20-6443

UNITED STATES SUPREME COURT

SCOTT MYERS,

Plaintiff-Appellant,

-against -

CHARLES BUCCA, GREG SEELEY, PATROLMAN ROWELL, ALAN FRISBEE, DONNA BAECKMAN, MICHAEL SPITZ, TERRY WILHELM, BOBBY HAINES, MUNICIPALITY OF GREENE COUNTY.

Defendant-Appellees.

ON PETITION FOR WRIT OF CERTIORARI

Scott Myers, prose

Scott Myers
39 West Bridge Street
Catskill, NY 12414
(518) 291-8169
scottmyers@mac.com

QUESTIONS PRESENTED

1. Don't the complete reversals affirm that malicious prosecution, inter alia, occurred and therefore requires, on the law, that the case be remanded for a jury trial for compensation? This 42 USC § 1983 complaint was timely and competently litigated. No right was given up in any pre or post-trial processes.

2. Doesn't the overall pattern of institutionalized abuse by the defendants[5] – against victims of 9/11 terrorism – easily surpass federal thresholds of "habit and custom" sufficient to name the Municipality of Greene County as a defendant?

3. Trial records show that Greene County Deputy Rowell knowingly created a false and malicious arrest on February 14, 2010, which ADA Charles Bucca prosecuted. The conviction, and all other convictions, are reversed on appeal. Doesn't this alone allow the claim to move to a jury for award determination?

---

[5] TOTALS OF JAIL AND PRISON: I was arrested on Greene County Ind. 13-163 on August 8, 2013, incarcerated and held through trial without bail for 221 days. I was convicted on March 17, 2014, and sent to prison and released after 652 days. On April 5, 2018, the appellate court reversed, and on September 20, 2018, the case was dismissed. Total days from GC Ind. 11-163 are 1,714 days. Previously, Greene County caused GC Ind. 11-100, which was also reversed and dismissed on appeal. Total jail for 11-100 and 11-100/C#080-11 is 390 days. Greene County caused 2,102 days of incarceration since 9/11 2,282 days.
- 6 ¼ years - all convictions are reversed and dismissed on appeal

LIST OF PARTIES AND RELATED CASES

1. CHARLES BUCCA, former Assistant District Attorney

2. TERRY WILHELM, former Greene County District Attorney

3. DEPUTY ROWELL, Greene County Sheriff's Deputy

4. GREG SEELEY, former Sheriff of Greene County

5. MICHAEL SPITZ, former Greene County Jail Supervisor

6. ALAN FRISBEE, Director of Greene County Probation

7. DONNA BAECKMAN, Greene County PreSentence Report author

8. BOBBY HAINES, Sergeant in Charge Town of Hunter Police

9. THE MUNICIPALITY OF GREENE COUNTY

RELATED CASES

Case #	Name of Case	Judge	Court	Type of case	Demise
1.	Ind. 11-100 County Ct.	People v. Myers	Contempt	George Pulver, J. Convicted, reversed and dismissed	GC
2.	Ind. 11-100/C#080-11	People v. Myers	Richard M. Koweek, J.	CG County Ct. Criminal Contempt Convicted, reversed and dismissed	
3.	Ind. 13-163	People v. Myers	Richard M. Koweek		CG

County Ct. Criminal Contempt Convicted, reversed and dismissed by 3rd Dept. Appellate Department's #105650

4. 15CV553 Myers v. Bucca, et. al. (DNH/ATB) FDNY 42 USC § 1983 Malicious Prosecution Foundation of this civil case

5. 16-277 16-471 Myers v. Bucca, et. al. USDC FDNY Appeal of 15cv553 to 2nd Circuit CofA Failed to advance, renewed herein

6. 19020071 People v. Myers, GC Durham Town Court, Kennedy, J. Arrest for attending County Legislator's Public Meeting Case pending Parallel federal civil rights case below.

7. 20-2206 Myers v. Greene County, et. al., 2nd Circuit Federal COA from FDNY 19-cv-325 (LEK/CFH), Kahn, J. 1st Amendment access to government 42 USC § 1983 and false criminal complaint in 19020071 Pending in the 2nd Circuit COA

8. 902208-19 Myers v. County of Greene, Albany Co. SC, Walsh, J. Article 78 Injunctive Relief to prevent a new Greene County Jail Case failed, appeal to 3rd Dept. failed, NYS COA declined to hear appeal application by permission

9. 2018-0868 Scott Myers v. Ed Kaplan, GC SC, Fisher, J., a libel suit against Greene County Attorney Failed to advance

10. 2018-0789 Scott Myers v. Ed Kaplan, Shaun Groden, and Municipality of Greene County, GC SC, Fisher, J. A civil case to force compliance with FOIL demands Failed to advance

11. 2017-977 Scott Myers v. State Farm Insurance, GC SC, Fisher/Elliott III, J. Civil case to reimburse chattel

Denied by County S.C., denied by 3rd Appellate Div.

12. 2020-1014 Scott Myers v. Groden, et. al. Ulster S.C., Schreibman, J. Article 78 Prevent Demolition of 80 Bridge Street Failed to advance

13. 2020-495 Scott Myers v. Groden, et. al., Ulster S.C., Schreibman, J., Article 78 Restore Daily Mail as Paper of Record Failed to advance

14. 905464-19 Scott Myers v. Groden, et. al., Ulster S.C., Schreibman, J., Article 78 to prevent nepotism and follow rules

15. Committee on Professional Standards ("COPs") complaint against Greene County Attorney Ed Kaplan Filed June 2020 Suspended/superseded by this federal civil case

Matrimonial related

16. 41439-04 Bassile v. Myers, Kings Co. Matrimonial/S.Ct., Prus, J. Matrimonial Action for Divorce Divorce granted Myers jailed civilly for 6 months (without assignment of counsel)

17. 15-2482 Myers v. Fiala (DMV) McDonough Albany S.Ct. Article 78 Failed to restore Driver's License

18. 52221/F20983-04 Myers v. Bassile Fasone Kings Co. Family Court failed to modify child support

19. 15cv107 Myers v. Cavallo (BKS/ATB) FDNY, then 2nd Cir. CofA 42 USC § 1983 The suit failed against the divorce attorney Cavallo, without any reason or law cited.

20. 28 U.S.C. § 351(a) Myers v. Kimba Wood Complaint Against Judicial Officer filed August 13, 2009, in the 2nd Circuit COA against then Chief Judge of the Southern District Federal District Court Kimba Wood Demise: Hon. Sondra Sotomayor demoted Wood on showing that Wood was personally advantage by Chief Matrimonial Judge Jacqueline Silbermann and yet didn't recuse from Myers v. Silbermann, et. al, 08cv4592 (KMW) SDNY.

TABLE OF CONTENTS

JURISDICTION

Jurisdiction to this court occurred with the final en banc denial in the 2nd Circuit Court of Appeals. The 2nd Circuit denial was preceded by renewal motions.

No opposition ever argued that the case lacks federal questions, nor that thresholds aren't surpassed.

Subject Matter Jurisdiction for this federal 42 USC § 1983 civil rights matter is secured by the complete reversals on appeal and then the dismissals on consent in the county courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

All of the arrests and prosecutions are proven to be false arrests and malicious prosecutions by the reversals and dismissals of the lower court convictions.

These bad acts are encompassed in the 42 U.S.C. § 1983 statutory and case laws.

They certainly show a pattern of "habit and custom."

The brief incorporates the memorandum of law citing specific applicable law.

MEMORANDUM OF LAW

1) The case Boumediene v. Bush - 553 U.S. 723, 128 S. Ct. 2229 (2008) cleared normal immunities by suing the U.S. President Bush. The case decided against the government, which brought the same rights to people in our custody (citizen, non-citizen, in the U.S. or abroad) as our citizens here. I did not receive even those rights.

2) A most relevant and useful case is Cordova v. City of Albuquerque, 14-2083, USDC New Mexico. Hon. Neil Gorsuch, now a US Supreme Court judge, argues circuitously why Cordova should not receive benefits from 42 U.S.C. § 1983.

3) My case fits within Gorsuch's cut-outs. There was no legitimate probable cause, my cases are dismissed entirely and on the merits.

4) Unlike Gorsuch's comments in Cordova v. City of Albuquerque, No. 14-2083, 10th Circuit COA (also a 42 U.S.C. § 1983 civil rights case), my underlying causes were not dismissed for technical reasons. They are dismissed because it's not a crime to protect your family after terrorism, sic. the reversals were decided on the merits. I have no convictions.

5) In a related federal civil rights case, 19cv325 FDNY, Senior Federal District Court Hon. Lawrence Kahn concluded that Greene County, et. al. actively suppresses and exceeds thresholds of the U.S.C. Article 1, Access To Government.[6]

6) The acts satisfy legal threshold definitions of false arrest, malicious prosecution, *inter alia*, because **each claim is completely reversed and dismissed**.[7]

7) The abuse by the defendants likely vastly supersedes the various immunities since they occur outside the authority of their positions, and repeatedly.

8) The otherwise qualified and "absolute" immunities of these public officials are likely surpassed. They are state actors acting under the color of law. "The "sufficiently close nexus" of the state actor and the "private conduct," is

---

[6] Myers v. Greene County, et. al. 19cv0325, (LEK/CFH), FDNY Doc 17 The defendants arrested me on January 17, 2019 simply for attending the monthly public legislators meeting. Senior Judge Hon. Kahn agreed that I am denied access to government, a U.S.C. 1st Amendment right.

[7] TOTALS OF JAIL AND PRISON: I was arrested on Greene County Ind. 13-163 on August 8, 2013, incarcerated and held through trial without bail for 221 days. I was convicted on March 17, 2014, and sent to prison and released after 652 days. On April 5, 2018, the appellate court reversed, and on September 20, 2018, the case was dismissed. Total days from GC Ind. 11-163 are 1,714 days. Previously, Greene County caused GC Ind. 11-100, which was also reversed and dismissed on appeal. Total jail for 11-100 and 11-100/C#080-11 is 390 days. Greene County caused 2,102 days of incarceration since 9/11 2,282 days.
- 6 ¼ years - all matters are reversed and dismissed on appeal

self-referential and does not need to be conclusive. That is to say, the actions of the defendants are "under the color of law." These are government officials – the state actor and the private actor diminish any otherwise liability protections.[8]

9) Any reading of this record must conclude that the defendants knew they were harming my family, causing repeated force against us, and maliciously prosecuting victims of 9/11.

10) Over 20 arrests, jail, prison, repeated solitary confinement (by Seeley and Michael Spitz), handcuffs, Haines pointing his gun at me, *inter alia,* are acts a reasonable officer knows are harmful, which is as true for the non-officer defendants here.[9]

11) The defendants, Seeley and Spitz, are named "worst offenders" by the NYS Commission of Corrections.[10]

---

[8] https://law.justia.com/constitution/us/amendment-14/06-equal-protection-of-the-laws.html

[9] Cooper v. Flaig, 18-50499 (5th Cir. Oct. 8, 2019), 19-1001 (S.C.)defines Qualified Immunity thus: To overcome the qualified immunity defense, Appellees must show that the law was so clear, under circumstances reasonably analogous to those Flaig and Sanchez confronted, that no reasonable officer would have used the amount of force they used. See Brosseau v. Haugen, 543 U.S. 194, 201 (2004).

[10] Commission of Corrections Chair Thomas Beilein ranking Greene County Worst Offender http://www.scoc.ny.gov/pdfdocs/Problematic-Jails-Report-2-2018.pdf

12) During trials, my (ex)wife declined to provide "victim impact" statements. The record shows that ADA Ann Marie Rabin and defendant Probation Officer Laura Baeckman (as supervised by defendant Alan Frisbee and Glen Lubera) then wrote one themselves. Law prohibits victim statements by people other than the alleged victim.[11] Clare refused to cooperate with the prosecution of her partner, so they wrote a victim statement themselves.

13) I cannot protect my family from terrorism if the courts do not hold accountable bad acts by "officers of the court." Polk County v. Dodson, 454 U.S. 31 2, 102 S.Ct. 445 (1981) exempts a public defender from U.S.C.A. § 1983 civil rights claims on the concept that he is a private attorney. The public defender, Angelo Scaturro, was present as Stand-By counsel in the last trial, 13-163, and is not sued herein.

14) Defendant Charles Bucca persistently and maliciously prosecuted as Assistant District Attorney, but Bucca & Bucca was also the realtor for our property. Bucca was denied the position of District Attorney on this and other cases. The acts surpass Qualified Immunity because he acted outside his

---

[11] The law provides no method for any prosecutor to write or read a statement for a living "victim." See: CPL§§390.30, .50 2 (b) and 2 (f).

authority.

15) State Action.—The Fourteenth Amendment, by its terms, limits discrimination only by governmental entities, not by private parties.[12] As the Court has noted, "the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful."[13]

16) Although state action requirements also apply to other provisions of the Constitution[14] and federal governmental

---

[12] The Amendment provides that "[n]o State" and "nor shall any State" engage in the proscribed conduct. There are, of course, numerous federal statutes that prohibit discrimination by private parties. See, e.g., Civil Rights Act of 1964, Title II, 78 Stat. 241, 243, 42 U.S.C. §§ 2000a et seq. These statutes, however, are generally based on Congress's power to regulate commerce. See Katzenbach v. McClung, 379 U.S. 294 (1964); Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

[13] Shelley v. Kraemer, 334 U.S. 1, 13 (1948). "It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." Civil Rights Cases, 109 U.S. 3, 11 (1883).

[14] The doctrine applies to other rights protected of the Fourteenth Amendment, such as privileges and immunities and failure to provide due process. It also applies to Congress's enforcement powers under section 5 of the Amendment. For discussion of the latter, see Section 5, Enforcement, "State Action," infra. Several other constitutional rights are similarly limited—the Fifteenth Amendment (racial discrimination in voting), the Nineteenth Amendment (sex discrimination in voting) and the Twenty-sixth Amendment (voting rights for 18-year olds)—although the Thirteenth Amendment, banning slavery and involuntary servitude, is not.

actions,1341 the doctrine is most often associated with the application of the Equal Protection Clause to the states.[15]

17) THEREFORE, and for reasons replete in the record, I pray the Court reviews and then remands this case to the 2nd Circuit COA or directly to the New York Northern District Court for a trial to award compensation.

18) And for any other relief such that advances justice.

Respectfully,

Scott Myers

Scott Myers
39 West Bridge St.
Catskill, NY 12414
(518) 291-8169
scottmyers@mac.com

I swear under penalty of perjury that the foregoing is true and correct, November 13, 2020, 28 U.S. Code § 1746

[15] The scope and reach of the "state action" doctrine is the same whether a state or the National Government is concerned. See CBS v. Democratic Nat'l Comm., 412 U.S. 94 (1973).

STATEMENT OF THE CASE

On September 11, 2001, two large planes full of fuel and passengers exploded inside the World Trade Towers a block from my home. My family lived in a rent-controlled penthouse at 12 John Street since 1982. At the time my wife was on bed rest in her 7th month of pregnancy. Clare is of Middle Eastern heritage.

When we finally abandoned the home and neighborhood we moved to a small country home in Tannersville where Clare spent most of her summers.

We were almost immediately attacked by local law enforcement. The first event was from taking our daughter to the local hardware store. I was arrested for leaving her in the car (which was 10' away and always within sight).

The case was eventually dismissed by the Town of Hunter Hon. William Simon, but the emotional damage to Clare caused her to breakdown. At the urging of her mother and sisters, she hired counsel and sued for divorce.

Her counsel, Rose Ann Branda, was then the President of the Bar in Brooklyn. Clare's retainer contract gave "sole discretion" to Branda who was eventually paid $50,000.

The judge, Eric Prus, saw us as his first contested case. Prus ran unopposed on both party tickets. He was nominated by the Brooklyn Bar.

The seasoned attorney Branda began with a temporary order of protection ("tOP"), which the family court-approved and Prus renewed.

After granting the divorce Prus jailed me in The Tombs for 6 months for complaining that he was aiding terrorism and avoiding legal protections such as the assignment of counsel.

At no time was I represented by counsel. My formal motions for appointment of counsel were denied.

The tOP was used by Greene County to persistently threaten and harass myself and family, preventing the necessary safety we needed after 9/11.

Charles Bucca grew up in Tannersville and was the prosecuting Assistant District Attorney. Bucca and Bucca were

also the realtor/attorney for our home in Tannersville.

On February 14, 2010, Greene County Deputy Rowell arrested me in Tannersville. ADA Bucca prosecuted. Although charged with refusing to take a breath test the April 19, 2012 trial in Athens proved that Rowell was not licensed to operate his equipment, that he did not do field sobriety tests, and that he made up a false probable cause. Hon. Constance Pazen convicted without any evidence of alcohol or unsafe driving. I appealed. On April 22, 2014, Hon. Richard Koweek reversed Pazen. The record on appeal showed that Pazen used a script that pre-convicted: "We now find the defendant _____ guilty of _____."

Meanwhile, the defendants prosecuted county indictments 11-100 and 13-163. They did not need Clare's permission. She did not cooperate with them. Clare did appear at the jury trial for 13-163, but as my witness.

Suspecting a forced conclusion, I declined to voir dire the jury for 13-163. The trial judge, Hon. Richard Koweek, denied my motions for jury instruction. I asked to include significant case law that allowed violating orders of protection where danger existed, etc.

The pre-sentencing report ("PSI") prepared by defendant Baeckman, supervised by defendants Frisbee and Lubera, can only be described as evil.

Generally, sentencing allows the victim to speak. But at sentencing Baeckman read a statement that Clare did not write.[16] The sentencing statement was not signed.

Further, the trial record shows that Clare was not a witness at the Grand Juries. In short, the county prosecuted without her cooperation.

CONSEQUENCES

Our son Taylor (25) and our daughter Camryn (19) lack the co-parenting they need and deserve. My partner Clare Bassile is unable to feel safe in our own community.

I've personally lost the co-parenting, lost all of my property, lost income from my engineering career, and lost freedom for 6 ¼ years of jail and prison.

---

[16] 15-cv-00553-DNH-ATB Document 64-4

REASONS FOR GRANTING THE PETITION

The defendants improperly forced jail and prison on me and took away my family. They prayed on our vulnerability after 9/11.

I've certainly done my part defending these mind-numbing false charges. I removed the New York State Matrimonial Chief Judge Jacqueline Silbermann and her department (referencing the conclusions of their own report). I demoted Federal Southern District Chief Judge Kimba Wood. I removed Greene County Sheriff Richard Hussey, Greene County Sheriff Greg Seeley, and Jail Superintendent Michael Spitz.

I provoked the Alternatives To Incarceration ("ATI') committee, which met weekly 20 times.

I forced our jail to close on April 17, 2018, a result of FOILing 5 years of correspondence and reinforced by SCOC's report naming Greene County a worst offender.

To recover my family from terrorism, and the effects of these defendants, it's necessary to grant the petition and remand to the district court for trial on an award.

No other solution exists. I do this work because I have no other choice.

If this fails my family and I will not recover from terrorism.

Our children did nothing wrong.

CONCLUSION

THEREFORE, it's requested the court GRANT the writ and then return the matter to the 2nd Circuit COA or District Court with instructions to provide for trial on the award, otherwise, justice will not occur.

Very truly yours,

Scott Myers

Scott Myers
39 West Bridge St.
Catskill, NY 12414
(518) 291-8169
scottmyers@mac.com

I swear under penalty of perjury that the foregoing is true and correct, November 13, 2020, 28 U.S. Code § 1746

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

SCOTT MYERS,

Plaintiff,

-against- 1:19-CV-0325 (LEK/CFH)

THE MUNICIPALITY OF GREENE COUNTY, *et al.*,

Defendants.

MEMORANDUM-DECISION AND ORDER

I. INTRODUCTION

Pro se plaintiff Scott Myers brings this complaint against the Municipality of Greene County and individual defendants Shaun Groden, Ed Kaplan, Kira Pospesel, and Patrick Linger. Dkt. No. 1 ("Complaint"); 9 ("Amended Complaint"). After granting Plaintiff's motion for leave to proceed in forma pauperis ("IFP"), the Honorable Christian F. Hummel, U.S. Magistrate Judge reviewed the Amended Complaint under 28 U.S.C. § 1915(e)(2)(B) and recommended that the Court dismiss all of Plaintiff's claims. Dkt. No. 14 ("Report-Recommendation") at 26–28. Plaintiff objected. Dkt. No. 16 ("Objections"). For the reasons that follow, the Report-Recommendation is adopted in part and rejected in part.

II. BACKGROUND

A. The Report-Recommendation

The facts and allegations in this case were detailed in the Report-Recommendation, familiarity with which is assumed. In short, Plaintiff asserts that officials in Greene County—and particularly County Attorney Ed Kaplan—committed a variety of constitutional violations

against him, largely in response to his vociferous opposition to a proposed Greene County jail. See Generally Am. Compl. Plaintiff also repeatedly states that the September 11, 2001 attacks rendered his apartment in lower Manhattan uninhabitable, and suggests that Defendants have targeted him based on his status as an "internally displaced refugee." See Am. Compl. at 6; Obj. at 6.

Judge Hummel construed Plaintiff's Complaint and Amended Complaint[1] to assert the following claims: (1) False arrest, false imprisonment, and malicious prosecution claims against Kaplan; (2) First and Fourteenth Amendment claims against Kaplan based on Kaplan's denial of Plaintiff's Freedom of Information Law ("FOIL") requests; (3) First Amendment claims against Kaplan based on Kaplan's opposition to Plaintiff's applications for poor person relief; (4) First Amendment claims against Kaplan based on Kaplan's role in seeking an order of protection against Plaintiff and blocking Plaintiff's emails; (5) a claim that Kaplan "aided an eviction" of Plaintiff; (6) Unspecified constitutional claims under the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments against Groden, Kaplan, Pospesel, and Linger; and (7) a Monell claim against Greene County. R. & R. at 26–27.

Judge Hummel recommended dismissing with prejudice the First and Fourteenth Amendment claims against Kaplan based on the denial of Plaintiff's FOIL requests and the First Amendment claims against Kaplan based on the denial of Plaintiff's application for poor person relief. Id. at 26. Judge Hummel recommended dismissing all other claims without prejudice and with an opportunity to amend. Id. at 26–28.

B. Plaintiff's Objections

[1] As the Magistrate Judge noted, Plaintiff's Amended Complaint is not styled as an independent pleading. R. & R. at 6. In light of Plaintiff's pro se status, Judge Hummel considered the allegations in the Complaint and Amended Complaint collectively. Id.

Plaintiff filed his Objections on August 6, 2019. Objs. As a preliminary matter, these Objections were untimely. The Report-Recommendation advised Plaintiff that, as of the July 12, 2019 date of decision, he had fourteen days to file written objections, R. & R. at 28, and factoring in Plaintiff's pro se status, the Court set an objection deadline of July 29, 2019. However, given Plaintiff's pro se status, the Court will consider his Objections nonetheless. See Brown v. Outhouse, No. 07-CV-1169, 2009 WL 1652211, at *1 (N.D.N.Y. June 10, 2009) (considering pro se plaintiff's untimely objections); Garcia v. Griffin, No. 16-CV-2584, 2019 WL 4917183, at *3 (S.D.N.Y. Oct. 4, 2019) (same).

While Plaintiff's filing objects to several of the Magistrate Judge's recommendations, it also purports to narrow the scope of his claims and to add and drop defendants. Objs. at 1, 4, 8. Plaintiff also states, however, that "[a] modified complaint will be filed shortly." Id. at 3. Thus, the Court does not construe Plaintiff's Objections as a sort of objection-second amended complaint hybrid, but rather construes the filing as objections that preview a potentially forthcoming amended complaint. To date, Plaintiff has not filed a second amended complaint.

III. LEGAL STANDARD

A. § 1915 Review

When a plaintiff seeks to proceed IFP, "the court shall dismiss the case at any time" if the action: "(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B). Thus, even if a plaintiff meets the financial criteria to commence an action IFP, it is the court's responsibility to determine whether the plaintiff may properly maintain the complaint before permitting the plaintiff to proceed IFP. See id.

The Court must review pro se complaints liberally, see Nance v. Kelly, 912 F.2d 605, 606 (2d Cir. 1990) (per curiam), and should exercise "extreme caution . . . in ordering sua sponte

dismissal of a pro se complaint before the adverse party has been served and both parties (but particularly the plaintiff) have had an opportunity to respond." Anderson v. Coughlin, 700 F.2d 37, 41 (2d Cir. 1983) (internal citations omitted). Therefore, a court should not dismiss a complaint if the plaintiff has stated "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citing Twombly, 550 U.S. at 556). Although the Court should construe the factual allegations in the light most favorable to the plaintiff, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. (citing Twombly, 550 U.S. at 555). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged–but it has not 'show[n]'–'that the pleader is entitled to relief.'" Id. at 679 (quoting Fed. R. Civ. P. 8(a)(2)). Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555). Thus, a pleading that only "tenders naked assertions devoid of further factual enhancement" will not suffice. Id. (internal quotation marks and alterations omitted).

B. Report-Recommendation

Within fourteen days after a party has been served with a copy of a magistrate judge's report-recommendation, the party "may serve and file specific, written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b); L.R. 72.1(c). If objections are timely filed, a court "shall make a de novo determination of those portions of the report or

specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b). However, if no objections are made, or if an objection is general, conclusory, perfunctory, or a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error. Barnes v. Prack, No. 11-CV-857, 2013 WL 1121353, at *1 (N.D.N.Y. Mar. 18, 2013); Farid v. Bouey, 554 F. Supp. 2d 301, 306–07, 306 n.2 (N.D.N.Y. 2008), abrogated on other grounds by Widomski v. State Univ. of N.Y. at Orange, 748 F.3d 471 (2d Cir. 2014)). "Even a *pro se* party's objections to a Report and Recommendation must be specific and clearly aimed at particular findings in the magistrate's proposal." Machicote v. Ercole, No. 06-CV-13320, 2011 WL 3809920, at *2 (S.D.N.Y. Aug. 25, 2011). "A [district] judge . . . may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." § 636(b).

IV. DISCUSSION

A. Overview

In his Objections, Plaintiff states, "I'm focusing singularly on the access to government (1st Amendment)." Obj. at 1; see also id. at 4 ("To save court resources consistent with Judge Hummel's lead, I'm narrowing the complaint to just 'Access To Government' 1st Amendment issues[.]"). In line with this narrowed scope, Plaintiff's specific objections focus primarily on his First Amendment claims.[2] The Court reviews the Report-Recommendation's findings on these issues de novo. While Plaintiff's Objections also reference his other claims, these paragraphs are

[2] In addition to his Objections, Plaintiff submitted a 346-page compilation which, outside of a few pages of biographical material, consists almost entirely of documentation of Plaintiff's extensive, often acrimonious interactions with local officials and the state legal system. See generally Dkt. No. 16-1 ("Exhibits") (attaching, among other things, letters from Plaintiff to local officials and judges, courts records of criminal cases against Plaintiff, and orders of protection against Plaintiff).

copied nearly verbatim from his Amended Complaint, and thus the Court reviews the Magistrate Judge's findings on these issues for clear error. Barnes, 2013 WL 1121353, at *1 ("[I]f an objection is . . . a mere reiteration of an argument made to the magistrate judge, a district court need review that aspect of a report-recommendation only for clear error.").

The Court agrees with Judge Hummel's ultimate conclusion that all of Plaintiff's claims must be dismissed. However, the Court departs from Report-Recommendation's finding that several of Plaintiff's allegations are barred by Heck v. Humphrey, and instead dismisses these allegations for failure to state a claim. Additionally, the Court dismisses Plaintiff's First Amendment retaliation claim based on the denial of his FOIL request without—rather than with—prejudice.

B. False Arrest, False Imprisonment, and Malicious Prosecution

The Report-Recommendation construed the Complaint to bring claims of false arrest/imprisonment and malicious prosecution against Kaplan, it and recommended dismissing these claims without prejudice as barred by Heck v. Humphrey. R. & R. at 7–9. Plaintiff argues that Heck does not apply. Objs. at 4, 6.

1. Heck v. Humphrey

Under Heck, when a plaintiff who has an underlying conviction in state court seeks damages in a § 1983 suit, "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 v. Humphrey, 512 U.S. 477, 487 (1994). The Magistrate Judge recommended that, because it appeared the charges against Plaintiff remained pending, his

claims be dismissed as barred by Heck. R. & R. at 7–9.[3] Plaintiff's objections on this point are difficult to follow, and Plaintiff cites no case law in support. See Objs. at 4, 6. Nonetheless, Heck does not bar Plaintiff's claims.

"Heck bars a § 1983 claim based on an extant conviction, but it has no application to an anticipated future conviction." Stegemann v. Rensselaer Cty. Sheriff's Office, 648 F. App'x 73, 76 (2d Cir. 2016); see also Wallace v. Kato, 549 U.S. 384, 393 (2007) (refuting the argument that "an action which would impugn *an anticipated future conviction* cannot be brought until that conviction occurs and is set aside" and stating "[w]e are not disposed to embrace this . . . extension of Heck") (emphasis in original); McDonough v. Smith, 139 S. Ct. 2149, 2157 (2019) (noting that "some claims do fall outside Heck's ambit when a conviction is merely 'anticipated'").

2. Failure to State a Claim

Because Heck does not bar Plaintiff's claims, the Court considers whether Plaintiff has stated a claim for false arrest/imprisonment, or malicious prosecution. See 28 U.S.C. § 1915(e)(2)(B). He has not. Plaintiff's Complaint, Amended Complaint, and Objections include only the most conclusory of allegations which, even read together and liberally, are insufficient to state a claim.

First, while the unresolved criminal proceedings do not bar Plaintiff's complaint under Heck, they do prevent Plaintiff from pursuing a malicious prosecution claim. See Singer v. Fulton Cty. Sheriff, 63 F.3d 110, 118 (2d Cir. 1995) ("One element that must be alleged and

[3] While the Magistrate Judge noted that the status of the charges against Plaintiff was not entirely clear, Plaintiff's Objections confirm that the charges are still pending. Objs. at 4 ("My Motion to Dismiss for Speedy Trial failure, inter alia, is pending in the Town of Durham's Court.").

proved in a malicious prosecution action is termination of the prior criminal proceeding in favor of the accused.") (quoting Restatement (Second) of Torts § 653(b) (1977)).[4] The pending criminal charges do not, however, bar Plaintiff's false arrest and false imprisonment claims. See Weyant v. Okst, 101 F.3d 845, 853 (2d Cir. 1996) ("[W]hile the favorable termination of judicial proceedings is an element of a claim for malicious prosecution, it is not an element of a claim for false arrest.") (citation omitted).

The Court considers Plaintiff's false arrest and false imprisonment claims in tandem. See Singer, 63 F.3d at 118 ("The common law tort of false arrest is a species of false imprisonment."); Dale v. Kelley, 908 F. Supp. 125, 131 (W.D.N.Y. 1995) ("Although the complaint alleges both false arrest and false imprisonment, the two terms are virtually synonymous under New York law.") aff'd, 95 F.3d 2 (2d Cir. 1996). "The elements of a claim of false arrest under § 1983 are substantially the same as the elements of a false arrest claim under New York law." Singer, 63 F.3d at 11. "Under New York law, the elements of a false imprisonment claim are: (1) the defendant intended to confine [the plaintiff], (2) the plaintiff was conscious of the confinement, (3) the plaintiff did not consent to the confinement and (4) the confinement was not otherwise privileged." Id. (quotations omitted; alteration in original). "There can be no federal civil rights claim for false arrest where the arresting officer had probable cause." Id.

Here, Plaintiff has not plausibly alleged a lack of probable cause. Plaintiff's only allegations regarding the "pre-planned false arrest," Compl. at 1, are that "[t]he arrest was

[4] Plaintiff also fails to state a claim for malicious prosecution because Plaintiff has not sufficiently alleged there was a lack of probable cause, as discussed infra. Kilburn v. Vill. of Saranac Lake, 413 F. App'x 362, 364 (2d Cir. 2011) ("Probable cause is an absolute defense to a malicious prosecution claim under New York law.").

prearranged," and that "Mr. Kaplan directed what charge[s] were made, adding resisting arrest a day later," id. at 6; see also Am. Compl. at 8 ("Greene County per-planned [sic] an arrest of me at the January 16, 2019 Monthly County Legislature Meeting, charging me with disorderly conduct, and trespassing. I was arrested the next day off the street and taken to Cairo for arraignment where an additional charge of resisting arrest was added–presumably to raise the mischief to criminal."). These vague claims do not plausibly allege that there was a lack of "knowledge or reasonably trustworthy information sufficient to warrant a person of reasonable caution in the belief that an offense has been committed by the person to be arrested." Singer, 63 F.3d at 119. In a different section of his Amended Complaint, Plaintiff states, "The matter at hand flows naturally from the exploitation of my family's vulnerability from terrorism and is materialized by their blocking of email and eventually arresting me simply for attending the monthly legislature meeting." Am. Compl. at 5. While an arrest for simply attending a meeting could, if properly plead, very well lead to a valid claim, Plaintiff has simply not alleged "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft, 556 U.S. at 678 (2009).

Accordingly, the Court adopts the Magistrate Judge's recommendation that Plaintiff's false arrest, false imprisonment, and malicious prosecution claims be dismissed without prejudice.

C. FOIL

The Magistrate Judge recommended dismissing Plaintiff's First and Fourteenth Amendment FOIL claims against Kaplan with prejudice. R. & R. at 10–12.

The Court agrees that Plaintiff failed to allege that the denial of his FOIL requests directly violated his Fourteenth Amendment rights and that an amended complaint could not cure this claim's defects. See R. & R. at 11. "Courts in this District have repeatedly recognized that a

section 1983 action is not the proper vehicle for bringing a FOIL claim." Hall v. Benniger, No. 19-CV-85, 2019 WL 2477994, at *2 (N.D.N.Y. Mar. 4, 2019) (internal quotation marks omitted), report and recommendation adopted, No. 19-CV-85, 2019 WL 1760050 (N.D.N.Y. Apr. 22, 2019) (Kahn, J.). "Under New York state law, if an agency or government official fails to comply with the provisions of FOIL, the person submitting the FOIL request must pursue an administrative appeal or seek remedies in state court pursuant to N.Y. C.P.L.R. Article 78." Posr v. City of New York, No. 10-CV-2551, 2013 WL 2419142, at *14 (S.D.N.Y. June 4, 2013), aff'd sub nom. Posr v. Ueberbacher, 569 F. App'x 32 (2d Cir. 2014). Accordingly, Plaintiff's Fourteenth Amendment FOIL claim is dismissed with prejudice. See Butler v. Geico Gen. Ins. Co., No. 18-CV-1493, 2019 WL 330591, at *3 (N.D.N.Y. Jan. 25, 2019) ("[W]here the grounds for dismissal offer no basis for curing the defects in the pleading, dismissal with prejudice is appropriate.") report and recommendation adopted, No. 18-CV-1493, 2019 WL 652197 (N.D.N.Y. Feb. 15, 2019)

As the Report-Recommendation noted, however, Plaintiff also appears to allege that Kaplan "denied FOIL requests in retaliation for plaintiff's exercise of protected speech" in opposition to the county jail. R. & R. at 11; Am. Compl. at 6–7. Thus, the Court must also analyze whether Plaintiff's allegations state a First Amendment retaliation claim. To assert this, a plaintiff must allege: (1) that the speech or conduct at issue was protected, (2) that the defendant took adverse action against the plaintiff, and (3) that there was a causal connection between the protected speech and the adverse action." Dawes v. Walker, 239 F.3d 489, 492 (2d Cir. 2001), overruled on other grounds, Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002).

Plaintiff—whose Objections in support of his FOIL claims merely repeat arguments in his Amended Complaint, see Objs. at 6–7; Am. Compl. at 7—fails to state a First Amendment retaliation claim. He alleges that Kaplan "denied [his] legal FOIL requests" and that "the denial of FOILs here is strategic and harmful." Objs. at 6–7. Further, he assets that unlike most public institutions in which "someone [is] not gaming the FOIL requests[,] Mr. Kaplan choose [sic] to directly participate, which is the intent and the issue." Id. These conclusory allegations do not plausibly allege the requisite causal connection between the protected speech and the purported adverse action. Dawes, 239 F.3d at 492.

But it is not clear that Plaintiff would be unable to remedy these flaws in a second amended complaint. While § 1983 claims directly disputing denied FOIL requests are not permitted, see Hall, 2019 WL 2477994, at *2, it appears at least possible that the denial of a FOIL request can constitute a retaliatory act. In Murray v. Coleman, a plaintiff stated a First Amendment retaliation claim by alleging that the defendant retaliated against Plaintiff's protected speech by denying his FOIL request. 737 F. Supp. 2d 121, 126 (W.D.N.Y. 2010). In rejecting the defendant's contention that "the denial of a FOIL request . . . cannot, as a matter of law, present a constitutional violation," the Court explained that "plaintiff is not claiming that the First Amendment entitled him to disclosure of the records he requested through FOIL: rather, he asserts that [the defendant's] denial of his FOIL request was an unconstitutional act of retaliation for his exercise of his own First Amendment rights." Id.; see also Green v. Sears, No. 10-CV-121, 2013 WL 1081779, at *14 (N.D.N.Y. Feb. 19, 2013), report and recommendation adopted, No. 10-CV-121, 2013 WL 1081535 (N.D.N.Y. Mar. 14, 2013) (suggesting a retaliation claim could lie if there was "evidence of a causal connection between Plaintiff's protected First Amendment conduct . . . and the denial of his FOIL requests").