Appendix A

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-13098
Non-Argument Calendar

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D.C. Docket No. 6:18-cv-00501-CEM-KRS

BRENNEN CLANCY,

Plaintiff-Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
NORTHAMPTON COUNTY CORRECTIONS ADULT PROBATION,
INTERSTATE COMMISSION FOR ADULT OFFENDERS,

Defendants-Appellees,

INTERSTATE COMPACT OFFICE FOR ADULT OFFENDERS, et al.,

Defendants.

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Appeal from the United States District Court
for the Middle District of Florida

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(July 22, 2019)

Appendix A

Before TJOFLAT, JILL PRYOR, and ANDERSON, Circuit Judges.

PER CURIAM:

Brennen Clancy, proceeding *pro se*, appeals the dismissal of his third amended complaint for civil rights violations under 42 U.S.C. § 1983. He also appeals the District Court's denial of his motion for leave to file a fourth amended complaint. We affirm.

We review the denial of a motion for leave to amend a complaint for abuse of discretion. *Covenant Christian Ministries, Inc. v. City of Marietta*, 654 F.3d 1231, 1239 (11th Cir. 2011). A district court's dismissal for failure to state a claim is reviewed *de novo*, and we accept as true all well-pleaded factual allegations. *See Ironworkers Local Union 68 v. AstraZeneca Pharm., LP*, 634 F.3d 1352, 1359 (11th Cir. 2011). Though *pro se* pleadings are construed more leniently than attorney-drafted pleadings, *Hughes v. Lott*, 350 F.3d 1157, 1160 (11th Cir. 2003), the same rules apply, *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir. 1989), including the requirement that the complaint "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, 129 S. Ct. 1937, 1949 (2009). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

Clancy contends that the Defendants-Appellees "switched [his] status from misdemeanor to felony" "during the transfer process" in "April of 2015." Presumably, his probationary supervision was transferred from Pennsylvania to Florida under the aegis of the Interstate Commission for Adult Offender Supervision ("ICAOS"). Documents that Clancy had attached to an earlier complaint[1] clarify his allegations: he was convicted of a misdemeanor offense in Pennsylvania—specifically, his third DUI—and now lives in Florida. His "status"—i.e., what he is listed as being on probation for—is listed on multiple public-record websites as a felony.

All of this is a natural consequence of how supervision of parolees and probationers is normally transferred between states. In Pennsylvania, a third DUI offense is a misdemeanor, but in Florida it is a felony. *Compare* 75 Pa. Stat. §§ 3802(a), 3803(a)(2) *with* Fla. Stat. § 316.193(2)(b)(1). Mr. Clancy was convicted of a third DUI and, on his request, his probationary supervision was transferred to Florida. Under the terms of the relevant interstate compact, Florida 1) is permitted to impose conditions on transferee probationers that "would have been imposed on an offender sentenced in" Florida and 2) is required to "supervise offenders

[1] Clancy did not incorporate his earlier complaints or their attachments into his third amended complaint. "[A]s a general rule, an amended complaint supersedes and replaces the original complaint unless the amendment specifically refers to or adopts the earlier pleading." *Varnes v. Local 91, Glass Bottle Blowers Ass'n of U.S. & Canada*, 674 F.2d 1365, 1370 n.6 (11th Cir. 1982). We will consider these documents only to the extent they clarify, rather than add to, the meaning of the complaint we are reviewing.

consistent with the supervision of other similar offenders sentenced in" Florida. ICAOS Rule 4.103(a), 4.101, available at http://interstatecompact.org/step-by-step/chapters/4.[2] Since third-DUI offenders in Florida are given probation terms and conditions consistent with their having been sentenced as felons, third-DUI transferees at least may (and possibly must) have the same conditions imposed on their probation, including what Clancy describes as felony status.

Nonetheless, Clancy's complaint asserts that the three defendants—ICAOS, the Florida Department of Corrections, and the Northampton County Corrections Adult Probation Department—violated 42 U.S.C. § 1983 when they "switched [his] status from misdemeanor to felony." In his complaint, Clancy locates the predicate federal rights for a § 1983 violation in the Privacy Act of 1974, the Civil Rights Act of 1964, and three statutes—18 U.S.C. §§ 3559, 3601, and 3603—governing criminal sentencing and probation. And on appeal, he seems to argue that the Fourteenth Amendment provides the predicate federal rights.

None of these statutes support a plausible claim for relief. Section 1983 provides a right of action for a violation of a federal statute only when the statute unambiguously grants an individual right. *Gonzaga Univ. v. Doe*, 536 U.S. 273,

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[2] The status-switching Clancy complains of might even be required by the Constitution. The Third Circuit has found a violation of the Equal Protection Clause when a state treated probationers convicted of the same category of offense differently based on whether their convictions were in-state or out-of-state. *Doe v. Penn. Bd. of Prob. & Parole*, 513 F.3d 95, 108 (3d Cir. 2008). Since we find for other reasons that the complaint does not state a claim, we need not decide this constitutional question.

282, 122 S. Ct. 2268, 2274 (2002) ("[A] plaintiff must assert the violation of a federal *right*, not merely a violation of federal *law*." (citation omitted)). All possibly relevant portions of the Privacy Act of 1974 impose requirements only on federal agencies, *see Burch v. Pioneer Credit Recovery, Inc.*, 551 F.3d 122, 124–25 (2d Cir. 2008), so non-federal agencies are not required to comply with them, and none of the defendants are federal agencies: the two state agencies for obvious reasons, and ICAOS because it is an agency of the compacting states. *See* Fla. Stat. § 949.07, Art. III(1). The Civil Rights Act of 1964 is inapplicable, since Clancy has not alleged discrimination based on his race, color, religion, sex, or national origin. *See* 42 U.S.C. §§ 2000a, 2000e. Nor are the federal sentencing and probation requirements in Title 18 relevant: these statutes, along with the rest of Title 18 part II, govern criminal procedure in the federal court system for federal crimes, not Clancy's state offenses. *See* 18 U.S.C. § 3601 (identifying applicable provisions of the federal criminal code); 11 Melley et al., Cyclopedia of Federal Procedure § 39:23 (3d ed.). So none of these provisions provide Clancy with a federal right he can assert against the defendants.

Nor does Clancy's complaint state (as he argues on appeal) a Fourteenth Amendment claim. The facts in Clancy's complaint do not plausibly suggest that he was deprived of "the privileges or immunities of citizens of the United States,"

"life, liberty, or property, without due process of law," or "the equal protection of the laws." U.S. Const. amend. XIV.

Though the Privileges or Immunities Clause protects a constitutional right to travel, *see Saenz v. Roe*, 526 U.S. 489, 503, 119 S. Ct. 1518, 1526 (1999), this right can be lawfully abridged by the conditions of a criminal sentence, including probation. *See* 18 U.S.C. § 3563(b)(14); *United States v. Friedberg*, 78 F.3d 94, 97 (2d Cir. 1996). Moreover, Clancy's complaint is devoid of allegations showing that the status-switching is an unreasonable burden on his right to travel under the circumstances. So Clancy has not stated a claim under this Clause.

The Due Process Clause protects fundamental rights, *Washington v. Glucksberg*, 521 U.S. 702, 720–21, 117 S. Ct. 2258, 2268 (1997), and guarantees appropriate legal process calibrated to the character of any deprivation of life, liberty, or property. *See Mathews v. Eldridge*, 424 U.S. 319, 332–33, 96 S. Ct. 893, 901 (1976). Clancy has not stated a Due Process claim because he has not pleaded facts showing he was deprived of a fundamental right or given insufficient process. We are not aware of any authority suggesting that there exists a fundamental right for a probationer not to have his "status" labeled "probation felony" in public records when his offense of conviction was a misdemeanor. Nor has Clancy told us how much process he received, such that we could assess the sufficiency of the defendant's procedures for imposing this status.

The Equal Protection Clause requires equal treatment for similarly situated persons. *Plyler v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394 (1982). Clancy has not alleged he was treated differently from any similarly situated person, let alone pleaded facts to support this allegation.

Far from "showing that the pleader is entitled to relief," Fed. R. Civ. P. 8(a)(2), Clancy's complaint is too threadbare to allow his case to proceed. Moreover, as Clancy has already been given ample opportunity to amend his complaint and has not addressed the deficiencies identified by the District Court, the District Court did not abuse its discretion in denying leave to file a fourth amended complaint. *In re Engle Cases*, 767 F.3d 1082, 1108–09 (11th Cir. 2014).

We thus affirm the dismissal of Mr. Clancy's complaint and the denial of his motion to amend.

**AFFIRMED.**

Appendix B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

**BRENNEN CLANCY,**

**Plaintiff,**

**v.** **Case No: 6:18-cv-501-Orl-41KRS**

**FLORIDA DEPARTMENT OF CORRECTIONS, NORTHAMPTON COUNTY CORRECTIONS ADULT PROBATION and INTERSTATE COMMISSION FOR ADULT OFFENDERS,**

**Defendants.**

_____/

**ORDER**

THIS CAUSE is before the Court on Plaintiff's Motion for Leave to File an Amended Complaint ("Motion to Amend," Doc. 13). Plaintiff, who is proceeding *pro se*, filed his first Complaint (Doc. 1) on April 2, 2018, and his first Motion to Proceed *In Forma Pauperis* (Doc. 3) on May 1, 2018. United States Magistrate Judge Karla R. Spaulding issued a Report and Recommendation (Doc. 4), in which she recommended that the Complaint be dismissed but that Plaintiff be given an opportunity to amend. (Id. at 5). Instead of waiting for the Court to address the Report and Recommendation, Plaintiff filed an Amended Complaint (Doc. 5) on May 17, 2018, and his Third Amended Complaint (Doc. 10) on May 21, 2018. Plaintiff also filed a renewed Motion to Proceed *In Forma Pauperis* (Doc. 9). Thereafter, Judge Spaulding issued a second Report and Recommendation (Doc. 12), in which she recommended that the case be dismissed without leave to amend because Plaintiff had attempted to sufficiently plead his claims three times and had repeatedly failed to do so. (*Id.* at 4).

Appendix B

Plaintiff then filed his Motion to Amend and his Objection (Doc. 14) to the second Report and Recommendation. In both documents, Plaintiff states that he has done "further research" and now "understand[s] how to properly fill out a complaint." (Doc. 13 at 1; Doc. 14 at 1). However, Plaintiff has failed to address the insufficiencies pointed out by the Report and Recommendation. Therefore, the Court agrees with Judge Spaulding that permitting Plaintiff to file another amended complaint would be an exercise in futility.

Accordingly, it is **ORDERED** and **ADJUDGED** as follows:

1. The second Report and Recommendation (Doc. 12) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. Plaintiff's Motion for Leave to File an Amended Complaint (Doc. 13) is **DENIED**.
3. Plaintiff's Objection (Doc. 14) to the second Report and Recommendation is **OVERRULED**.
4. This case is **DISMISSED**.
5. The Clerk is directed to close this case.

**DONE** and **ORDERED** in Orlando, Florida on July 2, 2018.

CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Unrepresented Party
Counsel of Record

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

**BRENNEN CLANCY,**

**Plaintiff,**

**v.** **Case No: 6:18-cv-501-Orl-41KRS**

**FLORIDA DEPARTMENT OF CORRECTIONS, INTERSTATE COMPACT OFFICE FOR ADULT OFFENDERS and NORTHAMPTON COUNTY CORRECTIONS,**

**Defendants.**

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## REPORT AND RECOMMENDATION

**TO THE UNITED STATES DISTRICT COURT:**

This cause came on for consideration without oral argument on the following motion filed herein:

| | |
|---|---|
| **MOTION:** | **APPLICATION TO PROCEED IN DISTRICT COURT WITHOUT PREPAYING FEES OR COSTS (Doc. No. 3)** |
| **FILED:** | **May 1, 2018** |

## I. PROCEDURAL HISTORY.

On April 2, 2018, Plaintiff Brennan Clancy filed this action against Defendants, Florida Department of Corrections; Interstate Compact Office for Adult Offenders; and, Northampton County (PA) Corrections. He provided a mailing address in South Daytona, Florida. Doc No. 1. Exhibits attached to his complaint show that in July 2013, Clancy was arrested in Northampton County, Pennsylvania and charged with driving under the influence (DUI). *Id.* at 3. The incident

was his third DUI offense. *Id.* Clancy plead guilty to the charge, which was a misdemeanor. *Id.* His driving license was suspended and he was sentenced to ninety days in jail. *Id.* at 4-5.

Clancy alleges that he has since moved to Florida and resided in Florida for three years. He contends that although the offense to which he plead guilty and was sentenced was a misdemeanor charge, the Defendants switched his sentencing status from misdemeanor to felony. *Id.* at 1. He alleges that his reported status as a felon has "gone viral" and every background check company now lists him as a felon. *Id.* at 2. As a result of being listed as a felon, he contends that he has been rejected as a tenant by landlords, been denied many better paying jobs, and been denied the right to vote. *Id.* at 1-2.

Based on these allegations, Clancy states that the following rights have been violated: (1) his Ninth Amendment[1] right to be free from cruel and unusual punishment; (2) his civil right to vote; (3) his civil right to equal housing act; and (4) his civil right for employment. *Id.* at 1. He also alleges the following common law causes of action: (1) breach of contract; (2) defamation of character and or slander; (3) infliction of emotional distress; (4) false imprisonment; and (5) due process. He demands injunctive relief and a total of $500,000.00 in damages.

On May 1, 2018, Clancy filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form), which I construe as a motion to proceed *in forma pauperis*. Doc. No. 3. That motion was referred to me for issuance of this Report and Recommendation, and the matter is now ripe for review.

[1] The Court notes that it is the Eighth Amendment, not the Ninth Amendment, that protects against cruel and unusual punishment. However, the Eighth Amendment applies only to prisoner actions. *See, e.g., Hoffman v. City of Ocala*, 2010 WL 2367260, at *3 (M.D. Fla. May 12, 2010), *report and recommendation adopted*, 2010 WL 2367264 (M.D. Fla. June 13, 2010) ("The Eighth Amendment only applies after a prisoner is convicted and it governs the conditions under which convicted prisoners are confined and the treatment they receive in prison.").

## II. STANDARD OF REVIEW.

Pursuant to 28 U.S.C. § 1915(e)(2)(B), when a plaintiff seeks to proceed *in forma pauperis* the Court is required to consider whether the plaintiff's complaint is frivolous, malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. *See also* Local Rule 4.07; *Mitchell v. Farcass*, 112 F.3d 1483, 1491 n.1 (11th Cir. 1997) (Lay, J., concurring) ("Section 1915(e) applies to all [in forma pauperis] litigants — prisoners who pay fees on an installment basis, prisoners who pay nothing, and nonprisoners in both categories."). Additionally, under Rule 12(h)(3) of the Federal Rules of Civil Procedure, a district court may at any time, upon motion or *sua sponte*, act to address the potential lack of subject-matter jurisdiction in a case. *Herskowitz v. Reid*, 187 F. App'x 911, 912-13 (11th Cir. 2006) (citing *Howard v. Lemmons*, 547 F.2d 290, 290 n.1 (5th Cir. 1977)). "[I]t is incumbent upon federal courts trial and appellate to constantly examine the basis of jurisdiction, doing so on our own motion if necessary." *Save the Bay, Inc. v. United States Army*, 639 F.2d 1100, 1102 (5th Cir. 1981). Federal courts are courts of limited jurisdiction; therefore, the Court must inquire into its subject-matter jurisdiction, even when a party has not challenged it. *See, e.g., Univ. of S. Ala. v. Am. Tobacco Co.*, 168 F.3d 405, 410 (11th Cir. 1999).

## III. ANALYSIS.

A complaint may be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. *Mitchell v. Farcass*, 112 F.3d 1483, 1490 (11th Cir. 1997). To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations must show plausibility. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Accordingly, "[f]actual allegations must be enough to raise a right to relief above the

speculative level" and must be a plain statement possessing enough heft to sho[w] that the pleader is entitled to relief. *Twombly*, 550 U.S. at 555, 557. However, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Although Clancy's complaint should be construed leniently in light of his *pro se* status, a court does not have "license . . . to rewrite an otherwise deficient pleading [by a pro se litigant] in order to sustain an action." *GJR Investments v. County of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), overruled on other grounds by *Iqbal*, 556 U.S. 662. Moreover, a pro se litigant "is subject to the relevant law and rules of court including the Federal Rules of Civil Procedure." *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir 1989).

Upon review of his complaint, Clancy's claims are due to be dismissed under § 1915 because the complaint fails to state a claim upon which relief can be granted. The complaint is devoid of sufficient factual detail to allege claims against the Defendants. Instead, it consists mostly of a list of causes of action, leaving the Court and each Defendant to wonder what facts, exactly, might support those causes of action. A bare-bones list of legal causes of action does not contain sufficient factual content to bring Clancy's claims "across the line from conceivable to plausible" and is due to be dismissed for failure to state a claim. *Twombly*, 550 U.S. at 570.

Ordinarily, a *pro se* party should be given one opportunity to file an amended complaint that states a claim within this Court's subject-matter jurisdiction on which relief could be granted. *See Troville v. Venz*, 303 F.3d 1256, 1260 n.5 (11th Cir. 2002). Should Clancy file an amended complaint, that filing should include a short and plain statement showing that this Court has jurisdiction over his claims. *See* Fed. R. Civ. P. 8(a)(1). He must separate each allegation into a numbered paragraph, and each claim into a separate count. In a section entitled "Statement of

Facts," Clancy should clearly identify the alleged legal violations committed by each Defendant and the facts surrounding the alleged legal violations. Clancy must allege some causal connection between those facts and the injuries he allegedly sustained.

In an amended complaint, Clancy should also clearly allege each cause of action that he wishes to pursue, and the legal basis of each cause of action (i.e., constitutional provision, treaty, statute, or common law cause of action). Each alleged violation should be set forth in a separate count. Along with each count, Clancy should include sufficient facts to show that each of his claims for relief is plausible. Clancy should specify the type (i.e., monetary, declaratory, or injunctive) and character of the relief that he requests.

Finally, in considering how to prepare his amended complaint, the Court directs Clancy to its website, where it has made available resources for *pro se* litigants to aid them in proceeding in federal court. In particular, the Court directs Clancy's attention to the portion of the Court's website that includes a handbook, forms, and other information to assist pro se litigants with representing themselves in this Court, which can be found at: *http://www.flmd.uscourts.gov/litigants-without-lawyers* (last visited May 7, 2018).

Clancy may be permitted to file a renewed motion to proceed *in forma pauperis* with an amended complaint.

## IV. RECOMMENDATION

For the reasons stated above, I **RESPECTFULLY RECOMMEND** that the Court **DISMISS** the complaint and **DIRECT** the Clerk of Court to terminate the motion to proceed *in forma pauperis* (Doc. No. 3). I further **RECOMMEND** that the Court give Clancy leave to file an amended complaint within a time established by the Court along with a renewed motion to proceed *in forma pauperis*. Finally, I **RECOMMEND** that the Court advise Clancy that failure to file an

amended complaint within the time permitted by the Court will result in dismissal of the case without further notice.

Failure to file written objections to the proposed findings and recommendations contained in this Report and Recommendation within fourteen (14) days from the date of its filing shall bar an aggrieved party from challenging on appeal the district court's order based on unobjected-to factual and legal conclusions.

Recommended in Orlando, Florida on May 7, 2018.

*Karla R. Spaulding*

KARLA R. SPAULDING
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge
Counsel of Record
Unrepresented Party
Courtroom Deputy

Appendix C

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta. Georgia 30303

David J. Smith
Clerk of Court

For rules and forms visit

October 03, 2019

Clerk - Middle District of Florida
U.S. District Court
401 W CENTRAL BLVD
ORLANDO, FL 32801

Appeal Number: 18-13098-EE
Case Style: Brennen Clancy v. Florida Department of Corr., et al
District Court Docket No: 6:18-cv-00501-CEM-KRS

A copy of this letter, and the judgment form if noted above, but not a copy of the court's decision, is also being forwarded to counsel and pro se parties. A copy of the court's decision was previously forwarded to counsel and pro se parties on the date it was issued.

The enclosed copy of the judgment is hereby issued as mandate of the court. The court's opinion was previously provided on the date of issuance.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Lois Tunstall
Phone #: (404) 335-6191

Enclosure(s)

MDT-1 Letter Issuing Mandate

Appendix C

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

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No. 18-13098-FF

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BRENNEN CLANCY,

Plaintiff - Appellant,

versus

FLORIDA DEPARTMENT OF CORRECTIONS,
NORTHAMPTON COUNTY CORRECTIONS ADULT PROBATION,
INTERSTATE COMMISSION FOR ADULT OFFENDERS,

Defendants - Appellees,

INTERSTATE COMPACT OFFICE FOR ADULT OFFENDERS, et al.,

Defendants.

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Appeal from the United States District Court
for the Middle District of Florida

---

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: TJOFLAT, JILL PRYOR and ANDERSON, Circuit Judges.

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)

ENTERED FOR THE COURT:

UNITED STATES CIRCUIT JUDGE