No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

NICHOLAS WEIR - PETITIONER

vs.

FEDERALLY FUNDED AGENCIES, ENTITIES AND ITS AGENTS, THE CITY OF NEW YORK, STATE OF NEW YORK FUNDED AGENCIES, ENTITIES AND ITS AGENTS, UNITED STATES OF AMERICA, EDWARD CURTIS, ASSISTANT ATTORNEY GENERAL, FREDERICK SCHAFFER, CUNY VICE CHANCELLOR OF LEGAL AFFAIRS, ERIC T. SCHNEIDERMAN, FORMER ATTORNEY GENERAL OF NEW YORK STATE, J. SAAB, ROSELIN ANACACY, JAMES PARDUCCI, JOHN DOE(S), JANE DOE(S) - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

---

from UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX OF PETITIONER NICHOLAS WEIR

Nicholas Weir, Pro Se

172 Lawrence Street,

Uniondale, NY 11553

718-503-4479

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

NICHOLAS WEIR - PETITIONER

vs.

FEDERALLY FUNDED AGENCIES, ENTITIES AND ITS AGENTS,
THE CITY OF NEW YORK, STATE OF NEW YORK FUNDED
AGENCIES, ENTITIES AND ITS AGENTS, UNITED STATES OF
AMERICA, EDWARD CURTIS, ASSISTANT ATTORNEY GENERAL,
FREDERICK SCHAFFER, CITY VICE CH /NCELLOR OF
LEGAL AFFAIRS, ERIC T. SCHNEIDERMAN, FORMER ATTORNEY
GENERAL OF NEW YORK STATE, I. SAAC ROSELIN, MACCCY
JAMES PARDUCCI, JOHN DOE(S), JANE DOE(S) - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

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from UNITED STATES COURT OF APPEALS FOR THE SECOND
CIRCUIT

APPENDIX OF PETITIONER NICHOLAS WEIR

Nicholas Weir, Pro Se
172 Lawrence Street,
Uniondale, NY 11553
718-508-4479

APPENDIX A

Decision of United States Court of Appeal of the Second Circuit

E.D.N.Y. – C. Islip
18-cv-4335
Bianco, 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 8th day of May, two thousand nineteen.

Present:

Dennis Jacobs,
Pierre N. Leval,
Christopher F. Droney,
Circuit Judges.

Nicholas D. Weir,

Plaintiff-Appellant,

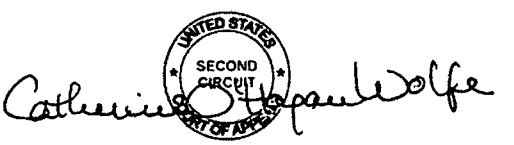
v. 18-3069

Federally Funded Agencies,
Entities and Its Agents, et al.,

Defendants-Appellees.

Appellant, pro se, moves for injunctive relief and to expedite the appeal. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED 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



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 4th day of June, two thousand and nineteen,

Present:

Dennis Jacobs,
Pierre N. Leval,
Christopher F. Droney,
Circuit Judges.

Nicholas D. Weir,

Plaintiff - Appellant,

v.

Federally Funded Agencies, Entities and Its Agents, The City of New York, State of New York Funded Agencies, Entities and Its Agents, United States of America, Edward Curtis, Assistant Attorney General, Frederick Schaffer, Cuny Vice Chancellor of Legal Affairs, Eric T. Schneiderman, former Attorney General of New York State, J. Saab, Roselin Anacacy, James Parducci, John Doe(s), Jane Doe(s),

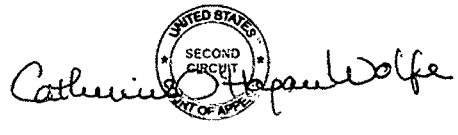
Defendants- Appellees.

ORDER
Docket No. 18-3069

Appellant filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:
Catherine O'Hagan Wolfe,
Clerk of Court



APPENDIX B

Decision of United States District Court for Eastern District of New York
Sua Sponte Dismissal of Complaint as Frivolous

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------X

NICHOLAS WEIR,

Plaintiff,

-against-

FEDERALLY FUNDED AGENCIES/ENTITES AND ITS AGENTS, THE CITY OF NEW YORK, THE STATE OF NEW YORK FUNDED AGENCIES/ENTITIES AND ITS AGENTS, UNITED STATES OF AMERICA, EDWARD CURTIS, JR., Assistant Attorney General, FREDERICK SCHAFFER, CUNY Vice Chancellor of Legal Affairs, ERIC SCHNEIDERMAN, former Attorney General of New York State, J. SAAB, ROSELIN ANACACY, JAMES PARDUCCI, JOHN DOE(S), and JANE DOE(S),

Defendants.

----------X

ORDER
18-CV-4335 (JFB)(GRB)

JOSEPH F. BIANCO, District Judge:

On July 2, 2018, Nicholas Weir ("plaintiff"), proceeding *pro se*, filed a complaint in the Supreme Court of the State of New York, Nassau County, under Index No. 608841/2018. (Dkt. No. 1-1.) On July 31, 2018, the United States removed the action to this Court pursuant to 28 U.S.C. § 1442(a)(1). (Dkt. No. 1.) On August 3, 2018, plaintiff moved to remand the action to state court (Dkt. No. 3), and by Order dated August 15, 2018, the Court denied plaintiff's motion to remand (Dkt. No. 6). On August 16, 2018, plaintiff filed an order to show cause seeking a "cease and desist order and temporary restraining order" enjoining defendants from, *inter alia*, "engaging in any form of retaliatory actions such as exposing plaintiff to toxic gas, stalking, and sabotaging career development." (Dkt. No. 7 at 1, 5.) On August 28, 2018, plaintiff filed: (1) a motion to amend (without a proposed amended complaint); (2) a motion for reconsideration of the Court's August 15, 2018 Order denying plaintiff's motion to remand; and (3) a "motion to

expedite" and "to participate in E.C.F." (Dkt. Nos. 8-10.) For the reasons that follow, the Court dismisses plaintiff's complaint because it does not allege a plausible claim. Given the dismissal of the complaint, plaintiff's order to show cause and other motions are denied.[1]

BACKGROUND

I. Plaintiff's Litigation History in the Federal Courts

Plaintiff is no stranger to the federal courts. The instant action is plaintiff's third complaint in this Court alleging similar, fantastic claims against many of the same defendants. *See, e.g.*, *Weir v. United States*, No. 17-CV-7430 (E.D.N.Y. 2017) (dismissed by Order dated February 28, 2018, warning plaintiff that similar, future complaints would not be tolerated); *Weir v. City Univ. of N.Y.*, No. 17-CV-4836 (E.D.N.Y. 2017) (dismissed voluntarily by Order dated August 28, 2017). In addition, plaintiff filed similar complaints in the United States District Courts for the Southern District of New York and the District of Connecticut, each of which were dismissed. *See* Order of Dismissal, *Weir v. City Univ. of N.Y.*, No. 17-CV-6795 (S.D.N.Y. Oct. 25, 2017), Dkt. No. 4; Order of Dismissal, *Weir v. State of New York Funded Agencies and its Agents*, No. 17-CV-9001 (S.D.N.Y. Dec. 11, 2017), Dkt. No. 3, *appeal dismissed by mandate*, No. 18-28 (2d Cir. June 29, 2018); Order Dismissing Case With Prejudice, *Weir v. United States*, No. 17-CV-2115 (D. Conn. Apr. 17, 2018), Dkt. No. 13.[2] Like the complaints filed in the previously dismissed federal actions, plaintiff continues to claim that defendants have conspired to deprive him of his Third, Fourth, Seventh, Thirteenth, and Fourteenth Amendment rights by

[1] The Court also concludes that there is no basis for reconsideration of its Order denying plaintiff's motion to remand.

[2] Plaintiff also has a history of frivolous litigation in the New York State Court system, including the instant complaint that was removed from Nassau County Supreme Court to this Court by the United States.

allegedly retaliating against plaintiff for his complaints about employee misconduct at the City University of New York and for his comments concerning "military retaliation." (Compl. at 28.)[3]

II. The Present Complaint

The instant, thirty-two-page complaint is largely incoherent. The complaint begins: "Your honor, as much as I am exhausted and disappointed in constantly being dismissed each time I reach out to the Court, I simply cannot stop until justice is attained." (*Id.* at 4.) According to the complaint, "this is the tenth time that [plaintiff is] requesting a cease and desist order (injunctive relief) for the same matter from a US District Court." (*Id.* at 28.) The first ten or so pages of plaintiff's complaint is a diatribe against the federal government's current immigration policies, as well as arguments in support of Deferred Action for Childhood Arrivals. (*Id.* at 4-9.) The next section of the complaint is a "Hate-Love Continuum," with a lengthy explanation thereof followed by several pages about "[g]anja [] a nonlethal drug that has been purposefully criminalized as a useless, addictive, and dangerous drug." (*Id.* at 12-18.) Plaintiff next provides an analysis of the United States prison system and proposes "the creation of a Department of Punishment" to deal with "individuals who commit gruesome crimes or murder." (*Id.* at 18-23.) Plaintiff finally relates the complaint to himself at page twenty-six, wherein he alleges that defendants have "retaliate[ed]" against him, which has "resulted in [plaintiff] losing at least two jobs." (*Id.* at 26.) According to the complaint, "[t]he daily retaliation from government agents have [sic] been ongoing for over 4 years (October 2018 will make five years)" (*id.* at 27), and therefore plaintiff seeks a "cease and desist order" to stop defendants'

[3] For clarity, the Court will cite to the pagination assigned by the Court's electronic case filing system.

"prolonged criminal acts, the repeated invasion of [his] room, and the continued covert retaliatory acts" (*id.* at 27-28). Plaintiff claims that defendants poisoned the food in his room and refrigerator, sprayed an odorless gas into his car, searched his room, solicited him to use marijuana on public transportation, compromised his phone service, switched the wiring on his laptop adapter, opened his mail, purposefully hit his car while he was driving in order to stage a car accident, placed toxic substances on his food at a fast food restaurant, stalked him, disrupted and blocked his internet access, sabotaged several job opportunities, and bribed his former employer to terminate his employment. (*Id.* at 29-32.)

DISCUSSION

I. Sufficiency of the Pleadings

A. Legal Standard

It is axiomatic that district courts are required to read *pro se* complaints liberally; *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007), and to construe them "to raise the strongest arguments that [they] suggest[]," *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (quoting *Harris v. City of New York*, 607 F.3d 18, 24 (2d Cir. 2010)). Moreover, at the pleadings stage of the proceeding, the Court must assume the truth of "all well-pleaded, nonconclusory factual allegations" in the complaint. *Kiobel v. Royal Dutch Petrol. Co.*, 621 F.3d 111, 123 (2d Cir. 2010) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)), *aff'd*, 569 U.S. 108 (2013). However, "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Notwithstanding a plaintiff's *pro se* status, a complaint must plead sufficient facts to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,

570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The plausibility standard requires "more than a sheer possibility that a defendant has acted unlawfully." *Id.*; *accord Wilson v. Merrill Lynch & Co.*, 671 F.3d 120, 128 (2d Cir. 2011). While "detailed factual allegations" are not required, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555).

Further, a district court has the inherent power to dismiss a case *sua sponte* if it determines that the action is frivolous. *See Fitzgerald v. First E. Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000). An action is "frivolous" when "'the factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (quoting *Nance v. Kelly*, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam)). "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." *Denton v. Hernandez*, 504 U.S. 25, 33 (1992); *see also Gallop v. Cheney*, 642 F.3d 364, 368 (2d Cir. 2011) ("A court may dismiss a claim as 'factually frivolous' if the sufficiently well-pleaded facts are 'clearly baseless'—that is, if they are 'fanciful,' 'fantastic,' or 'delusional.'" (quoting *Denton*, 504 U.S. at 32-33)).

B. Application

As readily apparent from the substance of the complaint, plaintiff's claims "rise to the level of the irrational or the wholly incredible." *Denton*, 504 U.S. at 33. Plaintiff purports to allege a broad conspiracy involving surveillance of and interference with his life by the United

States and various federal and state actors. Upon a careful reading of plaintiff's submissions, the allegations presented appear wholly incredible and can only be described as the "product of delusion or fantasy." *Livingston*, 141 F.3d at 437. Construing plaintiff's pleadings liberally and raising the strongest arguments they suggest, the Court finds that plaintiff's allegations rise to the level of irrational and wholly incredible.

Given that plaintiff's claims "rise to the level of the irrational or the wholly incredible," *Denton*, 504 U.S. at 33, they are factually frivolous and are accordingly dismissed. *See Mecca v. U.S. Gov't*, 232 F. App'x 66, 67 (2d Cir. 2007) (affirming district court dismissal of complaint that was "replete with fantastic and delusional scenarios"); *Gonzales v. Wright*, No. 9:06-CV-1424, 2010 WL 681323, at *12 (N.D.N.Y. Feb. 23, 2010) ("As the Second Circuit and New York District Courts have steadily recognized, it is utterly unjust to haul people into federal court to defend against, and disprove, delusions.") (collecting cases).[4]

The Court has considered affording plaintiff an opportunity to amend the complaint, *see Foman v. Davis*, 371 U.S. 178, 182 (1962), but declines to do so because, for the reasons discussed, the deficiencies therein could not be cured by further amendment, *see O'Hara v. Weeks Marine, Inc.*, 294 F.3d 55, 69 (2d Cir. 2002).

II. The All Writs Act

Under the All Writs Act, a federal court "may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." 28

[4] In addition, given that sovereign immunity shields the United States, it agencies, and government officials acting in their official capacity from suit, *FDIC v. Meyer*, 510 U.S. 471, 475 (1994), and that the Eleventh Amendment precludes actions in this Court against the State of New York, as well as actions for monetary damages against state officials acting in their official capacities, *State Emps. Bargaining Agent Coal. v. Rowland*, 494 F.3d 71, 95 (2d Cir. 2007), the Court likely lacks subject matter jurisdiction to adjudicate these claims.

U.S.C. § 1651(a). "The All-Writs Act grants district courts the power, under certain circumstances, to enjoin parties from filing further lawsuits." *MLE Realty Assocs. v. Handler*, 192 F.3d 259, 261 (2d Cir. 1999). Those circumstances include when a litigant engages in the filing of repetitive and frivolous suits. *See, e.g., Malley v. N.Y.C. Bd. of Educ.*, 112 F.3d 69, 69 (2d Cir. 1997) (per curiam) (affirming filing injunction when litigant had filed four actions based on the same events); *In re Martin-Trigona*, 9 F.3d 226, 228-29 (2d Cir. 1993). Such an injunction, while protecting the courts and parties from frivolous litigation, should be narrowly tailored so as to preserve the right of access to the courts. In addition, the Court must provide the litigant with notice and an opportunity to be heard before imposing a filing injunction. *Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998) (per curiam).

The Court previously warned plaintiff that if he continued to file similar, frivolous complaints in the future, he would be required to show cause as to why he should not have to first seek leave of the Court before submitting such filings. *See* Order of Dismissal, *Weir v. United States*, No. 17-CV-7430 (E.D.N.Y. Feb. 28, 2018), Dkt. No. 6. Plaintiff, however, did not file this action in this Court; rather, plaintiff initiated the action in Nassau County Supreme Court, and the United States removed it to this Court. Given plaintiff's *pro se* status, the Court now makes clear that future, similar complaints against these parties filed in this Court *or* state court (that are then removed to this Court) will not be allowed to continue. *See Sassower v. Abrams*, 833 F. Supp. 253, 271-72 (S.D.N.Y. 1993) (issuing injunction directing that, upon removal of an action filed by the plaintiff in New York state court to the Southern District of New York, plaintiff was required to seek leave from the court before the action could continue). Plaintiff's continued filing of repetitive, frivolous complaints constitutes an abuse of the judicial

process, and the Court has an "obligation to protect the public and the efficient administration of justice from individuals who have a 'history of litigation entailing "vexation, harassment and needless expense to [other parties]" and "an unnecessary burden on the courts and their supporting personnel."'" *Lau v. Meddaugh*, 229 F. 3d 121, 123 (2d Cir. 2000) (alteration in original) (quoting *In re Martin-Trigona*, 737 F.2d at 1262). If plaintiff persists in this course of action, the Court will require that plaintiff show cause as to why he should not first seek leave of Court before submitting such filings.

Finally, plaintiff is cautioned that Federal Rule of Civil Procedure 11 applies to *pro se* litigants, *see Maduakolam v. Columbia Univ.*, 866 F.2d 53, 56 (2d Cir. 1989), and that if plaintiff files another action against these parties relating to this subject matter, the Court may impose sanctions pursuant to Rule 11.

CONCLUSION

For the reasons set forth above, plaintiff's complaint is *sua sponte* dismissed as frivolous. Given the dismissal of the complaint, plaintiff's order to show cause and other pending motions are denied.

The Clerk of Court is directed to mail a copy of this Order to plaintiff and close this case.

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

SO ORDERED.

Dated: September 21, 2018
Central Islip, New York

Joseph F. Bianco
United States District Judge

CONCLUSION

For the reasons set forth above, plaintiff's complaint is sua sponte dismissed as frivolous. Given the dismissal of the complaint, plaintiff's order to show cause and other pending motions are denied.

The Clerk of Court is directed to mail a copy of this Order to plaintiff and close this case. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that, should plaintiff seek leave to appeal in forma pauperis, any appeal from this Order would not be taken in good faith, and in forma pauperis status is therefore denied for the purpose of any appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

Dated: September 21, 2018
Central Islip, New York

Joseph F. Bianco
United States District Judge