

Appellant

v.

Michael Duggan, Assistant Court
Clerk/Case Analyst to the Office of the
Clerk for the United States Supreme Court
and United States,

Appellees

MANDATE

In accordance with the judgment of April 18, 2018, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken R. Meadows
Deputy Clerk

Link to the judgment filed April 18, 2018

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Earl Reyes,)
Plaintiff,)
v.) Civil Action No. 17-1106 (UNA)
Michael Duggan *et al.*,)
Defendants.)

MEMORANDUM OPINION

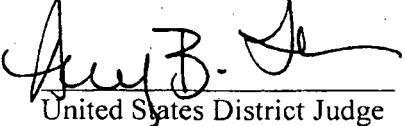
This matter is before the Court on its review of plaintiff's *pro se* complaint and application for leave to proceed *in forma pauperis*. For the reasons explained below, the *in forma pauperis* application will be granted and this case will be dismissed pursuant to 28 U.S.C. § 1915A, which requires immediate dismissal of a prisoner's complaint that fails to state a claim upon which relief can be granted.

“A complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Plaintiff is a New York state prisoner who has sued an Assistant Court Clerk/Case Analyst of the United States Supreme Court and the United States for monetary damages and equitable relief. *See* Compl. at 1-2. The complaint arises from the assistant clerk’s correspondence in February 2017 that directed plaintiff to resubmit his petition for a writ of certiorari “with the enclosed affidavit of timely mailing.” Compl. Ex. G. Plaintiff’s petition was eventually filed “and placed on the docket March 9, 2017[.]” Ex. I.

Plaintiff invokes *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), which permits an action for damages against a federal actor who violates one's constitutional rights. But the instant complaint reveals no such violation, and plaintiff's conclusory assertions of being "discriminated against . . . for being a member of the Latin Americans, Pro Se litigants, poor persons, prisoners, or" for being "treated different[ly] than other similarly situated," Compl. at 5-6, do not "suffice" to state a claim. *Iqbal*, 556 U.S. at 678, quoting *Twombly*, 550 U.S. at 555, 557 (finding insufficient "a pleading that offers 'labels and conclusions' . . . [or] tenders 'naked assertion[s]' devoid of 'further factual enhancement' ")).

As to plaintiff's claim for equitable relief, the Supreme Court "has inherent [and exclusive] supervisory authority over its Clerk" and his staff. *In re Marin*, 956 F.2d 339, 340 (D.C. Cir. 1992) (per curiam). Therefore, "a lower court may [not] compel the Clerk of the Supreme Court to take any action." *Id.*; see *Panko v. Rodak*, 606 F.2d 168, 171 n.6 (7th Cir. 1979), *cert. denied*, 444 U.S. 1081 (1980) ("It seems axiomatic that a lower court may not order the judges or officers of a higher court to take an action."). Hence, this case will be dismissed. A separate order accompanies this Memorandum Opinion.

Date: August 21th, 2017


United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Earl Reyes,)
Plaintiff,)
v.) Civil Action No. 17-1106 (UNA)
Michael Duggan *et al.*,)
Defendants.)

ORDER

For the reasons stated in the accompanying Memorandum Opinion, it is

ORDERED that plaintiff's application to proceed *in forma pauperis* [Dkt. # 2] is GRANTED; it is further

ORDERED that pursuant to 28 U.S.C. § 1915A(b)(1), this case is DISMISSED with prejudice.¹

This is a final appealable Order.

Aug 3 - 4
United States District Judge

Date: August 29th, 2017

¹ Plaintiff is advised that a dismissal for failure to state a claim qualifies as a strike under 28 U.S.C. § 1915(g), which limits a prisoner's ability to proceed *in forma pauperis* in federal court when certain conditions are satisfied.