S.D.N.Y. – N.Y.C.
18-cv-6203
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 19th day of June, two thousand nineteen.

Present:

José A. Cabranes,
Reena Raggi,
Christopher F. Droney,
Circuit Judges.

Jose Joaquin Ramirez, Propria Persona – Sui Juris,

Plaintiff-Appellant,

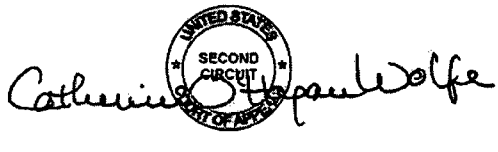
v. 19-89

Jeffrey C. Bloom, et al.,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis and other relief. 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 DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE JOAQUIN RAMIREZ,

Plaintiff,

-against-

JEFFREY C. BLOOM; WILLOUGBY C. JENETT; TAJUANA B. JOHNSON; LEGAL AID SOCIETY; CHIEF JUDGE GEORGE GRASSO; JUDGE GEORGE VILLEGAS; JUDGE MONTANO; JUDGE T. DAWSON; DARCEL CLARK; JEFFREY KIMMELMAN; ALLISON ZIMMERMAN,

Defendants.

18-CV-6203 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

Plaintiff, currently incarcerated at the Anna M. Kross Center ("AMKC") at Rikers Island, brings this *pro se* action under 42 U.S.C. § 1983 asserting that Defendants violated his civil rights. He requests injunctive and declaratory relief. By order dated July 25, 2018, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.[1] For the reasons set forth below, the Court dismisses this action.

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon 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), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). While the law mandates dismissal on any

[1] Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

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, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff brings this complaint asserting that he has been "unlawfully enslaved, deprived of life, liberty and property without due process of law and forced into shackles, chains, peonage, involuntary servitude and slavery without being duly convicted of any crime at all." (Compl. at 23.) He sues the following individuals and entity for their involvement in his state-court criminal proceedings: Jeffrey C. Bloom, Willoughby C. Jennet, and Tajuana B. Johnson – Legal Aid Attorneys who were assigned to defend him; the Legal Aid Society; Chief Judge George Grasso, Judge George Villegas, Judge Montano, and Judge T. Dawson – judges involved in criminal cases against Plaintiff before the Bronx County Supreme Court and the New York County Supreme Court; Darcel Clark, District Attorney for Bronx County; and Jeffrey Kimmelman and Alison Zimmerman – Assistant District Attorneys prosecuting Plaintiff in the Bronx.

Plaintiff asserts that on July 18, 2017, he was "kidnapped and abducted at gunpoint and forced into slavery." (*Id.* ¶ 47.) He claims that he was never told that he was under arrest, read his rights, given written notice of the charges, or "given a certified copy of the indictment, a bill of discovery, a bill of particulars nor any other formal accusations of the pretended crimes." (*Id.* ¶ 42.) Plaintiff asserts that despite his demand for a trial in September 2017, submissions of multiple character witnesses and completed applications for the "Fed Cap Program," and "never consenting to a single adjournment," at the time of the filing of the complaint, he had served the equivalent of an 18-month sentence without a trial or fair hearings. (*Id.* ¶¶ 47-48.)

Plaintiff blames his continued detention on Defendants' actions or omissions in his state-court criminal proceedings. He asserts that Bloom, his current defense attorney whose services he has continuously rejected, has worked in concert with the District Attorney and judges to railroad him, by keeping him out of the courtroom, off the record, and denying him available defenses. Plaintiff also claims that Jenett was the attorney who began the "railroad process" in the Bronx case by consenting to have him "remanded" prior to any hearing, and that Johnson, who was forced upon him in the Manhattan case, never contacted him. (*Id.* ¶ 30.) Plaintiff further contends that the Legal Aid Society "is an extension of the District Attorney's Office and is in place to present the appearance of legal assistance, but only encourages individuals to 'cop out' and plead guilty." (*Id.* ¶ 32.)

Plaintiff continues by criticizing the state-court judges involved in his cases. He asserts that Chief Judge Grasso has ignored his motions and voicemails detailing "the railroad process" against him, thereby allowing the crimes to continue (*id.* ¶ 33); Judge Villegas, who is presiding over the Bronx case, has allowed him to be subjected to an examination under Article 730 of New York Criminal Procedure Law without a court appearance,[2] has refused to address his

[2] In 2017, Plaintiff filed a case with another inmate in which he asserted that he was subjected to a secret examination under N.Y. Crim. Proc. Law § 730 in the Bronx case, found unfit to proceed to trial, and sent to Kirby Forensic Psychiatric Center. *See Ramirez v. New York City, Department of Corrections*, No. 17-CV-10171 (LGS) (ECF No. 1). Plaintiff, denying that he suffered from a psychiatric condition or mental illness, sought damages for his alleged enslavement at Kirby. On May 10, 2018, Chief Judge Colleen McMahon *sua sponte* dismissed the plaintiff's claims, which would require intervention in their state-court criminal proceedings, on abstention grounds under *Younger v. Harris*, 401 U.S. 37 (1971), and to the extent they sought *habeas corpus* relief for lack of exhaustion. Plaintiff appealed the dismissal on a solo basis, and on August 8, 2018, the Second Circuit issued a mandate dismissing Plaintiff's appeal in part but remanding it in part, finding that dismissal under "*Younger* abstention was inappropriate" for Plaintiff's § 1983 money damages claim. *Id.* (ECF No. 32). The Second Circuit directed this Court to "consider whether [Plaintiff's] claims for money damages should be dismissed on some other ground or stayed pending resolution of [his] state criminal case." *Id.*

motions, and has ignored his oath of office to protect and uphold the Constitution; Judge Montano kicked him out of the courtroom for asserting his right to proceed without counsel and allowed the case to be adjourned; and Judge Dawson, who is presiding over the Manhattan case, has refused to release him from custody despite the "ongoing railroad process" in the Bronx case (*id.* ¶ 36).

Plaintiff also asserts claims against the prosecutors of his criminal case in the Bronx. He asserts that Clark, who "operates and advocates the illegal slave trade in the Bronx," has refused to respond to his motions and other court documents (*id.* ¶ 37); Kimmelman has refused to answer motions and other documents although he is listed as the Assistant District Attorney for the Bronx case; and Zimmerman is "unable to rebuttle [sic] [his] legal claims" (*id.* ¶ 39).

Plaintiff also alleges that Defendants have conspired to violate his constitutional rights by "brutal[ly] delay[ing]" his Bronx criminal case despite his "extremely high level of submissions" to move the case along. (*Id.* ¶ 50.) Plaintiff asserts that the delays and adjournments in his case were done for "tactical advantages" and have proved effective because it has "overly depleated [sic]" his and his family's financial resources and has caused him to have "extremely high levels of anxiety." (*Id.* ¶¶52-53.) Plaintiff further claims that he is being detained under a bill of attainder pursuant to New York Bail Law § 530.40, and that he has been denied a multitude of rights, including his right to due process; a speedy trial under the Sixth Amendment and N.Y. Crim. Proc. Law § 30.20; "to be formally accussed [sic] of the pretended wrongdoings" (*id.* ¶ 63); to defend himself and "proceed Propria Persona" (*id.*); bail and to be free from cruel and

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On September 26, 2018, Judge Lorna G. Schofield, to whom the case was reassigned, directed Plaintiff to file an amended complaint within sixty days "detailing his claims arising from the fact of his detention at Kirby." *Id.* (ECF No. 34, at 9). On October 16, 2018, Judge Schofield extended the time for Plaintiff to file an amended complaint to November 27, 2018. *Id.* (ECF No. 37).

unusual punishment; not to be "enslaved without being duly convicted" (*id.*); and equal protections of the laws.

Plaintiff seeks the following relief: copies of legal documents from his cases, including certified copies of indictments and transcripts; an order of protection against Bloom, the Legal Aid Society, and "any and all other pretended [sic] future 'defense' lawyers" (*id.* ¶ 56); stopping Bloom and the Legal Aid Society from "committing felony fraud by falsely representing [him] and [his] account" (*id.* ¶ 57); directing all the judges, but specifically Judge Montano, to stop "any and all efforts to force state agents to pretend a defense" and to prohibit them be from having court proceedings without him being present (*id* ¶ 58); enjoining the prosecutors from further action in the Bronx case; issuing a decree that Defendants have "violently violated" his constitutional rights (*id.* ¶ 68); enjoining Defendants from railroading him; dismissing all indictments against him and expunging the records; and "release from enslavement" (*id*).[3]

Plaintiff makes it clear that he filed this complaint while simultaneously seeking relief in New York State courts for the alleged violations. Since the filing of this action, he has submitted multiple documents addressed to both state and federal courts, providing updates on his

[3] Plaintiff asserts that the Court should be very familiar with the arguments presented in his complaint as he drafted a template of similar claims, which was then used by other Rikers Island detainees in *habeas corpus* petitions and civil rights cases submitted to the Court. *See, e.g.*, *Sears v. City of New York*, No. 18-CV-3220 (CM) (S.D.N.Y. June 28, 2018); *Sears v. City of New York*, No. 18-CV-3288 (CM) (S.D.N.Y. Oct. 9, 2018); *Fernandez v. City of New York*, No. 18-CV-4123 (CM) (S.D.N.Y. June 14, 2018); *Rodriguez v. City of New York*, No. 18-CV-4527 (CM) (S.D.N.Y. Sept. 25, 2018); *Ramirez v. City of New York*, No. 18-CV-4528 (CM) (S.D.N.Y. Oct. 12, 2018); *Smalls v. City of New York*, No. 18-CV-4529 (CM) (S.D.N.Y. Sept. 25, 2018); *Smalls v. City of New York*, No. 18-CV-4532 (LLS) (S.D.N.Y. filed May 22, 2018) (pending); *Ramirez v. City of New York*, No. 18-CV-4533 (CM) (S.D.N.Y. Aug. 1, 2018); *Rodriguez v. City of New York*, No. 18-CV-5810 (UA) (S.D.N.Y. filed June 26, 2018) (pending); *Rodriguez v. City of New York*, No. 18-CV-5826 (CM) (S.D.N.Y. filed June 26, 2018) (pending). Plaintiff recently filed a purported class action, along with some of the same detainees who filed the above cases, again asserting similar claims. *See Ramirez v. Rikers Island Slave Complex*, No. 18-CV-9260 (UA) (S.D.N.Y. filed Oct. 2, 2018).

continued detention. (*See* ECF Nos. 6, 7, 8.) In these documents, Plaintiff again challenges the validity of his ongoing state-court criminal proceedings.[4]

DISCUSSION

A. Challenge to Pretrial Detention and Criminal Proceedings

Plaintiff brings this action challenging his ongoing criminal proceedings and pretrial detention on multiple grounds, including purported violations of his rights to speedy trial, to represent himself, to be free from excessive bail, due process, and equal protection of the laws. But the Court cannot consider these claims in a § 1983 action. Because Plaintiff's assertions concern the validity and duration of his confinement, he may not challenge them in a § 1983 action; instead, he can only obtain such relief by bringing a petition for a writ of *habeas corpus*. *See Wilkinson v. Dotson*, 544 U.S. 74, 78-82 (2005) (citing *Preiser v. Rodriguez*, 411 U.S. 475 (1973)) (noting that writ of *habeas corpus* is sole remedy for prisoner seeking to challenge the fact or duration of his confinement). A prisoner may not circumvent the state-court exhaustion requirement for *habeas corpus* relief by requesting release from custody in a § 1983 federal civil action. *Preiser*, 411 U.S. at 489-90.

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[4] In addition to the 2007 action and the slave complex case discussed above, Plaintiff has also filed a number of other civil rights actions and *habeas corpus* petitions challenging his detention at Kirby and Rikers Island. *See Ramirez v. City of New York,* No. 17-CV-9103 (CM) (S.D.N.Y. Feb. 23, 2018) (dismissing petition filed under 28 U.S.C. § 2241, challenging detention at Kirby, for failure to exhaust and under *Younger* abstention); Ramirez v. Bloom, No. 18-CV-6609 (CM) (S.D.N.Y. July 24, 2008) (dismissing as duplicative of this action); *Ramirez v. Warden*, No. 18-CV-6610 (CM) (S.D.N.Y. filed July 18, 2018) (pending); *Ramirez v. Grasso*, No. 18-CV-6612 (CM) (S.D.N.Y. Aug. 27, 2018) (dismissing petition filed under 28 U.S.C. § 2241 for failure to pay filing fee or submit *in forma pauperis* (IFP) application). Plaintiff has also filed cases challenging the conditions of his confinement. *See Ramirez v. Lewis*, No. 18-CV-3486 (VEC) (HBP) (S.D.N.Y. filed Apr. 18, 2018) (pending); *Ramirez v. Goede*, No. 18-CV-4040 (JMF) (S.D.N.Y. filed May 4, 2018) (pending).

Plaintiff has a pending petition for a writ of *habeas corpus* in which he raises substantially the same challenges to his ongoing criminal proceedings and continuing pretrial detention. *See Ramirez v. Warden*, No. 18-CV-6610 (CM) (S.D.N.Y. filed July 18, 2018). As the *habeas* action is the proper vehicle to obtain the declaratory and injunctive relief he seeks, the Court dismisses this § 1983 action.

B. Claims against Attorneys and Legal Aid Society

Even if the Court were to consider Plaintiff's claims under § 1983, the complaint must still be dismissed because he sues defendants who are not subject to liability or are immune from suit. A claim for relief under § 1983 must allege facts showing that each defendant acted under the color of a state "statute, ordinance, regulation, custom or usage." 42 U.S.C. § 1983. Private parties are therefore not generally liable under the statute. *Sykes v. Bank of America*, 723 F.3d 399, 406 (2d Cir. 2013) (citing *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001)); *see also Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) ("[T]he United States Constitution regulates only the Government, not private parties.").

Absent special circumstances suggesting concerted action between an attorney and a state representative, *see Nicholas v. Goord*, 430 F.3d 652, 656 n.7 (2d Cir. 2005), an attorney's legal representation of an individual does not constitute the degree of state involvement necessary for a claim under § 1983, regardless of whether that attorney is privately retained, court-appointed, or employed as a public defender. *See Bourdon v. Loughren*, 386 F.3d 88, 90 (2d Cir. 2004); *see also Schnabel v. Abramson*, 232 F.3d 83, 87 (2d Cir. 2000) (holding that legal aid organization ordinarily is not a state actor for purposes of § 1983).

Here, Plaintiff sues Bloom, Jenett, and Johnson for their actions in representing him in the state-court proceedings, and the Legal Aid Society, their employer. While Plaintiff alleges that his defense attorneys have worked in concert with the District Attorney to railroad him and

that the Legal Aid Society "is an extension of the District Attorney's Office" which "encourages individuals to 'cop out' and plead guilty," (Compl. ¶ 32), he fails to assert any facts supporting those assertions. Because Bloom, Jenett, Johnson, and the Legal Aid Society are not state actors, Plaintiff has not stated § 1983 claims against them, and all claims against these defendants are therefore dismissed.

C. Claims against Judges

Plaintiff's claims against the four state-court judges must also be dismissed. Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable." 42 U.S.C. § 1983.

Judicial immunity does not apply when the judge takes action "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles,* 502 U.S. at 9-10; *see also Bliven,* 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman,* 435 U.S. 349, 356 (1978).

Here, Plaintiff sues the four state-court judges for their judicial decisions in his state-court criminal proceedings. He does not allege any facts suggesting that Chief Judge Grasso,

Judge Villegas, Judge Montano, or Judge Dawson acted without jurisdiction in the state-court criminal proceedings. Because the actions Plaintiff complains of are plainly judicial in nature, the four state-court judges are entitled to absolute immunity. Plaintiff' s claims against Chief Judge Grasso, Judge Villegas, Judge Montano, and Judge Dawson must be dismissed on immunity grounds and as frivolous. *See* 28 U.S.C. § 1915(e) (2)(B)(i), (iii); *Mills v. Fischer*, 645 F.3d 176, 177 (2d Cir. 2011) ("Any claim dismissed on the ground of absolute judicial immunity is 'frivolous' for purposes of [the *in forma pauperis* statute].")

D. Claims against Prosecutors

Similarly, Clark, Kimmelman, and Zimmerman are also shielded from suit for acts committed within the scope of their official prosecutorial duties where the challenged activities are not investigative in nature but, rather, are "intimately associated with the judicial phase of the criminal process." *Simon v. City of New York*, 727 F.3d 167, 171 (2d Cir. 2013) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); *see also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) (holding that absolute immunity is analyzed under "functional approach" that "looks to the nature of the function performed, not the identity of the actor who performed it"). In addition, prosecutors are absolutely immune from suit for acts that may be administrative obligations but are "directly connected with the conduct of a trial." *Van de Kamp v. Goldstein*, 555 U.S. 335, 344 (2009).

Here, Plaintiff's claims against Clark, Kimmelman, and Zimmerman are based on actions within the scope of their official duties and associated with the conduct of a trial. Therefore, these claims are dismissed because they seek relief against defendants who are immune from suit and as frivolous. 28 U.S.C. § 1915(e)(2)(b)(i), (iii); *see Collazo v. Pagano*, 656 F. 3d 131, 134 (2d Cir. 2011) (holding that claim against prosecutor is frivolous if it arises from conduct that is "intimately associated with the judicial phase of the criminal process").

E. Denial of Leave to Amend

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 his complaint.

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. Plaintiff's complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed under 28 U.S.C. § 1915(e)(2)(B)(i), (ii), (iii). The Clerk of Court is directed to terminate all other pending matters.

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. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: November 5, 2018
New York, New York

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSE JOAQUIN RAMIREZ,

Petitioner,

- against -

WARDEN,

Respondent.

18cv6610 (JGK)

MEMORANDUM OPINION AND ORDER

JOHN G. KOELTL, District Judge:

The petitioner, Jose Joaquin Ramirez, brings this petition pursuant to 28 U.S.C. § 2241 for a writ of habeas corpus. The petitioner filed an amended petition, dated April 29, 2019, which the Court construed as a motion for leave to amend the petition. The respondent opposes the petitioner's motion to amend the petition and asks the Court to deny the motion to amend the petition and to dismiss the petition itself.

I.

The petitioner was indicted in state court for multiple offenses in relation to two incidents on July 18, 2017. The charges include, among others, making a terroristic threat. Wen Decl. ¶4 and Ex. 2. The petitioner has undergone two psychological exams pursuant to Section 730 of the New York Criminal Procedure Law. Wen Decl. Exs. 8, 14. After the first exam on September 26, 2017, the petitioner was found unfit to proceed and was committed to the Kirby Forensic Psychiatric

Center on November 3, 2017. Wen Decl. ¶ 10. After being found fit to proceed in February 2018, Wen Decl. ¶ 14 and Ex. 12, the petitioner was subsequently again found unfit to proceed after a second evaluation on October 2, 2018. Wen Decl. ¶ 15. He was then committed to Mid-Hudson Forensic Psychiatric Center in December 2018. Wen Decl. ¶ 16.

In his original petition, the petitioner argued that his right to a speedy trial was violated, that he was being denied his right to be free from self-incrimination, and that he was being denied his right to bail. Pet. at 1; Suppl. Pet. at 1, 7. The respondent opposed the original petition, on the grounds that (1) the Court should not intercede in an ongoing state criminal proceeding, including a proceeding for bail, (2) the petitioner had not yet exhausted his state court remedies, (3) there was no speedy trial claim violation because delays were related to the adjudication of the petitioner's mental competency, and (4) undergoing a court-ordered psychiatric examination did not violate the petitioner's privilege against self-incrimination.

In his amended petition, which the Court is treating as a motion for leave to file an amended petition, the petitioner alleges violations of (1) Bill of Attainder, (2) Freedom of Speech, (3) Procedural Due Process,
(4) Substantive Due Process, (5) Presentment of Indictment,

(6) Double Jeopardy, (7) Right to be Accused, (8) Right to Effective Assistance of Counsel, (9) Right to Defend Pro Se, (10) Speedy Trial, (11) Right to Bail, (12) Cruel and Unusual Punishment, (13) Slavery, (14) Privileges and Immunities, and (15) constitutional rights under Miranda v. Arizona, 384 U.S. 436 (1966), Estelle v. Smith, 451 U.S. 454 (1981), and Vitek v. Jones, 445 U.S. 480 (1980).

The respondent opposes the motion to amend the petition, arguing that the petitioner's claim is futile under Younger v. Harris, 401 U.S. 37 (1971), because there is an active criminal proceeding in state court and that the petitioner has failed to exhaust his claims in state court.

The petitioner is no longer detained and has been released on his own recognizance. The petitioner states that the granting of bail is no longer needed by the Federal Court. Pet'r's Reply ¶ 35. However, he seeks relief from the court for violations of due process from the denial of bail for 620 days, and asks the Court to "properly adjudicate" his claim and to declare that the denial of bail was "a gross miscarriage of justice." Id. The petitioner's state court case is pending; a court date was held on June 21, 2019, and another one was set for September 6, 2019. Letter of Pet'r dated June 25, 2019, ¶¶ 1, 5.

II.

Prior to reaching the decision on the merits of the petitioner's claims, it is necessary to determine whether the court will decide the original petition, or the petition as amended.

A motion to amend a Section 2241 habeas petition is governed by Federal Rule of Civil Procedure 15. See 28 U.S.C. § 2242 (habeas petitions "may be amended or supplemented as provided in the rules of procedure applicable to civil actions"); see Vargas v. Davies, No. 15cv3525 (ER), 2016 WL 3044850, at *3 (S.D.N.Y. May 27, 2016). Federal Rule of Civil Procedure 15(a) provides that "[t]he court should freely give leave [to amend] when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave to amend may, however, be denied when there is a sound basis for doing so, such as undue delay, bad faith, dilatory motive, undue prejudice to the opposing party, or futility. See Foman v. Davis, 371 U.S. 178, 182 (1962). "A pro se complaint is to be read liberally and should not be dismissed without granting leave to amend at least once when such a reading gives any indication that a valid claim might be stated. Thus, while futility is a valid reason for denying a motion to amend, this is true only where it is beyond doubt that the plaintiff can prove no set of facts in support of his amended

claims." Pangburn v. Culbertson, 200 F.3d 65, 70-71 (2d Cir. 1999) (citations and internal quotations omitted).

While the respondent argues that the petitioner's claim is futile under Younger because there is an active criminal proceeding and that the petitioner has failed to exhaust his claims in state court, the petitioner argues that Younger is not good law, and that the respondent cannot meet its burden to show why Younger abstention is appropriate. The petitioner also argues that unlike 28 U.S.C. § 2254, 28 U.S.C. § 2241 does not have an exhaustion requirement. In any case, the petitioner contends that he has exhausted all claims properly.

Given the emphasis in the Federal Rules of Civil Procedure on freely giving leave to amend complaints and in this Circuit's case law to read pro se complaints liberally, the Court will decide the original petition as amended.

III.

The petitioner's amended petition is denied on the merits.

A.

The petitioner's claim for bail is moot because the plaintiff has been released on his personal recognizance. Under a broad reading of the petitioner's claims, the Court treats the petitioner's request to "properly adjudicate" his claim for bail and declare that the denial of bail was a "miscarriage of justice" as a request for damages and declaratory judgment.

However, a petitioner may not seek monetary damages in a habeas petition, see Hardy v. Fischer, 701 F. Supp. 2d 614, 620 (S.D.N.Y. 2010), or use the writ to seek declaratory judgment, see U. S. ex rel. Burke v. Fay, 231 F. Supp. 385, 386 (S.D.N.Y. 1964). The purpose of the writ of habeas corpus "is to assure that when a person is detained unlawfully or in violation of his constitutional rights he will be afforded an independent determination by a federal court of the legality of his detention, even though the issue may already have been decided on the merits by a state tribunal." U. S. ex rel. Radich v. Criminal Court of City of New York, 459 F.2d 745, 748 (2d Cir. 1972). Therefore, the petitioner's request for other relief related to the denial of bail is denied.

B.

As to the petitioner's remaining claims, federal courts cannot intervene in ongoing criminal proceedings except in the most extraordinary circumstances and upon a clear showing of irreparable injury that is both great and immediate. See Younger, 401 U.S. at 45 (1971). "Younger abstention is appropriate when: (1) there is an ongoing state proceeding; (2) an important state interest is implicated; and (3) the plaintiff has an avenue open for review of constitutional claims in the state court." Hansel v. Town Court for Town of Springfield, N.Y., 56 F.3d 391, 393 (2d Cir. 1995).

All three requirements for abstention are clearly met. Firstly, the state criminal case against the petitioner is scheduled to proceed to trial and the petitioner was scheduled to appear in state court as recently as September 6, 2019. Secondly, "it is axiomatic that a state's interest in the administration of criminal justice within its borders is an important one." Id. "There is no question that [an] ongoing prosecution implicates important state interests." Davis v. Lansing, 851 F.2d 72, 76 (2d Cir. 1988). Lastly, to the extent that the petitioner has any constitutional claims, they can be raised in the state court proceeding and, if necessary, raised on appeal from any conviction. See Kugler v. Helfant, 421 U.S. 117, 124 (1975) ("[O]rdinarily a pending state prosecution provides the accused a fair and sufficient opportunity for vindication of federal constitutional rights").

The petitioner has also failed to make any showing of extraordinary circumstances or irreparable injury that would justify federal intervention in the pending state criminal proceeding. "Only if 'extraordinary circumstances' render the state court incapable of fairly and fully adjudicating the federal issues before it, can there be any relaxation of the deference to be accorded to the state criminal process." Id.

IV.

The respondent also argues that the petitioner has not fulfilled the writ's requirement for exhaustion. In contrast, the petitioner contends that 28 U.S.C. § 2241 does not require exhaustion, but that in any case, he has exhausted all of his claims. The Court of Appeals has held that "[w]hile 28 U.S.C. [§] 2241 does not by its own terms require the exhaustion of state remedies as a prerequisite to the grant of federal habeas relief, decisional law has superimposed such a requirement in order to accommodate principles of federalism." U. S. ex rel. Scranton v. State of N. Y., 532 F.2d 292 (2d Cir. 1976). In any event, it is unnecessary to reach the issue of exhaustion to deny the petitioner's application in this case.

CONCLUSION

The Court has considered all of the arguments raised by the parties, including legal arguments brought to the Court's attention in supplemental briefings. To the extent not specifically addressed, the arguments are either moot or without merit. For the reasons explained above, the amended petition for a writ of habeas corpus is **denied**. The Clerk is directed to enter judgment dismissing this case. The Clerk is also directed to close all pending motions and to close this case.

SO ORDERED.

Dated: **New York, New York**
September 12, 2019

John G. Koeltl
United States District Judge

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 11th day of October, two thousand nineteen.

Jose Joaquin Ramirez, Propia Persona - Sui Juris,

Plaintiff - Appellant,

v.

Jeffrey C. Bloom, Willougby C. Jenett, Tajuana B. Johnson, Legal Aid Society, Chief Judge George A. Grasso, Judge George Villegas, Montano Armando Montano, Judge Tandra L. Dawson, Darcel D. Clark, Jeffrey M. Kimelman, Allison Zimmerman,

Defendants - Appellees.

ORDER

Docket No: 19-89

Appellant, Jose Joaquin Ramirez, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request as a motion for reconsideration, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the motion and petition are denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk