

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY D. KILPATRICK,

Plaintiff,

-against-

CHARLES "CHUCK" ROSENBERG,
Administrator Drug Enforcement
Administration - D.E.A.,

Defendant.

18-CV-1412 (UA)

ORDER GRANTING IFP APPLICATION

COLLEEN McMAHON, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C.

§ 1915.

SO ORDERED.

Dated: August 28, 2018
New York, New York



COLLEEN McMAHON
Chief United States District Judge

S.D.N.Y. – N.Y.C.
18-cv-1412
Stanton, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of February, two thousand nineteen.

Present:

Barrington D. Parker,
Denny Chin,
Richard J. Sullivan,
Circuit Judges.

Gregory D. Kilpatrick,

Plaintiff-Appellant,

v.

18-2752

Uttam Dhillon, Administrator -- D.E.A.,

*Defendant-Appellee.**

Appellant, pro se, moves for in forma pauperis status, appointment of counsel, and “negligence.” Upon due consideration, it is hereby ORDERED that (1) the IFP motion is DENIED as unnecessary, since the district court granted, and did not revoke, Appellant’s IFP status; (2) the motions for appointment of counsel and negligence are DENIED; and (3) the appeal is DISMISSED as frivolous because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


* The Clerk of the Court is directed to amend the official caption to conform to the above.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY D. KILPATRICK,

Plaintiff,

-against-

CHARLES “CHUCK” ROSENBERG,
Administrator Drug Enforcement Administration –
D.E.A.,

Defendant.

18-CV-1412 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, appearing *pro se*, brings this action under the Court’s federal question jurisdiction. He sues Charles “Chuck” Rosenberg, the former acting Administrator of the federal Drug Enforcement Administration (“DEA”). Plaintiff seeks monetary damages. By order dated August 28, 2018, the Court granted Plaintiff’s request to proceed without prepayment of fees, that is, *in forma pauperis*. The Court dismisses this action for the reasons set forth below.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint, or portion thereof, when the Court lacks subject matter jurisdiction. *See Fed. R. Civ. P. 12(h)(3)*. While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the “strongest [claims] that they suggest,” *Triestman v. Fed. Bureau of*

Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted, emphasis in original).

A claim is frivolous when it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 25 (1989), *abrogated on other grounds by Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007); *see also Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (holding that a “finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible”); *Livingston*, 141 F.3d at 437 (“[A]n action is ‘frivolous’ when either: (1) the factual contentions are clearly baseless . . . ; or (2) the claim is based on an indisputably meritless legal theory.”) (internal quotation marks and citation omitted).

BACKGROUND

Plaintiff’s complaint is not a model of clarity. He asserts that Rosenberg did his investigation on Plaintiff and most probably derived at the conclusion that Plaintiff doesn’t like, degrade harasses Caucasian police, disrespects Caucasian law enforcement and believes that DEA agents take sides unite and “flock together” with male Caucasian city, state, federal police officials that have to do with criminal corruption “entrapping and assault.” [sic]

(ECF No. 1, at 4.) Plaintiff then appears to mention other civil actions that he has brought in this Court arising from his alleged experiences with dentists and pharmacies, including assaults against him with hypodermic needles and the successful attempts to infect him with diseases using those needles. (*Id.* at 5-6.) Plaintiff has attached copies of correspondence he has sent to the DEA complaining about those alleged experiences. (*Id.* at 9-20.)

Plaintiff asserts that Rosenberg is protecting someone or something, but he does not specify who or what Rosenberg is protecting. (*Id.* at 7.) He apparently seeks monetary relief for the DEA’s failure to arrest dentists and pharmacists, and for its “racism, favoritism, [and] insubordination.” (*Id.* at 7.)

DISCUSSION

Even when read with the “special solicitude” due *pro se* pleadings, *Triestman*, 470 F.3d at 474, the Court must dismiss this action as frivolous. Plaintiff’s allegations rise to the level of the irrational, and there is no legal theory on which he can rely. *See Denton*, 504 U.S. at 33; *Livingston*, 141 F.3d at 437.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff’s complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend.

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket.

The Court dismisses this action as frivolous.¹ 28 U.S.C. § 1915(e)(2)(B)(i).

¹ The Court notes that after Plaintiff filed the complaint commencing this action, the Court barred Plaintiff from filing future civil actions in this Court *in forma pauperis* without first obtaining from the Court leave to file; Plaintiff was barred because of his history of nonmeritorious litigation in this Court. *In re Gregory D. Kilpatrick*, Nos. 17-CV-9861, 17-CV-9862, 17-CV-9863, 17-CV-9864, 17-CV-9865, 17-CV-9866 (CM) (S.D.N.Y. Feb. 23, 2018), *appeal dismissed*, Nos. 18-287, 18-291, 18-295, 18-304, 18-306, 18-308 (2d Cir. May 21, 2018). The Court reminds Plaintiff that the filing bar remains in effect.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: August 30, 2018
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

GREGORY D. KILPATRICK,

Plaintiff,

-against-

CHARLES "CHUCK" ROSENBERG,
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Administration- D.E.A.,

Defendant.

18-CV-1412 (LLS)

CIVIL JUDGMENT

Pursuant to the order issued August 30, 2018, dismissing this action as frivolous,

IT IS ORDERED, ADJUDGED AND DECREED that this action is dismissed as
frivolous. 28 U.S.C. § 1915(e)(2)(B)(i).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's
judgment would not be taken in good faith.

IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to
Plaintiff and note service on the docket.

Dated: August 30, 2018
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

**Additional material
from this filing is
available in the
Clerk's Office.**