UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3841

SEAN M. DONAHUE,

Appellant

v.

R. ALEXANDER ACOSTA, UNITED STATES DEPARTMENT OF LABOR; UNITED STATES DEPARTMENT OF LABOR; THE COMMONWEALTH OF PENNSYLVANIA, IN ITS CAPACITY AS A SOVEREIGN SIGNATORY TO THE U.S. CONSTITUTION; THE LUZERNE/SCHUYLKILL COUNTIES WORKFORCE INVESTMENT BOARD, INC.; PRESIDENT DONALD J. TRUMP

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3:17-cv-01759)
District Judge: Honorable Robert D. Mariani

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 21, 2019

Before: MCKEE, COWEN, and RENDELL, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on August 21, 2019.

On consideration whereof, it is now hereby

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ORDERED and ADJUDGED by this Court that the judgment of the District Court entered December 18, 2017, be and the same is hereby affirmed. Costs will not be taxed.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: October 17, 2019

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 17-3841

SEAN M. DONAHUE,

Appellant

v.

R. ALEXANDER ACOSTA, UNITED STATES DEPARTMENT OF LABOR; UNITED STATES DEPARTMENT OF LABOR; THE COMMONWEALTH OF PENNSYLVANIA, IN ITS CAPACITY AS A SOVEREIGN SIGNATORY TO THE U.S. CONSTITUTION; THE LUZERNE/SCHUYLKILL COUNTIES WORKFORCE INVESTMENT BOARD, INC.; PRESIDENT DONALD J. TRUMP

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Before: MCKEE, COWEN, and RENDELL, Circuit Judges

(Opinion filed: October 17, 2019)

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OPINION*

PER CURIAM

Sean M. Donahue appeals an order of the United States District Court for the Middle District of Pennsylvania dismissing his amended complaint for failure to state a claim. For the following reasons, we will affirm.

Donahue is a pro se litigant who has filed several federal lawsuits arising out of his state court convictions for harassment. Those convictions stemmed from threatening emails that Donahue sent to state employees complaining that he had been improperly denied services at state employment offices. In September 2017, he filed in the District Court another such lawsuit, captioned "Petition for a Writ of Mandamus." Donahue claimed that a state court criminal sentence that prohibits him from entering certain employment services offices interferes with his ability to utilize preferential job placement benefits that are afforded to veterans. He named as defendants the United States Department of Labor, the Secretary of Labor, the Commonwealth of Pennsylvania, and the Luzerne and Schuylkill Counties Workforce Investment Board.

The matter was referred to a Magistrate Judge, who granted Donahue's request to proceed in forma pauperis (IFP) but concluded that he was not entitled to mandamus relief and that his claims were barred by Heck v. Humphrey, the Rooker-Feldman

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

doctrine, and the Younger abstention doctrine.[1] Nevertheless, the Magistrate Judge recommended that the action be dismissed without prejudice so that Donahue could amend his claims. The District Court adopted the Report and Recommendation and provided Donahue with 21 days to file an amended complaint.

Donahue filed a timely amended pleading, adding President Trump as a defendant, and asking the District Court to "intervene" and direct the defendants to provide him with "veterans priority job referrals under the US Jobs for Veterans Act ...." (ECF #6, p. 4-5, 8). The Magistrate Judge again concluded that mandamus relief was not warranted because Donahue did "not describe a plainly non-discretionary duty on the defendants' part" and did not "set forth well-pleaded facts giving [him] an absolute entitlement to the particular form of relief which he seeks." In addition, the Magistrate Judge stated that Heck barred Donahue's attempt to seek relief from his conviction in a civil rights action. To the extent that Donahue sought an order "quash[ing]" portions of the state court sentencing order, the Magistrate Judge concluded that his claims were barred by the Rooker-Feldman doctrine. Accordingly, the Magistrate Judge recommended that the amended complaint be dismissed with prejudice. Over Donahue's objections, the District Court adopted the Report and Recommendation and dismissed the amended complaint with prejudice. Donahue appealed.[2]

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[1] Heck v. Humphrey, 512 U.S. 477 (1994); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Younger v. Harris, 401 U.S. 37 (1971).

[2] Donahue has filed a notice of new evidence and motion to strike his state court conviction and trial testimony.

We have jurisdiction pursuant to 28 U.S.C. § 1291. Our review of the District Court's order dismissing the complaint is de novo. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000); Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 163 (3d Cir. 2010).

Donahue's claims lack merit. In his amended submission, he purported to "correct[] defects" in his initial pleading. (ECF #6, p. 2). But, at bottom, Donahue again asked the District Court to order the defendants to vacate his state court sentence and provide him with "veterans priority job referrals." (Id. at p. 4, 10). According to Donahue, the Department of Labor has a "nondiscretionary duty" to provide him with those referrals. (Id. at p. 6). But, pursuant to the sentences in his criminal cases, Donahue was prohibited from visiting certain career services offices. He asked the District Court to "intentionally disturb and overturn the outcome of both state criminal trials." (Id. at 10).

As the Magistrate Judge explained, Donahue is not entitled to mandamus relief. Such relief is available only in extraordinary circumstances. See In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). A petitioner seeking the writ "must have no other adequate means to obtain the desired relief, and must show that the right to issuance is clear and indisputable." Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996). Donahue did not demonstrate that he is clearly entitled to have the Department of Labor provide him with job placement services or to have the state courts overturn his conviction. Notably, Donahue has not meaningfully challenged the Magistrate Judge's conclusion that a "substantial element of discretion ... is an inherent part of many

Department of Labor job placement programs." Bartlett Mem'l Med. Ctr., Inc. v. Thompson, 347 F.3d 828, 831 (10th Cir. 2003) ("Because we find that the Secretary [of Health and Human Services] did not owe any clear, non-discretionary duty to Plaintiffs, we hold that mandamus jurisdiction does not lie[.]"). And, of course, Donahue had other means of challenging his criminal sentences. See Coady v. Vaughn, 251 F.3d 480, 485-86 (3d Cir. 2001) (providing that the proper avenue for challenging a state conviction in federal court is 28 U.S.C. § 2254).

To the extent that Donahue sought to use a civil rights action to obtain equitable relief – *i.e.*, to have the District Court overturn his state court sentences – his claim is barred by Heck. Heck holds that, where success in a § 1983 action would necessarily imply the invalidity of a conviction or sentence, an individual's suit for damages or equitable relief is barred unless he can demonstrate that his conviction or sentence has been invalidated. See Heck, 512 U.S. at 486-87; see also Wilkinson v. Dotson, 544 U.S. 74, 81-82 (2005). Donahue sought to challenge his sentence on the ground that the "State had no legal decision making jurisdiction regarding whether or not an honorably discharged veteran ... received first priority use of resources." (ECF #6, p. 3). But, because an order overturning Donahue's state court sentences would necessarily imply the invalidity of those sentences, his claim is Heck-barred.

Moreover, if, as Donahue asserts, an "underlying criminal case is on appeal in the state system," Appellant's Br., p. 18, it would be inappropriate to interfere with those ongoing state criminal proceedings. See Younger, 401 U.S. at 46. And, to the extent that Donahue sought to challenge a final state court conviction, his claim is barred by the

Rooker-Feldman doctrine. That doctrine deprives lower federal courts of jurisdiction over suits that are essentially appeals from state-court judgments. Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 165 (3d Cir. 2010). "[F]our requirements . . . must be met for the Rooker-Feldman doctrine to apply: (1) the federal plaintiff lost in state court; (2) the plaintiff 'complain[s] of injuries caused by [the] state-court judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." Id. at 166 (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)) (alterations in original). Those requirements have been met here. Donahue was convicted in state court before bringing the underlying action, he complained that his sentence prevents him from obtaining veterans job benefits, and he asked the District Court to overturn the sentence. See Erlandson v. Northglenn Mun. Ct., 528 F.3d 785, 788-90 (10th Cir. 2008) (holding that Rooker-Feldman doctrine barred challenge in federal district court to municipal court conviction and fine).

Accordingly, we will affirm the District Court's judgment.

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 17-3841

Sean Donahue v. R. Alexander Acosta, et al

(District Court No. 3-17-cv-01759)

ORDER

The Court has received petition for rehearing by **Sean M. Donahue**.

The petition for rehearing requirements are set forth in Fed. R. App. P. 32(g), 35(b), 40(b) and Third Circuit LAR 35.1 and 35.2. Your document does not comply with the following requirement(s):

Any additional documents attached to the petition must be accompanied by a motion to file the exhibits attached to the petition for rehearing. See Third Circuit L.A.R. 35.2(a).

Pursuant to 3rd Cir. LAR Misc. 107.3 and 3rd Cir. LAR Misc. 113, if the Court finds that a party continues not to be in compliance with the rules despite notice by the Clerk, the Court may, in its discretion, impose sanctions as it may deem appropriate, including but not limited to the dismissal of the appeal, imposition of costs or disciplinary sanctions upon a party or counsel.

The above deficiencies must be corrected by **12/10/2019**.

No action will be taken on the document until these deficiencies are corrected.

For the Court,

s/ Patricia S. Dodszuweit
Clerk

Date: December 3, 2019
SLC/cc: Sean M. Donahue
Shana C. Priore, Esq.
Melissa A. Swauger, Esq.

17-3841

Sean M. Donahue
625 Cleveland Street
Hazleton, PA 18201

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SEAN DONAHUE,	:	
	:	
Plaintiff,	:	
V.	:	**3:17-CV-1759**
	:	**(JUDGE MARIANI)**
UNITED STATES SECRETARY OF LABOR, et al.,	:	
	:	
	:	
Defendants.	:	

ORDER

AND NOW, THIS 13th **DAY OF DECEMBER, 2017**, upon *de novo* review of Magistrate Judge Carlson's Report & Recommendation, (Doc. 7), **IT IS HEREBY ORDERED THAT:**

1. The Report & Recommendation ("R&R"), (Doc. 7), is **ADOPTED** for the reasons stated therein.
2. Plaintiff's Objections, (Doc. 8), are **OVERRULED**. Plaintiff fails to cite any authority that supports his position that the R&R incorrectly applied the law. Upon close examination, the Court finds no errors in R&R's analysis or conclusions. To the extent that Plaintiff argues that the R&R relies on incorrect facts with respect to the circumstances surrounding his criminal convictions, the Court notes that the perceived errors that Plaintiff identifies are not material to the R&R's legal analysis and thus do not upset the validity of its conclusions.
3. Plaintiff's Amended Complaint, (Doc. 6), is **DISMISSED WITH PREJUDICE**.

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4. To the extent that Plaintiff's Objections, (Doc. 8), may be construed as a Motion to Appoint Counsel, such motion is **DISMISSED AS MOOT**.

5. The Clerk of Court is directed to **CLOSE** this case.

Robert D. Mariani
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SEAN DONAHUE,	:	**Civil No. 3:17-CV-1759**
Plaintiff	:	
v.	:	**(Judge Mariani)**
UNITED STATES SECRETARY OF LABOR, et al.,	:	**(Magistrate Judge Carlson)**
Defendants	:	

REPORT AND RECOMMENDATION

I. Factual Background

This case comes before us for a legally-mandated screening review of the plaintiff's proposed amended complaint, the plaintiff's initial complaint having been found legally insufficient but the plaintiff having been provided one final opportunity to try to amend his pleading to conform to the dictates of law.

As we previously noted this latest complaint arises out of longstanding grievances and grudges voiced by Sean Donahue in this past. The plaintiff, Sean Donahue, is a prodigious, albeit prodigiously unsuccessful, *pro se* litigant who has filed more than two dozen lawsuits in federal court since 2013.[1] Many of these lawsuits arise out of arrests and convictions of Donahue in state court for allegedly

[1] A summary listing of these prior cases is attached as Appendix A to the Report and Recommendation

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disruptive conduct at various local unemployment and employment services offices.

Donahue's latest federal lawsuit followed this familiar pattern. In his latest *pro se* complaint, Donahue named the United States Department of Labor and Secretary of Labor, the Commonwealth of Pennsylvania, and the Luzerne/Schuylkill Counties Workforce Investment Boards as defendants. (Doc. 1.) Donahue alleged that he was entitled to certain preferential job placement services as a veteran, and contended that a criminal sentence imposed against him in state court, which directed that he refrain from entering specific local CareerLinks offices, interfered with his ability to obtain this preferential hiring status as a veteran. (Id.) Accordingly, Donahue invoked the mandamus jurisdiction of this court, requested that we "quash" any state court orders limiting his access to these facilities, access that was curtailed following criminal prosecutions for alleged misconduct on Donahue's part, and asked that we direct the Department of Labor to give him priority job placements. (Id.)

Along with this complaint, Donahue filed a motion for leave to proceed *in forma pauperis,* (Doc. 2) which we granted but upon a screening review of the complaint we recommended that the complaint be dismissed without prejudice to allowing Donahue one final opportunity to try to file a proper pleading in federal

court. (Doc. 4.) The district court adopted this Report and Recommendation, (Doc. 5), on November 14, 2017 and directed Donahue to file an amended complaint within 21 days.

Donahue has now filed this proposed amended complaint. (Doc. 6.) A review of this amended complaint reveals that it is more in the nature of a polemic rather than a pleading.[2] However, from our review of this document we discern that Donahue's amended complaint, like his original pleading, asserts that the court has an absolute and non-discretionary duty to intervene in these state court criminal cases, and modify the orders imposed in those case to allow Donahue untrammeled access to certain CareerLinks offices that he is presently banned by state court order from visiting. (Id.)

Because we believe for reasons that we have previously explained to Donahue that this complaint rests on fundamentally erroneous legal premises, we now recommend that this complaint be dismissed with prejudice.

[2] This amended pleading also adds the President, Donald Trump, as a respondent, and suggests that both the President and the Secretary of Labor would secretly like Donahue to prevail in this quixotic litigation. These curious and speculative assertions regarding the undisclosed affinities of executive branch officials add nothing to the merits of Donahue's claims.

II. Discussion

A. Screening of *Pro Se* Complaints–Standard of Review

This Court has an on-going statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis* in cases which seek redress against government officials. See 28 U.S.C. § 1915(e)(2)(B)(ii). Thus, in this case we are obliged to review the complaint to determine whether any claims are frivolous, malicious, or fail to state a claim upon which relief may be granted. This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)]and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the Court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a

motion to dismiss, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 679.

Thus, following Twombly and Iqbal a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the court of appeals has observed: "The Supreme Court in Twombly set forth the 'plausibility' standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege 'enough facts to state a claim to relief that is plausible on its face.' Twombly, 550 U.S. at 570, 127 S.Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings 'allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Iqbal, 129 S.Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S.Ct. 1955). This standard requires showing 'more than a sheer possibility that a defendant has acted unlawfully.' Id. A complaint which pleads facts 'merely consistent with' a defendant's liability, [ ] 'stops short of the line between possibility and plausibility of "entitlement of relief." ' " Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011) cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis: "First, the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.' Iqbal, 129 S.Ct. at 1947. Second, the court should identify allegations that, 'because they are no more than conclusions, are not entitled to the assumption of truth.' Id. at 1950. Finally, 'where there are well-

pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.' Id." Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action.

Judged against these legal guideposts, for the reasons set forth below it is recommended that this amended complaint now be dismissed with prejudice.

B. Donahue's Amended Complaint Still Fails to State a Claim Upon Which Relief May Be Granted

In this case Donahue's amended mandamus complaint continues to run afoul of a series of insurmountable legal obstacles. Indeed, as set forth below, the complaint is fatally flawed in at least three different ways.

1. Donahue is Not Entitled to Mandamus Relief

At the outset, dismissal of this amended complaint is warranted because Donahue is not entitled to the extraordinary relief of a writ of mandamus in this case. A petition for writ of mandamus is an ancient form of common law judicial relief, a request for a court order compelling a public official to perform some

legally-mandated duty. The power of federal courts to issue writs of mandamus is now defined in a federal statute, 28 U.S.C. § 1361, which provides that: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.

Writs of mandamus compelling government officials to take specific actions, are extraordinary forms of relief, which must comply with demanding legal standards. Thus, it is well-settled that "The writ is a drastic remedy that 'is seldom issued and its use is discouraged.' " In re Patenaude, 210 F.3d 135, 140 (3d Cir. 2000) (quoting Lusardi v. Lechner, 855 F.2d 1062, 1069 (3d Cir. 1988)). Accordingly, as a general rule:

> There are two prerequisites to issuing a writ of mandamus. [Petitioners] must show that (1) they have no other adequate means to attain their desired relief; and (2) their right to the writ is clear and indisputable. See In re Patenaude, 210 F.3d 135, 141 (3d Cir.2000); Aerosource, Inc. v. Slater, 142 F.3d 572, 582 (3d. 1988).

Hinkel v. England, 349 F.3d 162, 164 (3d Cir. 2003).

Moreover, "[m]andamus is an extraordinary remedy that can only be granted where a legal duty 'is positively commanded and so plainly prescribed as to be free from doubt.' " Appalachian States Low-Level Radioactive Waste Comm'n v. O'Leary, 93 F.3d 103, 112 (3d Cir.1996) (quoting Harmon Cove Condominium

Ass'n, Inc. v. Marsh, 815 F.2d 949, 951 (3d Cir.1987)). See Ararat v. District Director, ICE, 176 F.App'x. 343 (3d Cir. 2006). Therefore:

> Mandamus "is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty." Heckler v. Ringer, 466 U.S. 602, 616, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984) (discussing the common-law writ of mandamus, as codified in 28 U.S.C. § 1361). See also Stehney, 101 F.3d at 934 (mandamus relief is a drastic remedy only to be invoked in extraordinary circumstances).

Stanley v. Hogsten 277 F.App'x. 180, 181(3d Cir. 2008).

As one court has aptly observed when describing the precise and exacting standards which must be met when a petitioner invokes the writ of mandamus:

> The remedy of mandamus "is a drastic one, to be invoked only in extraordinary circumstances." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 34,(1980). Only "exceptional circumstances amounting to a judicial 'usurpation of power' " will justify issuance of the writ. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988) (quoting Will v. United States, 389 U.S. 90, 95(1967)); see also In re Leeds, 951 F.2d 1323, 1323 (D.C.Cir.1991). Mandamus is available only if: "(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff." In re Medicare Reimbursement Litigation, 414 F.3d 7, 10 (D.C.Cir.2005) (quoting Power v. Barnhart, 292 F.3d 781, 784 (D.C.Cir.2002)); see also Banks v. Office of Senate Sergeant-At-Arms and Doorkeeper of the United States Senate, 471 F.3d 1341, 1350 (D.C.Cir.2006) (concluding that the extraordinary remedy of mandamus need not issue in a case arising under the Congressional Accountability Act where the issue could be addressed by an appeal from a final judgment). The party seeking mandamus "has the burden of showing that 'its right to issuance of the writ is clear and

> indisputable.' " Power v. Barnhart, 292 F.3d at 784 (quoting Northern States Power Co. v. U.S. Dep't of Energy, 128 F.3d 754, 758 (D.C.Cir.1997)). Where the action petitioner seeks to compel is discretionary, petitioner has no clear right to relief and mandamus therefore is not an appropriate remedy. See, e.g., Heckler v. Ringer, 466 U.S. 602, 616, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984); Weber v. United States, 209 F.3d at 760 ("[M]andamus is proper only when an agency has a clearly established duty to act.").

Carson v. U.S. Office of Special Counsel, 534 F.Supp.2d 103, 105 (D.D.C.2008).

Applying these exacting benchmarks, courts have frequently held that mandamus relief does not lie against the United States Department of Labor, compelling that federal agency to follow any particular course of action in the fields consigned to that agency's discretion. See, e.g., Penn Terminals, Inc. v. McTaggart, No. CIV. A. 99-2899, 2000 WL 361870, at *1 (E.D. Pa. Apr. 9, 2000); DeLuca v. U.S. Dep't of Labor, Employment Standards Admin., No. C.A. 93-1208, 1993 WL 232879, at *1 (E.D. Pa. June 28, 1993); Mallick v. Usery, 427 F. Supp. 964, 964 (W.D. Pa. 1977).

These principles apply here and call for dismissal of Donahue's amended mandamus petition. Donahue's petition for writ of mandamus does not describe a plainly non-discretionary duty on the defendants' part. Nor does it set forth well-pleaded facts giving Donahue an absolute entitlement to the particular form of relief which he seeks. Since "[m]andamus 'is intended to provide a remedy for a

plaintiff only if . . . the defendant owes him a clear nondiscretionary duty,' " Stanley v. Hogsten 277 F.App'x. at 181(citations omitted) and "[m]andamus is an extraordinary remedy that can only be granted where a legal duty 'is positively commanded and so plainly prescribed as to be free from doubt, ' " Ararat v. District Director, ICE, 176 F.App'x. at 343 (citations omitted), the substantial element of discretion which is an inherent part of many Department of Labor job placement programs compels us to deny this petition since we still cannot say on these facts that Donahue is entitled to untrammeled access to CareerLink offices where he is alleged to have indulged in disruptive behavior or the absolute job preferences which he seeks and that his "right to the writ is clear and indisputable." Hinkel v. England, 349 F.3d at 164.

2. Donahue May Not Bring a Civil Action Based Upon a Criminal Case Which Resulted in a Conviction

In addition, Donahue's amended complaint fails because it continues to rest, in part, on a fatally flawed legal premise. At bottom, Donahue seeks to bring a civil rights action premised in part on claims arising out of a state criminal case, a case that he concedes resulted in a state conviction which has not otherwise been set aside or overturned since Donahue invites us to "quash" part of this state criminal sentence.

This he cannot do. Quite the contrary, it is well-settled that an essential element of a civil rights action in this particular setting is that the underlying criminal case must have been terminated in favor of the civil rights claimant. Therefore, where, as here, the civil rights plaintiff brings a claim based upon a state case that resulted in a conviction, the plaintiff's claim fails as a matter of law. The United States Court of Appeals for the Third Circuit has aptly observed in this regard:

> The Supreme Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." Heck v. Humphrey, 512 U.S. 477, 483(1994) (quoting Memphis Community School Dist. v. Stachura, 477 U.S. 299, 305(1986) (internal quotation marks omitted)). Given this close relation between § 1983 and tort liability, the Supreme Court has said that the common law of torts, "defining the elements of damages and the prerequisites for their recovery, provide[s] the appropriate starting point for inquiry under § 1983 as well." Heck, 512 U.S. at 483(quoting Carey v. Piphus, 435 U.S. 247, 257-58,(1978)). The Supreme Court applied this rule in Heck to an inmate's § 1983 suit, which alleged that county prosecutors and a state police officer destroyed evidence, used an unlawful voice identification procedure, and engaged in other misconduct. In deciding whether the inmate could state a claim for those alleged violations, the Supreme Court asked what common-law cause of action was the closest to the inmate's claim and concluded that "malicious prosecution provides the closest analogy ... because unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process." Heck, 512 U.S. at 484. Looking to the elements of malicious prosecution, the Court held that the inmate's claim could not proceed because one requirement of malicious prosecution is that the prior criminal proceedings must have terminated in the plaintiff's favor, and the

inmate in Heck had not successfully challenged his criminal conviction. Id.

Hector v. Watt, 235 F.3d 154, 155-156 (3d Cir. 2000).

In this case it is evident that Donahue's state criminal prosecution did not conclude favorably since Donahue complains of the on-going effect of the sentence imposed upon him, which forbade him for entering specific unemployment service offices. Under the Supreme Court's favorable termination rule, the fact of this conviction would checkmate any civil lawsuit arising out of this criminal prosecution. In short, this complaint is based upon the fundamentally flawed legal premise that Donahue can sue these officials for civil rights violations arising out of his state prosecution even though he stands convicted in this state case. Since this premise is simply incorrect, Donahue's complaint fails as a matter of law.

3. The Rooker-Feldman Doctrine Also Bars Consideration of This Case

Moreover, at this juncture, where Donahue has filed a civil action which, in part, invites this court to reject findings made by a state court and "quash" portions of a state court sentencing order, the plaintiff also necessarily urges us to sit as a state appellate court and review, re-examine and reject these state court rulings in one of Donahue's state cases. This we cannot do. Indeed, the United States Supreme Court has spoken to this issue and has announced a rule, the Rooker-

Feldman doctrine, which compels federal district courts to decline invitations to conduct what amounts to appellate review of state trial court decisions. As described by the Third Circuit:

> That doctrine takes its name from the two Supreme Court cases that gave rise to the doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The doctrine is derived from 28 U.S.C. § 1257 which states that "[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court....". See also Desi's Pizza, Inc. v. City of Wilkes Barre, 321 F.3d 411, 419 (3d Cir.2003). "Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower District Courts to review state court decisions." Desi's Pizza, 321 F.3d at 419.

Gary v. Braddock Cemetery, 517 F.3d 195, 200 (3d Cir. 2008).

Because federal district courts are not empowered by law to sit as reviewing courts, reexamining state court decisions, "[t]he Rooker-Feldman doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication." Turner v. Crawford Square Apartments III, LLP,, 449 F.3d 542, 547 (3d Cir. 2006). Cases construing this jurisdictional limit on the power of federal courts have quite appropriately:

> [E]mphasized the narrow scope of the Rooker-Feldman doctrine, holding that it "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers

> complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[Exxon Mobil Corp. v. Saudi Basic Industries Corp.], 544 U.S. at 284, 125 S.Ct. at 1521-22; see also Lance v. Dennis, 546 U.S. 459, ----, 126 S.Ct. 1198, 1201, 163 L.Ed.2d 1059 (2006)

Id.

However, even within these narrowly drawn confines, it has been consistently recognized that the Rooker-Feldman doctrine prevents federal judges from considering lawsuits "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments," particularly where those lawsuits necessarily require us to re-examine the outcome of this state criminal case. As the United States Court of Appeals for the Third Circuit has observed in dismissing a similar lawsuit which sought to make a federal case out of state court rulings made in litigation relating to a prior state criminal case:

> The Rooker-Feldman doctrine divests federal courts of jurisdiction "if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 (3d Cir.2006) (internal citations omitted). The doctrine occupies "narrow ground." Exxon Mobil Corp. v. Saudi Basic Indus.. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). It applies only where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that

> judgment." Id. at 291, 125 S.Ct. 1517. . . . Ordering the relief he seeks, however, would require the District Court to effectively determine that the state courts' . . . determinations were improper. Therefore, [Plaintiff] Sullivan's claims are barred by the Rooker-Feldman doctrine. To the extent Sullivan was not "appealing" to the District Court, but instead was attempting to relitigate issues previously determined by the Pennsylvania courts, review is barred by res judicata. See Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 310 (3d Cir.2009) (describing conditions in Pennsylvania under which collateral estoppel will bar a subsequent claim).

Sullivan v. Linebaugh, 362 F. App'x 248, 249-50 (3d Cir. 2010).

This principle applies here. Thus, in this case, as in Sullivan, the Rooker-Feldman and *res judicata* doctrines combine to compel dismissal of this case, to the extent that Donahue improperly invites us to act as a Pennsylvania appellate court for matters and claims relating to a state litigation arising out of the plaintiff's state criminal prosecution.

C. The Amended Complaint Should Be Dismissed With Prejudice

In civil cases *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend is not necessary in a case such as this where amendment would be futile or result in undue delay. Alston v. Parker, 363 F.3d

229, 235 (3d Cir. 2004). Here, we granted Donahue leave to amend but to no avail. Consideration of Donahue's amended complaint reveals that it continues to fail as a matter of law for reasons which we previously discussed with the plaintiff. Since Donahue has been unable to amend his complaint to state a viable claim upon which mandamus relief may be granted, allowing further leave to amend would be futile and foster undue delay in this case. Therefore, it is recommended that this action be dismissed with prejudice.

III. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED that the Plaintiff's amended complaint be dismissed with prejudice.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record

developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 6th day of December, 2017.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

APPENDIX A

3:13-cv-01043-WJN-TMB	Donahue v. Kachmarski et al	filed 04/22/13 closed 05/31/13
3:13-cv-01071-WJN	Donahue v. Olexa	filed 04/24/13 closed 06/24/13
3:13-cv-01109-RDM	Donahue v. Pierantoni et al	filed 04/26/13 closed 01/09/15
3:13-cv-01271-WJN-TMB	Donahue v. Luzerne County Correctional Facility et al	filed 05/09/13 closed 08/27/13
3:13-cv-01272-WJN-TMB	Donahue v. Luzerne County Correctional Facility et al	filed 05/09/13 closed 08/27/13
3:13-cv-01273-WJN	Donahue v. Hazleton Police Department et al	filed 05/09/13 closed 07/30/13
3:13-cv-01274-WJN	Donahue v. Commonwealth Of Pennsylvania et al	filed 05/09/13 closed 07/30/13
3:13-cv-01275-WJN	Donahue v. Luzerne County Prison et al	filed 05/09/13 closed 07/30/13
3:13-cv-01276-WJN	Donahue v. Stolfa et al	filed 05/09/13 closed 07/30/13
3:13-cv-01277-WJN	Donahue v. Luzerne County Correctional Facility et al	filed 05/09/13 closed 07/30/13
3:13-cv-01278-WJN	Donahue v. Pugh et al	filed 05/09/13 closed 07/30/13
3:13-cv-01279-WJN	Donahue v. Luzerne County Correctional Facility Kitchen Supervisor	filed 05/09/13 closed 07/30/13
3:13-cv-01280-WJN	Donahue v. Hearthway et al	filed 05/09/13 closed 07/30/13
3:13-cv-01281-WJN	Donahue v. Luzerne County Correctional Facility	filed 05/09/13 closed 07/30/13

3:13-cv-01282-WJN	Donahue v. Commonwealth Of Pennsylvania et al	filed 05/09/13	closed 07/30/13
3:13-cv-01283-WJN	Donahue v. Zola et al	filed 05/09/13	closed 07/30/13
3:13-cv-01284-WJN	Donahue v. Hazleton City Police Department et al	filed 05/09/13	closed 07/30/13
3:13-cv-01285-WJN	Donahue v. Hazleton Career Link et al	filed 05/09/13	closed 07/30/13
3:13-cv-01286-WJN	Donahue v. FBI Scranton Office	filed 05/09/13	closed 07/30/13
3:13-cv-01326-WJN-TMB	Donahue v. Luzerne County Correctional Facility et al	filed 05/15/13	closed 08/27/13
3:13-cv-01327-WJN	Donahue v. Ristowski et al	filed 05/15/13	closed 07/30/13
3:13-cv-01328-WJN	Donahue v. Commonwealth of PA et al	filed 05/15/13	closed 07/30/13
3:13-cv-01414-WJN-TMB	Donahue v. Luzerne County Public Defender's Office et al	filed 05/24/13	closed 07/31/13
3:13-cv-01567-WJN-TMB	Donahue v. Luzerne County Correctional Facility et al	filed 06/11/13	closed 07/24/13
3:14-cv-01351-MEM	Donahue v. City of Hazleton, PA et al	filed 07/15/14	

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SEAN DONAHUE,	:	
	:	FILED SCRANTON
Plaintiff,	:	
V.	:	**3:17-CV-1759** NOV 14 2017
	:	**(JUDGE MARIANI)**
UNITED STATES SECRETARY	:	PER _____
OF LABOR, et al.,	:	DEPUTY CLERK
	:	
Defendants.	:	

ORDER

AND NOW, THIS 13th **DAY OF NOVEMBER, 2017,** upon review of Magistrate Judge Carlson's Report & Recommendation, (Doc. 4), for clear error and manifest injustice,

IT IS HEREBY ORDERED THAT:

1. The Report & Recommendation, (Doc. 4), is **ADOPTED** for the reasons stated therein.
2. Plaintiff's Complaint, (Doc. 1), is **DISMISSED WITHOUT PREJUDICE.**
3. Plaintiff may amend his Complaint within **twenty-one (21) days** from the date of this Order.
4. The case is **REMANDED** to Magistrate Judge Carlson for further proceedings consistent with this Order.

Robert D. Mariani
United States District Court Judge

A.6

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SEAN DONAHUE,	:	**Civil No. 3:17-CV-1759**
	:	
Plaintiff	:	
	:	
v.	:	**(Judge Mariani)**
	:	
UNITED STATES SECRETARY OF LABOR, et al.,	:	**(Magistrate Judge Carlson)**
	:	
Defendants	:	

REPORT AND RECOMMENDATION

I. Factual Background

This case comes before us for a legally-mandated screening review. The plaintiff, Sean Donahue, is a prodigious, albeit prodigiously unsuccessful, *pro se* litigant who has filed more than two dozen lawsuits in federal court since 2013. Many of these lawsuits arise out of arrests and convictions of Donahue in state court for allegedly disruptive conduct at various local unemployment and employment services offices.

Donahue's latest federal lawsuit follows this familiar pattern. In his latest *pro se* complaint, Donahue names the United States Department of Labor and Secretary of Labor, the Commonwealth of Pennsylvania, and the Luzerne/Schuylkill Counties Workforce Investment Boards as defendants. (Doc.

A. 7

1.) Donahue alleges that he is entitled to certain preferential job placement services as a veteran, and contends that a criminal sentence imposed against him in state court, which directed that he refrain from entering specific local CareerLinks offices, interferes with his ability to obtain this preferential hiring status as a veteran. (Id.) Accordingly, Donahue invokes the mandamus jurisdiction of this court, and requests that we "quash" any state court orders, and direct the Department of Labor to give him priority job placements. (Id.)

Along with this complaint, Donahue has filed a motion for leave to proceed *in forma pauperis*. (Doc. 2.) We will GRANT this motion, but for the reasons set forth below, we recommend that the complaint be dismissed.

II. Discussion

A. Screening of *Pro Se* Complaints–Standard of Review

This Court has an on-going statutory obligation to conduct a preliminary review of *pro se* complaints brought by plaintiffs given leave to proceed *in forma pauperis* in cases which seek redress against government officials. See 28 U.S.C. § 1915(e)(2)(B)(ii). Thus, in this case we are obliged to review the complaint to determine whether any claims are frivolous, malicious, or fail to state a claim upon which relief may be granted. This statutory text mirrors the language of Rule 12(b)(6) of the Federal Rules of Civil Procedure, which provides that a complaint

should be dismissed for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)]and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S.Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the Court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally a court need not "assume that a ... plaintiff can prove facts that the ...

plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft vi Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.

Id. at 679.

Thus, following Twombly and Iqbal a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the United States Court of Appeals for the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a "plausible claim for relief." In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to "show" such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

As the court of appeals has observed: "The Supreme Court in Twombly set forth the 'plausibility' standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege 'enough facts to state a claim to relief that is plausible on its face.' Twombly, 550 U.S. at 570, 127 S.Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings 'allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.' Iqbal, 129 S.Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S.Ct. 1955). This standard requires showing 'more

than a sheer possibility that a defendant has acted unlawfully.' Id. A complaint which pleads facts 'merely consistent with' a defendant's liability, [ ] 'stops short of the line between possibility and plausibility of "entitlement of relief." ' " Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011) cert. denied, 132 S. Ct. 1861, 182 L. Ed. 2d 644 (U.S. 2012).

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis: "First, the court must 'tak[e] note of the elements a plaintiff must plead to state a claim.' Iqbal, 129 S.Ct. at 1947. Second, the court should identify allegations that, 'because they are no more than conclusions, are not entitled to the assumption of truth.' Id. at 1950. Finally, 'where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief.' Id." Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a *pro se* plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action.

Judged against these legal guideposts, for the reasons set forth below it is recommended that this complaint be dismissed.

B. Donahue's Complaint Fails to State a Claim Upon Which Relief May Be Granted

In this case Donahue's mandamus complaint runs afoul of a series of insurmountable legal obstacles. Indeed, as set forth below, the complaint is fatally flawed in at least four different ways.

1. Donahue is Not Entitled to Mandamus Relief

At the outset, dismissal of this complaint is warranted because Donahue is not entitled to the extraordinary relief of a writ of mandamus in this case. A petition for writ of mandamus is an ancient form of common law judicial relief, a request for a court order compelling a public official to perform some legally-mandated duty. The power of federal courts to issue writs of mandamus is now defined in a federal statute, 28 U.S.C. § 1361, which provides that: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.

Writs of mandamus compelling government officials to take specific actions, are extraordinary forms of relief, which must comply with demanding legal standards. Thus, it is well-settled that "The writ is a drastic remedy that 'is seldom

issued and its use is discouraged.' " In re Patenaude, 210 F.3d 135, 140 (3d Cir. 2000) (quoting Lusardi v. Lechner, 855 F.2d 1062, 1069 (3d Cir. 1988)). Accordingly, as a general rule:

> There are two prerequisites to issuing a writ of mandamus. [Petitioners] must show that (1) they have no other adequate means to attain their desired relief; and (2) their right to the writ is clear and indisputable. See In re Patenaude, 210 F.3d 135, 141 (3d Cir.2000); Aerosource, Inc. v. Slater, 142 F.3d 572, 582 (3d. 1988).

Hinkel v. England, 349 F.3d 162, 164 (3d Cir. 2003).

Moreover, "[m]andamus is an extraordinary remedy that can only be granted where a legal duty 'is positively commanded and so plainly prescribed as to be free from doubt.' " Appalachian States Low-Level Radioactive Waste Comm'n v. O'Leary, 93 F.3d 103, 112 (3d Cir.1996) (quoting Harmon Cove Condominium Ass'n, Inc. v. Marsh, 815 F.2d 949, 951 (3d Cir.1987)). See Ararat v. District Dircctor, ICE, 176 F.App'x. 343 (3d Cir. 2006). Therefore:

> Mandamus "is intended to provide a remedy for a plaintiff only if he has exhausted all other avenues of relief and only if the defendant owes him a clear nondiscretionary duty." Heckler v. Ringer, 466 U.S. 602, 616, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984) (discussing the common-law writ of mandamus, as codified in 28 U.S.C. § 1361). See also Stehney, 101 F.3d at 934 (mandamus relief is a drastic remedy only to be invoked in extraordinary circumstances).

Stanley v. Hogsten 277 F.App'x. 180, 181(3d Cir. 2008).

As one court has aptly observed when describing the precise and exacting standards which must be met when a petitioner invokes the writ of mandamus:

> The remedy of mandamus "is a drastic one, to be invoked only in extraordinary circumstances." Allied Chemical Corp. v. Daiflon, Inc., 449 U.S. 33, 34,(1980). Only "exceptional circumstances amounting to a judicial 'usurpation of power' " will justify issuance of the writ. Gulfstream Aerospace Corp. v. Mayacamas Corp., 485 U.S. 271, 289 (1988) (quoting Will v. United States, 389 U.S. 90, 95(1967)); see also In re Leeds, 951 F.2d 1323, 1323 (D.C.Cir.1991). Mandamus is available only if: "(1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to plaintiff." In re Medicare Reimbursement Litigation, 414 F.3d 7, 10 (D.C.Cir.2005) (quoting Power v. Barnhart, 292 F.3d 781, 784 (D.C.Cir.2002)); see also Banks v. Office of Senate Sergeant-At-Arms and Doorkeeper of the United States Senate, 471 F.3d 1341, 1350 (D.C.Cir.2006) (concluding that the extraordinary remedy of mandamus need not issue in a case arising under the Congressional Accountability Act where the issue could be addressed by an appeal from a final judgment). The party seeking mandamus "has the burden of showing that 'its right to issuance of the writ is clear and indisputable.' " Power v. Barnhart, 292 F.3d at 784 (quoting Northern States Power Co. v. U.S. Dep't of Energy, 128 F.3d 754, 758 (D.C.Cir.1997)). Where the action petitioner seeks to compel is discretionary, petitioner has no clear right to relief and mandamus therefore is not an appropriate remedy. See, e.g., Heckler v. Ringer, 466 U.S. 602, 616, 104 S.Ct. 2013, 80 L.Ed.2d 622 (1984); Weber v. United States, 209 F.3d at 760 ("[M]andamus is proper only when an agency has a clearly established duty to act.").

Carson v. U.S. Office of Special Counsel, 534 F.Supp.2d 103, 105 (D.D.C.2008).

Applying these exacting benchmarks, courts have frequently held that mandamus relief does not lie against the United States Department of Labor,

compelling that federal agency to follow any particular course of action in the fields consigned to that agency's discretion. See, e.g., Penn Terminals, Inc. v. McTaggart, No. CIV. A. 99-2899, 2000 WL 361870, at *1 (E.D. Pa. Apr. 9, 2000); DeLuca v. U.S. Dep't of Labor, Employment Standards Admin., No. C.A. 93-1208, 1993 WL 232879, at *1 (E.D. Pa. June 28, 1993); Mallick v. Usery, 427 F. Supp. 964, 964 (W.D. Pa. 1977).

These principles apply here and call for dismissal of Donahue's mandamus petition. Donahue's petition for writ of mandamus does not describe a plainly non-discretionary duty on the defendants' part. Nor does it set forth well-pleaded facts giving Donahue an absolute entitlement to the particular form of relief which he seeks. Since "[m]andamus 'is intended to provide a remedy for a plaintiff only if . . the defendant owes him a clear nondiscretionary duty,' " Stanley v. Hogsten 277 F.App'x. at 181(citations omitted) and "[m]andamus is an extraordinary remedy that can only be granted where a legal duty 'is positively commanded and so plainly prescribed as to be free from doubt,' " Ararat v. District Director, ICE, 176 F.App'x. at 343 (citations omitted), the substantial element of discretion which is an inherent part of many Department of Labor job placement programs compels us to deny this petition since we cannot say on these facts that Donahue is

entitled to the absolute job preferences which he seeks and that his "right to the writ is clear and indisputable." Hinkel v. England, 349 F.3d at 164.

2. Donahue May Not Bring a Civil Action Based Upon a Criminal Case Which Resulted in a Conviction

In addition, Donahue's complaint fails because it apparently rests, in part, on a fatally flawed legal premise. At bottom, Donahue seeks to bring a civil rights action premised in part on claims arising out of a state criminal case, a case that he seems to concede resulted in a state conviction which has not otherwise been set aside or overturned since Donahue invites us to "quash" part of this state criminal sentence.

This he cannot do. Quite the contrary, it is well-settled that an essential element of a civil rights action in this particular setting is that the underlying criminal case must have been terminated in favor of the civil rights claimant. Therefore, where, as here, the civil rights plaintiff brings a claim based upon a state case that resulted in a conviction, the plaintiff's claim fails as a matter of law. The United States Court of Appeals for the Third Circuit has aptly observed in this regard:

> The Supreme Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." Heck v. Humphrey, 512 U.S. 477, 483(1994) (quoting Memphis Community School Dist. v. Stachura, 477 U.S. 299, 305(1986) (internal quotation marks omitted)). Given this close relation between § 1983 and tort liability, the Supreme

> Court has said that the common law of torts, "defining the elements of damages and the prerequisites for their recovery, provide[s] the appropriate starting point for inquiry under § 1983 as well." Heck, 512 U.S. at 483(quoting Carey v. Piphus, 435 U.S. 247, 257-58,(1978)). The Supreme Court applied this rule in Heck to an inmate's § 1983 suit, which alleged that county prosecutors and a state police officer destroyed evidence, used an unlawful voice identification procedure, and engaged in other misconduct. In deciding whether the inmate could state a claim for those alleged violations, the Supreme Court asked what common-law cause of action was the closest to the inmate's claim and concluded that "malicious prosecution provides the closest analogy ... because unlike the related cause of action for false arrest or imprisonment, it permits damages for confinement imposed pursuant to legal process." Heck, 512 U.S. at 484. Looking to the elements of malicious prosecution, the Court held that the inmate's claim could not proceed because one requirement of malicious prosecution is that the prior criminal proceedings must have terminated in the plaintiff's favor, and the inmate in Heck had not successfully challenged his criminal conviction. Id.

Hector v. Watt, 235 F.3d 154, 155-156 (3d Cir. 2000).

In this case it is evident that Donahue's state criminal prosecution did not conclude favorably since Donahue complains of the on-going effect of the sentence imposed upon him, which forbade him for entering specific unemployment service offices. Under the Supreme Court's favorable termination rule, the fact of this conviction would checkmate any civil lawsuit arising out of this criminal prosecution. In short, this complaint is based upon the fundamentally flawed legal premise that Donahue can sue these officials for civil rights violations arising out

of his state prosecution even though he stands convicted in this state case. Since this premise is simply incorrect, Donahue's complaint fails as a matter of law.

3. The Rooker-Feldman Doctrine Also Bars Consideration of This Case

Moreover, at this juncture, where Donahue has filed a civil action which, in part, invites this court to reject findings made by a state court and "quash" portions of a state court sentencing order, the plaintiff also necessarily urges us to sit as a state appellate court and review, re-examine and reject these state court rulings in one of Donahue's state cases. This we cannot do. Indeed, the United States Supreme Court has spoken to this issue and has announced a rule, the Rooker-Feldman doctrine, which compels federal district courts to decline invitations to conduct what amounts to appellate review of state trial court decisions. As described by the Third Circuit:

> That doctrine takes its name from the two Supreme Court cases that gave rise to the doctrine. Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). The doctrine is derived from 28 U.S.C. § 1257 which states that "[f]inal judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court....". See also Desi's Pizza, Inc. v. City of Wilkes Barre, 321 F.3d 411, 419 (3d Cir.2003). "Since Congress has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not intend to empower

> District Courts to review state court decisions." Desi's Pizza, 321 F.3d at 419.

Gary v. Braddock Cemetery, 517 F.3d 195, 200 (3d Cir. 2008).

Because federal district courts are not empowered by law to sit as reviewing courts, reexamining state court decisions, "[t]he Rooker-Feldman doctrine deprives a federal district court of jurisdiction in some circumstances to review a state court adjudication." Turner v. Crawford Square Apartments III, LLP,, 449 F.3d 542, 547 (3d Cir. 2006). Cases construing this jurisdictional limit on the power of federal courts have quite appropriately:

> [E]mphasized the narrow scope of the Rooker-Feldman doctrine, holding that it "is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments."[Exxon Mobil Corp. v. Saudi Basic Industries Corp.], 544 U.S. at 284, 125 S.Ct. at 1521-22; see also Lance v. Dennis, 546 U.S. 459, ----, 126 S.Ct. 1198, 1201, 163 L.Ed.2d 1059 (2006)

Id.

However, even within these narrowly drawn confines, it has been consistently recognized that the Rooker-Feldman doctrine prevents federal judges from considering lawsuits "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments,"

particularly where those lawsuits necessarily require us to re-examine the outcome of this state criminal case. As the United States Court of Appeals for the Third Circuit has observed in dismissing a similar lawsuit which sought to make a federal case out of state court rulings made in litigation relating to a prior state criminal case:

> The Rooker-Feldman doctrine divests federal courts of jurisdiction "if the relief requested effectively would reverse a state court decision or void its ruling." Taliaferro v. Darby Twp. Zoning Bd., 458 F.3d 181, 192 (3d Cir.2006) (internal citations omitted). The doctrine occupies "narrow ground." Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). It applies only where "the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment." Id. at 291, 125 S.Ct. 1517. . . . Ordering the relief he seeks, however, would require the District Court to effectively determine that the state courts' . . . determinations were improper. Therefore, [Plaintiff] Sullivan's claims are barred by the Rooker-Feldman doctrine. To the extent Sullivan was not "appealing" to the District Court, but instead was attempting to relitigate issues previously determined by the Pennsylvania courts, review is barred by res judicata. See Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc., 571 F.3d 299, 310 (3d Cir.2009) (describing conditions in Pennsylvania under which collateral estoppel will bar a subsequent claim).

Sullivan v. Linebaugh, 362 F. App'x 248, 249-50 (3d Cir. 2010).

This principle applies here. Thus, in this case, as in Sullivan, the Rooker-Feldman and *res judicata* doctrines combine to compel dismissal of this case, to

the extent that Donahue improperly invites us to act as a Pennsylvania appellate court for matters and claims relating to a state litigation arising out of the plaintiff's state criminal prosecution.

4. Younger Abstention Applies Here

Further, Donahue's latest complaint also seemingly invites us to issue an injunction quashing the sentence in one of his state criminal cases. To the extent that the complaint invites this Court to enjoin aspects of a state criminal case, and in effect calls upon us to dictate the result of this state case, this *pro se* pleading runs afoul of a settled tenet of federal law, the Younger abstention doctrine.

The Younger abstention doctrine is inspired by basic considerations of comity that are fundamental to our federal system of government. As defined by the courts: "Younger abstention is a legal doctrine granting federal courts discretion to abstain from exercising jurisdiction over a claim when resolution of that claim would interfere with an ongoing state proceeding. See Younger v. Harris, 401 U.S. 37, 41 (1971) ('[W]e have concluded that the judgment of the District Court, enjoining appellant Younger from prosecuting under these California statutes, must be reversed as a violation of the national policy forbidding federal courts to stay or enjoin pending state court proceedings except under special circumstances.')." Kendall v. Russell, 572 F.3d 126, 130 (3d Cir. 2009).

This doctrine, which is informed by principles of comity, is also guided by these same principles in its application. As the United States Court of Appeals for the Third Circuit has observed:

> "A federal district court has discretion to abstain from exercising jurisdiction over a particular claim where resolution of that claim in federal court would offend principles of comity by interfering with an ongoing state proceeding." Addiction Specialists, Inc. v. Twp. of Hampton, 411 F.3d 399, 408 (3d Cir.2005) (citing Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971)). As noted earlier, the Younger doctrine allows a district court to abstain, but that discretion can properly be exercised only when (1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims. Matusow v. Trans-County Title Agency, LLC, 545 F.3d 241, 248 (3d Cir.2008).

Kendall v. Russell, 572 F.3d at 131.

Once these three legal requirements for Younger abstention are met, the decision to abstain rests in the sound discretion of the district court and will not be disturbed absent an abuse of that discretion. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319, 325 (3d Cir. 2004). Moreover, applying these standards, federal courts frequently abstain from hearing matters which necessarily interfere with state criminal cases. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

In this case, the plaintiff's *pro se* complaint reveals that all of the legal prerequisites for Younger abstention are present here with respect to those claims that seek to enjoin on-going state cases. First, it is evident that there were state proceedings in this case. Second, it is also apparent that those proceedings afford Donahue a full and fair opportunity to litigate the issues raised in this lawsuit in this state case. See Sullivan v. Linebaugh, 362 F. App'x 248, 249-50 (3d Cir. 2010). Finally, it is clear that the state proceedings implicate important state interests, since these matters involve state criminal law enforcement, an issue of paramount importance to the state. See, e.g., Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

Since the legal requirements for Younger abstention are fully met here, the decision to abstain rests in the sound discretion of this Court. Lui v. Commission on Adult Entertainment Establishments, 369 F.3d 319, 325 (3d Cir. 2004). However, given the important state interest in enforcement of its criminal laws, and recognizing that the state courts are prepared to fully address the merits of these matters, we believe that the proper exercise of this discretion weighs in favor of abstention and dismissal of this federal case at the present time. Lui v.

Commission on Adult Entertainment Establishments, 369 F.3d 319 (3d Cir. 2004); Zahl v. Harper, 282 F.3d 204 (3d Cir. 2002).

C. The Complaint Should Be Dismissed Without Prejudice

While this screening merits analysis calls for dismissal of this action in its current form, we recommend that the plaintiff be given another, final opportunity to further litigate this matter by endeavoring to promptly file an amended complaint setting forth well-pleaded claims within the period of the statute of limitations. We recommend this course mindful of the fact that in civil rights cases *pro se* plaintiffs often should be afforded an opportunity to amend a complaint before the complaint is dismissed in its entirety, see Fletcher-Hardee Corp. v. Pote Concrete Contractors, 482 F.3d 247, 253 (3d Cir. 2007), unless granting further leave to amend is not necessary in a case such as this where amendment would be futile or result in undue delay, Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004). Accordingly, it is recommended that the Court provide the plaintiff with an opportunity to correct these deficiencies in the *pro se* complaint, by dismissing this deficient complaint at this time without prejudice to one final effort by the plaintiff to comply with the rules governing civil actions in federal court, by filing an amended complaint containing any timely and proper claims which he may have.

III. Recommendation

Accordingly, for the foregoing reasons, the plaintiff's request to proceed *in forma pauperis* is GRANTED, (Doc 2.), but IT IS RECOMMENDED that the Plaintiff's complaint be dismissed without prejudice to the plaintiff endeavoring to correct the defects cited in this report, provided that the plaintiff acts within 20 days of any dismissal order.

The Parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 3d day of October, 2017.

S/Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge

38 USC 4215: Priority of service for veterans in Department of Labor job training programs
Text contains those laws in effect on January 27, 2020

From Title 38-VETERANS' BENEFITS
PART III-READJUSTMENT AND RELATED BENEFITS
CHAPTER 42-EMPLOYMENT AND TRAINING OF VETERANS
Jump To:

§4215. Priority of service for veterans in Department of Labor job training programs

(a) DEFINITIONS.-In this section:
(1) The term "covered person" means any of the following individuals:
(A) A veteran.
(B) The spouse of any of the following individuals:
(i) Any veteran who died of a service-connected disability.
(ii) Any member of the Armed Forces serving on active duty who, at the time of application for assistance under this section, is listed, pursuant to section 556 of title 37 and regulations issued thereunder, by the Secretary concerned in one or more of the following categories and has been so listed for a total of more than 90 days: (I) missing in action, (II) captured in line of duty by a hostile force, or (III) forcibly detained or interned in line of duty by a foreign government or power.
(iii) Any veteran who has a total disability resulting from a service-connected disability.
(iv) Any veteran who died while a disability so evaluated was in existence.

(2) The term "qualified job training program" means any workforce preparation, development, or delivery program or service that is directly funded, in whole or in part, by the Department of Labor and includes the following:
(A) Any such program or service that uses technology to assist individuals to access workforce development programs (such as job and training opportunities, labor market information, career assessment tools, and related support services).
(B) Any such program or service under the public employment service system, one-stop career centers, the Workforce Investment Act of 1998,[1] a demonstration or other temporary program, and those programs implemented by States or local service providers based on Federal block grants administered by the Department of Labor.
(C) Any such program or service that is a workforce development program targeted to specific groups.

(3) The term "priority of service" means, with respect to any qualified job training program, that a covered person shall be given priority over nonveterans for the receipt of employment, training, and placement services provided under that program, notwithstanding any other provision of law. Such priority includes giving access to such services to a covered person before a non-covered person or, if resources are limited, giving access to such services to a covered person instead of a non-covered person.

(b) ENTITLEMENT TO PRIORITY OF SERVICE.-(1) A covered person is entitled to priority of service under any qualified job training program if the person otherwise meets the eligibility requirements for participation in such program.
(2) The Secretary of Labor may establish priorities among covered persons for purposes of this section to take into account the needs of disabled veterans and special disabled veterans, and such other factors as the Secretary determines appropriate.
(c) ADMINISTRATION OF PROGRAMS AT STATE AND LOCAL LEVELS.-An entity of a State or a political subdivision of the State that administers or delivers services under a qualified job training program shall-
(1) provide information and priority of service to covered persons regarding benefits and services that may be obtained through other entities or service providers; and
(2) ensure that each covered person who applies to or who is assisted by such a program is informed of the employment-related rights and benefits to which the person is entitled under this section.

(d) ADDITION TO ANNUAL REPORT.-(1) In the annual report required under section 4107(c) of this title for the program year beginning in 2003 and each subsequent program year, the Secretary of Labor shall evaluate whether covered

B

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