APPENDIX A

**MICHAEL OWEN HARRIOT, Plaintiff - Appellant, v. UNITED STATES, (Federal Bureau of Investigation "FBI"), Defendant - Appellee.**
**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**
**795 Fed. Appx. 215; 2020 U.S. App. LEXIS 5815**
**No. 19-7511**
**February 20, 2020, Submitted**
**February 26, 2020, Decided**

**Notice:**

**PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.**

**Editorial Information: Prior History**

**{2020 U.S. App. LEXIS 1}**Appeal from the United States District Court for the District of South Carolina, at Columbia. (3:19-cv-02482-JFA). Joseph F. Anderson, Jr., Senior District Judge.Harriot v. United States, 2019 U.S. Dist. LEXIS 172497 (D.S.C., Oct. 4, 2019)

**Disposition:**
AFFIRMED.

**Counsel** Michael Owen **Harriot**, Appellant, Pro se.
**Judges:** Before AGEE, QUATTLEBAUM, and RUSHING, Circuit Judges.

**Opinion**

**{795 Fed. Appx. 216}** PER CURIAM:

Michael Owen **Harriot** appeals the district court's order accepting the recommendation of the magistrate judge and dismissing under 28 U.S.C. § 1915(e)(2)(B) (2018) his complaint filed pursuant to the Federal Torts Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-80 (2018). "[W]e may affirm a district court's ruling on any ground apparent in the record." *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 375 (4th Cir. 2015). A federal court may sua sponte dismiss a complaint as barred by the statute of limitations on initial review pursuant to 28 U.S.C. § 1915 (2018). *Eriline Co. S.A. v. Johnson*, 440 F.3d 648, 656-57 (4th Cir. 2006); *Nasim v. Warden, Md. House of Corr.*, 64 F.3d 951, 954-55 (4th Cir. 1995) (en banc). We affirm the district court's order because Harriot's claims are barred by the applicable statute of limitations.* *See* 28 U.S.C. § 2401(b) (2018). We deny Harriot's motion for a certified copy of the arrest warrant. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

*AFFIRMED*

**Footnotes**

We also discern no abuse of discretion in the district court's decisions denying Harriot's request to appoint counsel and Harriot's motion for recusal. *See Belue v. Leventhal*, 640 F.3d 567, 573 (4th Cir. 2011); *Whisenant v. Yuam*, 739 F.2d 160, 163 (4th Cir. 1984), *abrogated on other grounds by Mallard v. United States Dist. Court for Southern Dist.*, 490 U.S. 296, 109 S. Ct. 1814, 104 L. Ed. 2d 318 (1989).

APPENDIX B

**Michael Owen Harriot, Plaintiff, vs. United States of America, Defendant.**
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA**
**2019 U.S. Dist. LEXIS 172756**
**C/A No.: 3:19-2482-JFA-SVH**
**September 20, 2019, Decided**
**September 20, 2019, Filed**

**Editorial Information: Subsequent History**

Adopted by, Dismissed by Harriot v. United States, 2019 U.S. Dist. LEXIS 172497 (D.S.C., Oct. 4, 2019)

**Editorial Information: Prior History**

Harriot v. United States, 2019 U.S. Dist. LEXIS 158018 (D.S.C., Sept. 16, 2019)

**Counsel** **{2019 U.S. Dist. LEXIS 1}**Michael Owen Harriot, Plaintiff, Pro se, Estill, SC.

**Judges:** Shiva V. Hodges, United States Magistrate Judge.

**Opinion**

**Opinion by:** Shiva V. Hodges

**Opinion**

REPORT AND RECOMMENDATION

Michael Owen Harriot ("Plaintiff"), proceeding pro se and in forma pauperis, filed this complaint against the United States of America ("Defendant") seeking damages under the Federal Tort Claims Act ("FTCA"). Pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Civ. Rule 73.02(B)(2)(e) (D.S.C.), the undersigned is authorized to review such complaints for relief and submit findings and recommendations to the district judge. For the following reasons, the undersigned recommends the district judge dismiss the complaint with prejudice and without issuance and service of process.

I. Factual and Procedural Background

Plaintiff is a federal inmate incarcerated at Federal Correctional Institution Estill. [ECF No. 1-2]. On December 1, 2000, Plaintiff was convicted of offenses under 21 U.S.C. §§ 841(a)(1), 846, and 861(a) and 8 U.S.C. § 1326(a), and sentenced to life imprisonment. *See USA v. Harriot*, No. 3:99-cr-341-MBS-3 (April 30, 2001).1

Plaintiff alleges that on July 24, 1999, Sheriff's deputies arrested him in Columbia, South Carolina at the direction of Federal Bureau of Investigation ("FBI") Agent Waizenhofer ("Agent"). *Id.* at 3. He claims he was**{2019 U.S. Dist. LEXIS 2}** subsequently transported to jail without a warrant or probable cause by two FBI special agents acting at the direction of Agent. *Id.* at 4. Plaintiff maintains Agent subsequently swore out a false criminal complaint in Case No. 3:99-MJ-481 on July 26, 1999, to conceal Plaintiff's original arrest from the Magistrate Judge and court. *Id.* He claims Agent admitted during a November 2000 suppression hearing that no arrest warrant existed prior to the July

24, 1999 arrest. *Id.* at 5. Plaintiff states there is no evidence in the record that an arrest warrant was issued. *Id.* at 4. He claims Assistant United States Attorney Stacey D. Haynes admitted in a reply to his § 2255 petition that Plaintiff had been arrested on July 24, 1999, but falsely stated Magistrate Judge Bristow Marchant had signed a warrant for Plaintiff's arrest on July 26, 1999. *Id.* at 5.

Plaintiff alleges he discovered Agent's "fraudulent concealment" while researching and reviewing cases in February 2018. He maintains he presented his administrative claims to the "appropriate FBI agency" through Standard Form 95 ("Form SF-95") on January 3, 2019, and requested the agency conduct an internal investigation, ascertain the legitimacy of his claims, and remit $15 million**{2019 U.S. Dist. LEXIS 3}** to him. *Id.* at 2. He claims FBI Chief Division Counsel Donald A. Wood returned the Form SF-95 to him on January 10, 2019, with a letter indicating the claim was not perfected. *Id.* He maintains he perfected the claim on January 22, 2019, by attaching copies of the criminal complaint in Case No. 3:99-MJ-481 and the indictment in Case No. 3:99-341. *Id.* He claims he received no response, despite having sent a follow up letter on July 22, 2019. *Id.* at 2-3.

Plaintiff requests Defendant compensate him for false arrest and imprisonment under the FTCA. [ECF No. 1 at 1]. He seeks damages of $15 million, appointment of counsel, and any other relief the court may provide.2 *Id.* at 9.

II. Discussion

A. Standard of Review

Plaintiff filed his complaint pursuant to 28 U.S.C. § 1915, which permits an indigent litigant to commence an action in federal court without prepaying the administrative costs of proceeding with the lawsuit. To protect against possible abuses of this privilege, the statute allows a district court to dismiss a case upon a finding that the action fails to state a claim on which relief may be granted or is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B)(i), (ii). A finding of frivolity can be made where the complaint lacks an arguable basis either in law or**{2019 U.S. Dist. LEXIS 4}** in fact. *Denton v. Hernandez*, 504 U.S. 25, 31, 112 S. Ct. 1728, 118 L. Ed. 2d 340 (1992). A claim based on a meritless legal theory may be dismissed sua sponte under 28 U.S.C. § 1915(e)(2)(B). *See Neitzke v. Williams*, 490 U.S. 319, 327, 109 S. Ct. 1827, 104 L. Ed. 2d 338 (1989).

Pro se complaints are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). A federal court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S. Ct. 2197, 167 L. Ed. 2d 1081 (2007). In evaluating a pro se complaint, the plaintiff's allegations are assumed to be true. *Fine v. City of N.Y.*, 529 F.2d 70, 74 (2d Cir. 1975). The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so. Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

B. Analysis

1. Plaintiff's Claim Barred by Heck

Plaintiff's claims for damages for alleged false arrest and imprisonment are barred by the United States Supreme Court's holding in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). The Court stated the following:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness**{2019 U.S. Dist. LEXIS**

5} would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has not been so invalidated is not cognizable under § 1983.*Id.* at 486-87. Other courts have extended the Supreme Court's holding in Heck to cases brought pursuant to the FTCA. *See e.g.,* ***O'Brien v. United States Federal Government***, 763 Fed. App'x 157 (3d Cir. 2019) ("Furthermore, we discern no reversible error in the District Court's determination that Heck's favorable termination rule may not apply just to the *Bivens* claim, but to the FTCA and RICO claims in O'Brien's amended complaint as well."); *Erlin v. United States*, 364 F.3d 1127, 1133 (9th Cir. 2004) (holding that "a civil action under the Federal Tort Claims Act for negligently calculating a prisoner's release date, or otherwise wrongfully imprisoning the prisoner, does not accrue until the prisoner has established, in a direct or collateral attack on his imprisonment, that he is entitled to release from custody"); *Parris v. United States*, 45 F.3d 383, 385 (10th Cir. 1995) ("FTCA, like § 1983, is not an appropriate vehicle for challenging the**{2019 U.S. Dist. LEXIS 6}** validity of outstanding criminal judgments.").

In addressing a claim for damages, "the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487. Judgment in Plaintiff's favor on his false arrest and imprisonment claims would necessarily imply the invalidity of his subsequent conviction. The court takes judicial notice that Plaintiff unsuccessfully challenged his conviction through direct appeal and collateral proceedings. *See USA v. Harriot*, No. 3:99-cr-341-MBS-3 (April 30, 2001), *appeal dismissed*, 37 Fed. Appx. 601 (4th Cir. 2002); *Harriot v. USA*, No. 3:03-3299-MJP, 2005 U.S. Dist. LEXIS 51844 (D.S.C. September 19, 2005), appeal dismissed, No. 05-7704 (4th Cir. July 24, 2016). Because Plaintiff fails to demonstrate he has successfully challenged his convictions, *Heck* bars his claims. Therefore, the undersigned recommends these claims be summarily dismissed.

2. Denial of Request for Appointment of Counsel

Plaintiff is not entitled to appointed counsel. Pursuant to 28 U.S.C. § 1915(e)(1), "[t]he court may**{2019 U.S. Dist. LEXIS 7}** request an attorney to represent any person unable to afford counsel." Nevertheless, "it is well settled that in civil actions the appointment of counsel should be allowed only in exceptional cases." *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1975) (citing *United States v. Madden*, 352 F.2d 792 (9th Cir. 1965)). A review of the complaint reveals no exceptional or unusual circumstances that would justify the appointment of counsel in this matter.

III. Conclusion and Recommendation

For the foregoing reasons, the undersigned recommends the district judge dismiss the complaint with prejudice3 and without issuance and service of process.

IT IS SO RECOMMENDED.

September 20, 2019

Columbia, South Carolina

/s/ Shiva V. Hodges

Shiva V. Hodges

United States Magistrate Judge

**Footnotes**

1

The court takes judicial notice of Petitioner's prior cases. *See Colonial Penn Ins. Co. v. Coil*, 887 F.2d 1236, 1239 (4th Cir. 1989) ("The most frequent use of judicial notice of ascertainable facts is in noticing the content of court records.") (citation omitted).

2

Plaintiff requests a "true certif[ied] copy" of Agent's criminal complaint in Case No. 3:99-MJ-481, as well as the arrest warrant in the case. [ECF No. 1 at 9]. Plaintiff is advised that he may request from the Clerk of Court copies of documents he is entitled to receive, but will be assessed the normal costs associated with obtaining those documents.

3

Because Plaintiff's claims would ultimately fail if he were permitted to amend his complaint, the undersigned recommends the district judge order the dismissal with prejudice.

APPENDIX B

**Michael Owen Harriot, Plaintiff, vs. United States of America, Defendants.**
**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA**
**2019 U.S. Dist. LEXIS 172497**
**C/A No. 3:19-2482-JFA-SVH**
**October 4, 2019, Decided**
**October 4, 2019, Filed**

**Editorial Information: Prior History**

Harriot v. United States, 2019 U.S. Dist. LEXIS 172756 (D.S.C., Sept. 20, 2019)

**Counsel** **{2019 U.S. Dist. LEXIS 1}**Michael Owen Harriot, Plaintiff, Pro se, Estill, SC .

**Judges:** Joseph F. Anderson, Jr., United States District Judge.

**Opinion**

**Opinion by:** Joseph F. Anderson, Jr.

**Opinion**

**ORDER**

**I. INTRODUCTION**

Michael Owen **Harriot**, ("Plaintiff"), a prisoner proceeding pro se and in forma pauperis, filed this complaint against the United States of America ("Defendant") seeking damages under the Federal Tort Claims Act ("FTCA"). (ECF No. 1). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), the case was referred to the Magistrate Judge.

The Magistrate Judge assigned to this action1 prepared a thorough Report and Recommendation ("Report") and opines that Plaintiff's complaint should be dismissed without issuance and service of process. (ECF No. 13). The Report sets forth, in detail, the relevant facts and standards of law on this matter, and this Court incorporates those facts and standards without a recitation.

**II. LEGAL STANDARD**

The Court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b)(1). However, a district**{2019 U.S. Dist. LEXIS 2}** court is only required to conduct a *de novo* review of the specific portions of the Magistrate Judge's Report to which an objection is made. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b); *Carniewski v. W. Virginia Bd. of Prob. & Parole*, 974 F.2d 1330 (4th Cir. 1992). In the absence of specific objections to portions of the Report of the Magistrate, this Court is not required to give an explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983).

**III. DISCUSSION**

The Report recites the factual and procedural background giving rise to this action in detail, which is incorporated by reference. Briefly, Plaintiff has brought claims for false arrest and imprisonment under the FTCA. (ECF No. 1). Plaintiff has requested $15 million in damages, appointment of counsel, and any other relief the court may provide. (ECF No. 1).

**A. Plaintiff's Claims are Barred by Heck**

The Magistrate Judge correctly opines that Plaintiff's claims concerning his alleged false arrest and imprisonment are barred by the holding in *Heck v. Humphrey*, 512 U.S. 477, 114 S. Ct. 2364, 129 L. Ed. 2d 383 (1994). (ECF No. 13). In *Heck*, the Supreme Court held that "in order to recover damages from allegedly unconstitutional conviction or imprisonment, or for other harm whose unlawfulness would render a conviction or sentence invalid, ... a § 1983 Plaintiff must prove that the conviction or sentence has been reversed on direct appeal,**{2019 U.S. Dist. LEXIS 3}** expunged by executive order, declared invalid by a state tribunal authorized to make such a determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254."

As the District Court, we must "consider whether judgment in favor of the Plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the Plaintiff can demonstrate the conviction or sentence has already been invalidated." *Heck*, 512 U.S. at 487. The Report submits that a judgment in Plaintiff's favor on his false arrest and imprisonment claims would necessarily imply the invalidity of his subsequent conviction. (ECF No. 13).

Although Plaintiff objects the Report, Plaintiff's objections fail to demonstrate he has successfully challenged his conviction such that his claims would not be barred by *Heck*. (ECF No. 16). First, Plaintiff argues that the Report is contrary to *Heck*, however, Plaintiff does not explain how the Report departs from the established precedent. (ECF No. 16). Although Plaintiff cites to several cases for support, they miss the point and do not address the issue at hand. (ECF No. 16). Next, Plaintiff argues that the Magistrate Judge**{2019 U.S. Dist. LEXIS 4}** viewed Plaintiff's FTCA claims as a malicious prosecution claim and this was clear error. (ECF No. 16). However, the Magistrate Judge makes no reference to malicious prosecution in the Report. (ECF No. 13).

Finally, Plaintiff asserts that "to properly apply *Heck's* bar against certain damage action claims a district court 'must' analyze the relationship between plaintiff's claims and the charge on which he was convicted. *Hardrick v. City of Bolingbrook*, 522 F.3d 758, 762 (7th. Cir. 2008)." (ECF No. 13). In *Hardrick*, the Plaintiff pled guilty to resisting a peace officer and the Court held Plaintiff's § 1983 action for excessive force was not precluded under *Heck*. The Court reasoned the allegations did not present a collateral attack to his conviction rather an argument that he suffered unnecessary injuries. *Hardrick v. City of Bolingbrook*, 522 F.3d 758 (7th Cir. 2008). This case is inapposite from the one at hand in which Plaintiff has brought an action under the FTCA alleging false arrest and imprisonment which are directly related to his conviction and a favorable determination of these claims would imply the invalidity of his conviction.2 Therefore, because Plaintiff does not allege, and court records do no show that he successfully challenged the lawfulness of his federal conviction, the Court dismisses Plaintiff's**{2019 U.S. Dist. LEXIS 5}** claims as they are barred by *Heck*.

**B. Denial of Request for Appointment of Counsel**

In his Complaint, Plaintiff asserts that he has a right to appointed counsel. (ECF No. 1). However, the Magistrate Judge correctly finds Plaintiff is not entitled to the appointment of counsel. (ECF No. 13). Although Plaintiff objects that appointment of counsel is necessary, his argument is unavailing. (ECF No. 16). As the Report sets out, "it is well settled that in civil actions the appointment of counsel should be allowed only in exceptional cases." *Cook v. Bounds*, 518 F.2d 779, 780 (4th Cir. 1965).

After a review of Plaintiff's Complaint, the Court finds no such circumstances are present in this case. Therefore, Plaintiff is not entitled to appointed counsel.

**C. Plaintiff's Motion to Recuse Magistrate Judge and Judge Anderson**

Plaintiff has filed a Motion requesting the Magistrate Judge and Judge Anderson to recuse themselves from his case. (ECF No. 6). Plaintiff asserts various allegations against both Judges in his motion. Specifically, Plaintiff alleges that neither Judge is impartial to his case and both continue to make bias decisions to protect the executive branch's misconduct. (ECF No. 6). Plaintiff's allegations stem from the fact that he**{2019 U.S. Dist. LEXIS 6}** has filed more than one lawsuit and the lawsuits have been characterized as "related cases" by the court. Plaintiff's allegations of bias have no basis in fact or law. The nature of the judge's bias must be personal and not judicial. *Shaw v. Martin*, 733 F.2d 304, 308 (4th Cir.1984). A judge is not disqualified because his familiarity with the facts of a case stem from his judicial conduct in presiding over earlier proceedings. *United States v. Parker*, 742 F.2d 127 (4th Cir.1984). Therefore, Plaintiff's Motion to Recuse the Magistrate Judge and Judge Anderson are denied.

**IV. CONCLUSION**

After carefully reviewing the applicable laws, the record in this case, the Report, and the objections thereto, this Court finds the Magistrate Judge's recommendation fairly and accurately summarizes the facts and applies the correct principles of law. Accordingly, this Court **adopts** the Magistrate Judge's Report and Recommendation. (ECF No.13). Thus, Plaintiff's complaint is dismissed with prejudice and without issuance and service of process. (ECF No. 1).

IT IS SO ORDERED.

October 4, 2019

Columbia, South Carolina

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

United States District Judge

**Footnotes**

1

The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.). The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 96 S. Ct. 549, 46 L. Ed. 2d 483 (1976). The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

2

Plaintiff was convicted of offenses under 21 U.S.C. §§ 841(a)(1), 846, and 861(a) and 8 U.S.C. § 1326(a) and sentenced to life imprisonment.

APPENDIX C

FILED: April 28, 2020

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 19-7511
(3:19-cv-02482-JFA)

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MICHAEL OWEN HARRIOT

Plaintiff - Appellant

v.

UNITED STATES, (Federal Bureau of Investigation "FBI")

Defendant - Appellee

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ORDER

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The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Agee, Judge Quattlebaum, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk