

APPENDIX A2

DLD-135

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3328

EL AEMER EL MUJADDID,
Appellant

v.

ANDREW BREWER; JOSH ROWBOTTOM; BRIAN FERGUSON; GREGG PERR;
SUSAN GRAUBART; COREY AHART; MARION KARP; DENNIS P. MCINERNEY;
WESTAMPTON TOWNSHIP COMMITTEE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 1-18-cv-14021)
District Judge: Honorable Robert B. Kugler

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

March 5, 2020

Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted for possible dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) and for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on March 5, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered October 4, 2019, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: April 9, 2020



Teste: *Patricia S. Dodszuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

APPENDIX A3

DLD-144

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 19-3329 and 19-3463

STATE OF NEW JERSEY

v.

EL AEMER EL MUJADDID,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 1-19-cv-17596)
District Judge: Honorable Robert B. Kugler

Submitted for Possible Summary Action Pursuant to Third Circuit LAR 27.4
and I.O.P. 10.6 and Possible Dismissal due to a Jurisdictional Defect

March 20, 2020

Before: RESTREPO, PORTER and SCIRICA, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted for possible summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6, and for possible dismissal due to a jurisdictional defect on March 20, 2020. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 20, 2019, be and the same hereby is affirmed at C.A. No. 19-3329. The appeal docketed at C.A. No. 19-3463 is dismissed for lack of appellate jurisdiction.

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

ATTEST:

s/ Patricia S. Dodszeuweit
Clerk

DATED: May 1, 2020



Teste: *Patricia S. Dodszeuweit*
Clerk, U.S. Court of Appeals for the Third Circuit

APPENDIX A4

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **19-3328**

EL AEMER EL MUJADDID,
Appellant

v.

ANDREW BREWER; JOSH ROWBOTTOM; BRIAN FERGUSON; GREGG PERR;
SUSAN GRAUBART; COREY AHART; MARION KARP; DENNIS P. MCINERNEY;
WESTAMPTON TOWNSHIP COMMITTEE

(D.C. No. 1-18-cv-14021)

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS and SCIRICA,* *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo
Circuit Judge

Dated: July 2, 2020
Lmr/cc: El Aemer El Mujaddid
John C. Gillespie

* Judge Scirica's vote is limited to panel rehearing only.

APPENDIX A5

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. Nos. **19-3329** & **19-3463**

STATE OF NEW JERSEY

v.

EL AEMER EL MUJADDID,
Appellant

(D.C. No. 1-19-cv-17596-001)

SUR PETITION FOR REHEARING

Before: SMITH, *Chief Judge*, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY, PHIPPS and SCIRICA,* *Circuit Judges*

The petition for rehearing filed by appellant in the above-entitled cases having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ L. Felipe Restrepo
Circuit Judge

Dated: July 2, 2020
Lmr/cc: El Aemer El Mujaddid

* Judge Scirica's vote is limited to panel rehearing only.



2019 Decisions

Opinions of the United
States Court of Appeals
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1-29-2019

In Re: El Aemer El Mujaddid

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APPENDIX 7

DLD-135

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3328

EL AEMER EL MUJADDID,
Appellant

v.

ANDREW BREWER; JOSH ROWBOTTOM; BRIAN FERGUSON; GREGG PERR;
SUSAN GRAUBART; COREY AHART; MARION KARP; DENNIS P. MCINERNEY;
WESTAMPTON TOWNSHIP COMMITTEE

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 1-18-cv-14021)
District Judge: Honorable Robert B. Kugler

Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B) or
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6

March 5, 2020

Before: RESTREPO, PORTER, and SCIRICA, Circuit Judges

(Opinion filed: April 9, 2020)

OPINION*

PER CURIAM

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

After receiving a traffic citation, Appellant El Aemer El Mujaddid filed suit in New Jersey Superior Court against the Westampton Township committee and several Westampton Township officers, administrators, and judges. The defendants removed the 285-paragraph complaint to the United States District Court for the District of New Jersey. After the District Court denied El Mujaddid's motion to remand the complaint to state court, El Mujaddid filed motions for appointment of counsel which were denied by the Magistrate Judge. He also filed a motion to amend his complaint. After the defendants moved to dismiss the initial removed complaint, El Mujaddid asked to withdraw the motion to amend and moved to file another amended complaint. The District Court dismissed the initial removed complaint as it did not comport with Federal Rule of Civil Procedure 8(a), an issue the Court raised sua sponte.¹ According to the District Court, the complaint did not contain a "short and plain statement of the claim," but instead alleged "legal conclusions, devoid of requisite factual support." El Mujaddid v. Brewer, No. 18-14021 (D.N.J. Apr. 1, 2019). The Court provided El Mujaddid 14 days to file a motion to amend the complaint consistent with Rule 8.

El Mujaddid filed a timely motion to amend the complaint with a proposed amended complaint. The proposed amendment repeated the same allegations that were made in the original complaint. Although the amended complaint, like the original complaint, is difficult to follow, El Mujaddid seems to have alleged that he was involved

¹ The Order also dismissed as moot El Mujaddid's motions for leave to file an amended complaint, motion for preliminary injunction, and motion for sanctions, as well as the defendants' motion to dismiss.

in an automobile accident with a third party not named in this suit. The named officers filled out a police report detailing the situation, which El Mujaddid claimed was inaccurate. Later, El Mujaddid received a traffic citation for careless driving based on the accident. Without any justifying details, El Mujaddid stated that the officers discriminated against him because of his ethnicity and falsified the reports. He further claimed that the officers did not have probable cause to issue the traffic citation, that they did not properly serve the citation, and that he was forced to appear before a municipal court based on allegedly false charges. El Mujaddid purported to make claims under 42 U.S.C. §§ 1983, 1985, and 1986, the First, Fourth, Thirteenth, and Fourteenth Amendments, the Civil Rights Acts of 1866 and 1875, the New Jersey Civil Rights Act, and the Constitution of New Jersey.

The District Court, noting that the proposed amended complaint did not cure the deficiencies addressed in the previous order, denied the motion to amend. El Mujaddid timely appealed. In this Court, he filed a motion for leave to file an overlength motion for summary action, a related motion for summary action, a motion for appointment of counsel, a motion for an injunction pending appeal, and two motions to consolidate.² For the reasons stated below, we will affirm the judgment of the District Court.

² In his first motion to consolidate, El Mujaddid sought to consolidate this appeal with two other appeals from cases arising from the same traffic citation but with different claims against different defendants. The Clerk granted the first motion in part and denied it in part, consolidating the other two appeals, but leaving this appeal to proceed separately. In the motion before us (for which El Mujaddid has submitted a “corrected version”), El Mujaddid seeks to consolidate this appeal with three other appeals, including the two already-consolidated appeals from the previous motion.

We have jurisdiction under 28 U.S.C. § 1291. We construe El Mujaddid's pro se allegations liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). We may summarily affirm on any basis supported by the record if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. We review both the District Court's dismissal of a complaint under Rule 8 and the denial of a motion to amend the complaint for abuse of discretion. See In re: Westinghouse Sec. Litig., 90 F.3d 696, 702 (3d Cir. 1996); Bechtel v. Robinson, 886 F.2d 644, 647 (3d Cir. 1989).

Rule 8(a) requires a pleading to contain "a short and plain statement of the grounds for the court's jurisdiction" and "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(1), (2). Each averment must be "simple, concise, and direct." Id. at 8(d)(1). "Taken together," Rules 8(a) and 8(d)(1) "underscore the emphasis placed on clarity and brevity by the federal pleading rules." In re: Westinghouse Sec. Litig., 90 F.3d at 702 (citation omitted). A district court may sua sponte dismiss a complaint for failure to comply with Rule 8 when the complaint is "so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." Simmons v. Abruzzo, 49 F.3d 83, 86 (2d Cir. 1995) (quotations omitted).

We agree with the District Court that El Mujaddid's original complaint was anything but "simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). It was so excessively voluminous and unfocused as to be unintelligible. In addition, despite the length of the complaint and proposed amendment, El Mujaddid did not plead any facts showing that he

was entitled to relief. See id. at 8(a)(2). Though he expressed displeasure at the alleged misinformation contained in the police report after his car accident and the traffic citation he was issued, there does not seem to be any indication in the complaint of a viable state or federal claim. We simply do not see any factual averments showing that the Westampton officials were engaged in race- or nationality-based discrimination, nor do we perceive any other constitutional violations based on the issuance of a traffic citation for careless driving or El Mujaddid's appearance before a municipal court. Though the complaint is replete with legal-sounding verbiage, it contains mostly conclusory statements with no factual bases.³ The District Court's dismissal of the original complaint was thus proper.

Moreover, the District Court did not abuse its discretion in denying El Mujaddid's motion to amend the complaint. The order denying the original complaint made clear that El Mujaddid was required to plead a short and plain statement of the claim, more than just legal conclusions and vague assertions. However, the proposed amended complaint did not cure the deficiencies noted in the order. In fact, El Mujaddid sought in his motion to amend to add three new defendants and another constitutional claim regarding the alleged suspension of his driver's license. The proposed amended complaint was not significantly more "simple, concise, and direct" than the original

³ For example, as the District Court noted, El Mujaddid claimed that he was "legally subjected to conditions of slavery," and that the defendants "conspired to frame him for careless driving in a conspiracy to deny him equal protection under the law because he is a Moor," engaged in a "Jim Crow revenue scheme to gain a... \$200.00 debt," and "distorted the even-handed pursuit of justice," all without factual support.

complaint. Fed. R. Civ. P. 8(d)(1). Over the course of the litigation, El Mujaddid attempted to file three different amended complaints, none of which were drafted in accordance with Rule 8. The District Court need not have entertained another complaint containing only meandering and conclusory allegations.

Accordingly, because this appeal presents no substantial question, we will affirm the judgment of the District Court.⁴ See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. El Mujaddid's motions for summary action,⁵ appointment of counsel, injunction pending appeal, and consolidation are denied.

⁴ El Mujaddid also appeals the denial of his motions for appointment of counsel and motion for reconsideration. Because El Mujaddid did not appeal those orders, issued by a Magistrate Judge, to the District Court, he has waived his right to object to them. See 28 U.S.C. § 636(b)(1); United Steelworkers of Am., AFL-CIO v. N.J. Zinc Co., 828 F.2d 1001, 1005 (3d Cir. 1987).

⁵ El Mujaddid's motion for leave to file an overlength motion for summary action is granted.

DLD-144

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 19-3329 and 19-3463

STATE OF NEW JERSEY

v.

EL AEMER EL MUJADDID,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 1-19-cv-17596)
District Judge: Honorable Robert B. Kugler

Submitted for Possible Summary Action Pursuant to Third Circuit LAR 27.4
and I.O.P. 10.6 and Possible Dismissal due to a Jurisdictional Defect

March 20, 2020

Before: RESTREPO, PORTER and SCIRICA, Circuit Judges

(Opinion filed: May 1, 2020)

OPINION*

PER CURIAM

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

On September 3, 2019, appellant El Aemer El Mujaddid filed a Notice of Removal pursuant to 28 U.S.C. § 1443(1), wherein he sought to remove to the United States District Court for the District of New Jersey what he characterizes as a “quasi criminal” case pending against him in the Gloucester City Municipal Court under Ticket No. E18-002499.¹ Because the criminal prosecution against El Mujaddid had been dismissed in the Gloucester City Municipal Court at the discretion of the prosecution on the same day the removal notice was docketed, the District Court denied the petition for removal and summarily remanded the case to the Gloucester City Municipal Court in an order entered on September 20, 2019. El Mujaddid filed a timely notice of appeal, and that appeal has been docketed at C.A. No. 19-3329.

El Mujaddid thereafter filed a motion in the District Court seeking leave to appeal that court’s remand order in forma pauperis (“IFP”). However, because the IFP application did not contain sufficiently precise information regarding El Mujaddid’s income or assets to permit the District Court to evaluate his financial eligibility, the court entered an order denying the IFP application without prejudice. The District Court advised El Mujaddid how to obtain a form application designed for pro se litigants that would ensure the inclusion of sufficient information to allow the court to make the necessary evaluation. The District Court further informed El Mujaddid that he was permitted to reapply for IFP status using the proper form. Rather than submit the appropriate form, El Mujaddid filed another notice of appeal. That appeal has been

¹ The Gloucester City Municipal Court case appears to have involved a traffic citation.

docketed at C.A. No. 19-3463. The two appeals have been consolidated for purposes of disposition.²

This Court may review a remand order in a case which was removed pursuant to 28 U.S.C. § 1443. See 28 U.S.C. § 1447(d). We exercise plenary review here. See Lazorko v. Pa. Hosp., 237 F.3d 242, 247 (3d Cir. 2000). Our Clerk advised El Mujaddid that the appeal was subject to summary action under Third Cir. LAR 27.4 and I.O.P. 10.6. The parties were invited to submit argument in writing and El Mujaddid has done so. We will summarily affirm the order of the District Court entered September 20, 2019, because no substantial question is presented by this appeal. See Third Circuit LAR 27.4 and I.O.P. 10.6.

As explained by the District Court, the removal permitted by 28 U.S.C. § 1443 is narrow. Removal under § 1443(1) is appropriate when a state court defendant “is being deprived of rights guaranteed by a federal law ‘providing for . . . equal civil rights’” and cannot enforce those rights in state court. Davis v. Glanton, 107 F.3d 1044, 1047 (3d Cir. 1997). While El Mujaddid asserted that this case involves, inter alia, the Civil Rights Act of 1964, he no longer had a criminal prosecution pending against him as the proceeding

² Insofar as El Mujaddid seeks review of the Clerk’s Order granting consolidation of these two appeals but denying his request to consolidate the appeals with C.A. No. 19-3328, we affirm the Clerk’s Order issued on November 18, 2019. The appeal docketed at C.A. No. 19-3328 is from a separate District Court action dismissing a complaint filed pursuant to, inter alia, 42 U.S.C. § 1983 against numerous defendants. See El Mujaddid v. Brewer, D.N.J. Civ. No. 18-cv-14021. We likewise reject El Mujaddid’s contention in his “corrected” motion that consolidation of these appeals with C.A. No. 18-3756 is appropriate. El Mujaddid’s mandamus action docketed at C.A. No. 18-3756 related to the civil action underlying C.A. No. 19-3328 and was disposed of back in January 2019.

in the Gloucester City Municipal Court had been dismissed in its entirety.³ We thus agree with the District Court's determination that a summary remand was appropriate. See 28 U.S.C. § 1455(b)(4) ("If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand.").

El Mujaddid's appeal from the District Court's order denying his motion for leave to proceed IFP in this proceeding will be dismissed for lack of jurisdiction. El Mujaddid is correct in his contention that, generally, an order denying IFP status is a "final, collateral order appealable under 28 U.S.C. § 1291." See Abdul-Akbar v. McKelvie, 239 F.3d 307, 311 (3d Cir. 2001). An order denying IFP status without prejudice, on the other hand, is not final and appealable if the order provides an opportunity to cure a defect. Redmond v. Gill, 352 F.3d 801, 803 (3d Cir. 2003). However, we need not comment on this distinction further in the instant case. The proper way to seek relief from the District Court's denial of leave to proceed IFP on appeal is to seek such leave directly from this Court. See Fed. R. App. P. 24(a)(5). El Mujaddid has sought and obtained such leave in C.A. No. 19-3329, so the issue is moot.

Given the foregoing, we will summarily affirm the District Court's order at issue in C.A. No. 19-3329 because the appeal presents no substantial issue, see Third Circuit

³ Moreover, El Mujaddid had an opportunity to litigate his complaint raising claims under, inter alia, 42 U.S.C. §§ 1983, 1985 and 1986, and the First, Fourth, Thirteenth and Fourteenth Amendments against numerous defendants stemming from events surrounding the same traffic citation after the case was removed to federal court. See El Mujaddid v. Brewer, et al., D.N.J. Civ. No. 18-cv-14021. An appeal from the District Court's dismissal of that action has been docketed in this Court at C.A. No. 19-3328.

LAR 27.4 and I.O.P. 10.6, and will dismiss the appeal at C.A. No. 19-3463 for lack of jurisdiction. El Mujaddid's motions for summary reversal, the appointment of counsel, and an injunction or expedited consideration are denied.

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

EL AEMER EL MUJADDID,

Plaintiff,

v.

ANDREW BREWER, *et al.*,

Defendants.

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Civil No. 18-14021 (RBK/AMD)

OPINION

Kugler, United States District Judge:

This matter is before the Court on Plaintiff El Aemer El Mujaddid's motion to remand and relief from judgment or order. (Doc. No. 4.) For the reasons below, Plaintiff's motions are **DENIED**.

I. BACKGROUND

The Third Circuit recently summarized the relevant facts in this matter. *See In re Mujaddid*, No. 18-cv-3756, 2019 WL 360052, at *1 (3d Cir. Jan. 29, 2019). As the Third Circuit explained, Plaintiff El Aemer El Mujaddid filed a complaint in the Superior Court of New Jersey, Law Division, Burlington County, against numerous defendants relating to a traffic citation he received. *Id.* Mujaddid alleged, among other things, causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his constitutional rights. *Id.* It appears that Mujaddid claimed his procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law. *Id.*

The matter was transferred to the Law Division, Camden County, in July 2018, and an amended complaint was filed on August 1, 2018. *Id.* Defendants Andrew Brewer, Josh Rowbottom, Brian Ferguson, Gregg Perr, Susan Graubert, Corey Ahart, Marion Karp, and Westampton Township (collectively, “removing Defendants”) removed the case to this Court on September 19, 2018 based on this Court’s original jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3). (Doc. No. 1-1.) The Notice of Removal did not mention whether Defendant Judge Dennis McInerney joined in or consented to the removal. *Id.* The Court thus issued an Order to Show Cause (Doc. No. 12) as to why removal was proper, and removing Defendants timely responded. (Doc. No. 14.)

Plaintiff now opposes the removal and asks the Court to remand the case to state court. (Doc. No. 4 (“Pl.’s Br.”).) Invoking Federal Rule of Civil Procedure 60, Plaintiff also asks this Court to “vacate the Order setting an initial conference for 10/23/2018,” which Magistrate Judge Donio entered on September 19, 2019. (Pl.’s Br. at 17.)

II. DISCUSSION

“The removability of a legal matter is determined from the plaintiff’s pleadings at the time of removal.” *Costa v. Verizon New Jersey, Inc.*, 936 F. Supp. 2d 455, 458 (D.N.J. 2013) (citing *Am. Fire & Cas. Co. v. Finn*, 341 U.S. 6, 14 (1951)). Under 28 U.S.C. § 1441(a), a defendant may remove an action filed in state court to that federal court with original jurisdiction over the action. Defendants bear the burden of showing that there is federal subject matter jurisdiction in an action removed to federal court under 28 U.S.C. § 1441. *See Samuel-Bassett v. KIA Motors Am., Inc.*, 357 F.3d 392, 396 (3d Cir. 2004).

Here, Defendants properly removed this matter based on the Court’s original jurisdiction. Despite Plaintiff’s assertions to the contrary, the Complaint raises causes of action asserting that

Plaintiff's civil rights were violated under the United States Constitution. For example, the caption of the removed Complaint notes that Plaintiff seeks relief under 42 U.S.C. §§ 1983, 1985, and 1986, and other portions of the document explicitly state that there have been violations of Plaintiff's "civil rights, including procedural due process, substantive due process, [and] equal protection rights," among other things. (Doc. No. 1-1, Ex. B at p. 4, 6 of 26.) Plaintiff also brings a *Monell* claim. (*Id.* at p. 21 of 26.) Indeed, the Third Circuit's recent decision in this matter confirms this Court's federal question jurisdiction. *See In re Mujaddid*, No. 18-cv-3756, 2019 WL 360052, at *1 (3d Cir. Jan. 29, 2019) (stating that Plaintiff alleged "causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his constitutional rights" as well as apparent claims that Plaintiff's "procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law").¹

Plaintiff's arguments in seeking remand fall flat. First, Plaintiff contends that the Court lacks diversity jurisdiction and that the amount in controversy requirement in diversity cases is not met. (Pl.'s Rep. Br. at 1). But such claims are of no moment because the removing Defendants properly removed this matter based on this Court's federal question jurisdiction.

Second, Plaintiff contends that remand is appropriate because Defendant Judge Dennis McInerney did not consent to the removal. (Pl.'s Rep. Br. at 1.) Although the rule of unanimity ordinarily requires all defendants to join in the removal petition, an exception arises "when a non-resident defendant has not been served at the time the removing defendants file their petition." *Lewis v. Rego Co.*, 757 F.2d 66, 68 (3d Cir. 1985). In response to the Court's Order to Show Cause on this issue, the removing defendants certified that Judge McInerney was not properly served in

¹ Insofar as Plaintiff asserts state law claims, they appear to arise from the same "common nucleus of operative fact," and are appropriate under this Court's supplemental jurisdiction. *See* 28 U.S.C. § 1367; *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966).

this case (Doc. No. 13), and thus need not join in the removal. Regardless, Plaintiff has waived any challenge on this issue, as he did not object to this alleged defect within 30 days of removal. *See Green Tree Servicing LLC v. Dillard*, 88 F. Supp. 3d 399, 401 n.2 (D.N.J. 2015) (“A violation of the rule of unanimity, however, constitutes a procedural defect subject to waiver if the plaintiff fails to object within 30 days.”). This matter was removed on September 19, 2018; Plaintiff, however, did not raise any rule of unanimity issue until he states that he discussed it with Magistrate Judge Donio “during the Joint Discovery Plan,” on October 23, 2018. (Doc. No. 6.) Nor did Plaintiff raise the alleged defect to this Court until Plaintiff filed his reply brief on October 29, 2018 in connection with his motion to remand. (Doc. No. 9.)

Third, Plaintiff contends that removal was not timely filed within 30 days after receipt of service by email and mail. (Pl.’s Br. at 7; *see also* Pl.’s Rep. Br. at 1); 28 U.S.C. § 1446(b)(1). In support of this contention, Plaintiff alleges that he served hard copies of the required papers by mail to an individual named George Saponaro, whose website states that he is the Solicitor of Westampton Township. (Pl.’s Br. at 6.) But aside from the fact that Plaintiff does not specify when this alleged service occurred, the removing Defendants have certified that Mr. Saponaro is not the Westampton Solicitor and has not represented the Township since 2015. (Def.’s Br. at Ex. A.) Thus, Mr. Saponaro is not a proper party to receive service on the Township’s behalf.

In further support of his claim that removal was not timely, Plaintiff contends that an uninterested party sent “hard copy and email service” to the New Jersey Division of Law on behalf of several defendants. (Pl.’s Br. at 7.) According to the page in the record that Plaintiff cites in making that assertion, the third party served those documents by mail on August 27, 2018. (Doc. No. 1-1, Ex. C.) And according to the attachment to the removing defendants’ brief, the email to Saponaro occurred on August 21, 2018. (Defs.’ Br. at Ex. B.) Even assuming that service on the

New Jersey Division of Law and email service to Saponaro was proper, the corresponding removal on September 19, 2019 still fell within 30 days of both dates. Thus, the removal was not untimely.

Finally, Plaintiff claims that removal is not proper because “this matter is not solely nor generally an action brought under the Civil Rights Acts,” but instead, “the caption of the complaint clearly provides that this is an Action in Lieu of Prerogative Writs” under state law. (Pl.’s Br. at 3–4.) But as the Third Circuit’s decision recently recognized, Plaintiff asserts violations of federal law, and thus presents a matter removable based on this Court’s federal question jurisdiction.

III. CONCLUSION

For the foregoing reasons, Plaintiff’s motion to remand is **DENIED**. Plaintiff’s additional request that this Court vacate Judge Donio’s Order of September 19, 2018 setting an initial conference for October 23, 2018 (Doc. No. 2) under Federal Rule of Civil Procedure 60 is **DENIED AS MOOT**.

Dated: 2/27/2019

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

APPENDIX 10

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

	:	
El Aemer El MUJADDID,	:	
Plaintiff,	:	
v.	:	Civil No. 18-14021 (RBK/AMD)
Andrew BREWER, Josh ROWBOTTOM, <i>et</i>	:	ORDER
<i>al.</i>	:	
Defendants.	:	

THIS MATTER comes before the Court on its own motion in receipt of the Plaintiff's Complaint (Doc. No. 1-1), and

IT APPEARING TO THE COURT Plaintiff's 285-paragraph single-spaced Complaint alleges various state and constitutional claims arising out of a traffic violation. Plaintiff claims Defendants "treated him differently than non-Moor or non-Muslim American persons accused of a violation." *Id.* Plaintiff then alleges various violations under the First, Fourth, Thirteenth, and Fourteenth Amendments of the United States Constitution, and various federal and state statutes; and

THE COURT NOTING that the Federal Rules of Civil Procedure require that a complaint "shall contain . . . a **short and plain statement** of the claim showing that the pleader is entitled to relief . . ." Fed. R. Civ. P. 8(a). Such factual allegations in a proper complaint "must be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); and

THE COURT NOTING FURTHER that pro se complaints, while held to a less stringent standard than those drawn by legal counsel, may be dismissed under rule 8(a). *Tillio v. Spiess*, 441 Fed.Appx. 109, 110 (3d Cir. Aug. 4, 2011). Obviously, there must be a limit to the indulgence of the law and the resultant imposition on the defendants in these suits, and complaints have been dismissed under Rule 8(a) where they were found to be “a labyrinthian prolixity of unrelated and vituperative charges that defied comprehension,” *Prezzi v. Schelter*, 469 F.2d 691 (2nd Cir. 1972); “a euphoric harassment of (the defendants) . . . (t)otally obfuscated . . . (i)mpossible for any party or court to understand plaintiff’s alleged claim or damage,” *Koll v. Wayzata State Bank*, 397 F.2d 124 (8th Cir. 1968); “confusing, ambiguous, redundant, vague and, in some respects, unintelligible,” *Wallach v. City of Pagedale*, 359 F.2d 57 (8th Cir. 1966); and “so verbose, confused and redundant that its true substance, if any, is well disguised,” *Corcoran v. Yorty*, 347 F.2d 222 (9th Cir. 1965); and

THE COURT FINDING that Plaintiff’s Complaint alleges legal conclusions, devoid of requisite factual support, and therefore fails to comply with the Federal Rules of Civil Procedure. *See* Federal Rule 8(a)(2) (Plaintiff must provide “a short and plain statement of the claim showing that the pleader is entitled to relief.”) The 285-paragraphs include long and meandering legal conclusions and general and vague assertions. The font size and spacing also makes the document generally difficult to follow. *See* L. Rule 7.2(b) (“Typeface shall be in 12-point non-proportional font (such as Courier New 12) or an equivalent 14-point proportional font (such as Times New Roman 14).”)

IT IS HEREBY ORDERED that the complaint is **DISMISSED**. Plaintiff **has fourteen (14)** **days to file a Motion to Amend the Complaint** consistent with Rule 8 and this Order.

IT IS HEREBY ORDERED FURTHER that Plaintiff's Motion for Leave to File an Amended Complaint is **DISMISSED AS MOOT** (Doc. Nos. 20 and 25). Plaintiff's Motion for Preliminary Injunction is **DISMISSED AS MOOT** (Doc. No. 24). Plaintiff's Motion for Sanctions (Doc. No. 32) is **DISMISSED AS MOOT**. Defendants' Motion to Dismiss (Doc. No. 22) is **DISMISSED AS MOOT**. Defendants' Motion for Extension of Time to File an Answer (Doc. No 8) is **DISMISSED AS MOOT**.

Dated: 4/1/2019

s/ Robert B. Kugler

ROBERT B. KUGLER

United States District Judge

APPENDIX 11

[D.I. 14]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EL AEMER EL MUJADDID,

Plaintiff,

v.

ANDREW BREWER, et al.,

Defendants.

Civil No. 18-14021 (RBK/AMD)

ORDER

This matter comes before the Court by way of motion of *pro se* Plaintiff El Aemer El Mujaddid (hereinafter, "Plaintiff") for the appointment of *pro bono* counsel pursuant to 28 U.S.C. § 1915(e)(1). (See Motion for Appointment of Counsel Pursuant to 28 U.S.C. § 1915(d)¹ (hereinafter, "Pl.'s Mot.") [D.I. 14], Feb. 21, 2019.) Defendants oppose the motion. (See Memorandum in Opposition [D.I. 18], Mar. 1, 2019.) The Court has considered Plaintiff's submission and decides the matter pursuant to Federal Rule of Civil Procedure 78(b).

"Indigent civil litigants possess neither a constitutional nor a statutory right to appointed counsel." *Montgomery v. Pinchak*,

¹ While Plaintiff cites to 28 U.S.C. § 1915(d), the Court notes that the proper provision governing appointment of *pro bono* counsel for indigent litigants is § 1915(e)(1).

294 F.3d 492, 498 (3d Cir. 2002). Indeed, under 28 U.S.C. § 1915, Congress has only granted district courts the statutory authority to “request” that attorneys represent an indigent individual in a civil matter. *Id.* (citing 28 U.S.C. § 1915(e)(1)). This grant is interpreted as providing the courts with “‘broad discretion’ to determine whether appointment of counsel in a civil case would be appropriate.” *Id.* (citing *Tabron v. Grace*, 6 F.3d 147, 153 (3d Cir. 1993), *cert. denied*, 510 U.S. 1196 (1994)). “As a threshold matter, a court must assess” the merits of a plaintiff’s case. *Id.* at 498. If a court finds that there is sufficient and factual merit to a claim, the court next turns to the factors set forth in *Tabron v. Grace* to assess whether appointment of *pro bono* counsel is warranted. *Id.* at 499.²

Here, the District Court dismissed Plaintiff’s complaint with leave to file a motion to amend the complaint. (See Order [D.I. 33], Apr. 1, 2019, p. 2 on the docket.) Consequently, at this time, a threshold determination cannot be made as to the merits of Plaintiff’s complaint, and the Court will deny Plaintiff’s motion [D.I. 14] without prejudice.

²These factors include: (1) the movant’s ability to present his or her own case; (2) the difficulty or complexity of the legal issues involved in the case; (3) the degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation; (4) whether and to what extent the case is likely to turn on credibility determinations; (5) whether expert testimony will be required in presenting the case; and (6) whether the movant is able to retain and afford counsel on his or her own behalf. *Tabron*, 6 F.3d at 156-157.

For the reasons set forth herein, and for good cause shown:

IT IS on this **2nd** day of **April 2019**,

ORDERED that Plaintiff's motion for *pro bono* counsel [D.I. 14] shall be, and is hereby, **DENIED WITHOUT PREJUDICE**.

s/ Ann Marie Donio

ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler

APPENDIX 12

[D.I. 37]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EL AEMER EL MUJADDID,

Plaintiff,

v.

ANDREW BREWER, et al.,

Defendants.

Civil No. 18-14021 (RBK/AMD)

ORDER

This matter comes before the Court by way of motion of *pro se* Plaintiff El Aemer El Mujaddid (hereinafter, "Plaintiff") for the appointment of *pro bono* counsel pursuant to 28 U.S.C. § 1915(e)(1). (See Motion to Appoint Pro Bono Counsel (hereinafter, "Pl.'s Mot.") [D.I. 37], Apr. 8, 2019.) Defendants oppose the motion. (See Memorandum in Opposition [D.I. 38], Apr. 22, 2019.) The Court has considered Plaintiff's submission and decides the matter pursuant to Federal Rule of Civil Procedure 78(b).

On April 1, 2019, the District Court dismissed the complaint finding that "Plaintiff's Complaint alleges legal conclusions, devoid of requisite factual support, and therefore fails to comply with the Federal Rules of Civil Procedure." (Order [D.I. 33].) In the same Order, the District Court granted Plaintiff

fourteen days to refile a motion to amend the complaint. (*Id.*) On April 8, 2019, Plaintiff filed a motion to amend. (Mot. to Amend [D.I. 36].) That motion is currently pending before the District Judge.

"Indigent civil litigants possess neither a constitutional nor a statutory right to appointed counsel." *Montgomery v. Pinchak*, 294 F.3d 492, 498 (3d Cir. 2002). Indeed, under 28 U.S.C. § 1915, Congress has only granted district courts the statutory authority to "request" that attorneys represent an indigent individual in a civil matter. *Id.* (citing 28 U.S.C. § 1915(e)(1)). This grant is interpreted as providing the courts with "'broad discretion' to determine whether appointment of counsel in a civil case would be appropriate." *Id.* (citing *Tabron v. Grace*, 6 F.3d 147, 153 (3d Cir. 1993), *cert. denied*, 510 U.S. 1196 (1994)). "As a threshold matter, a court must assess" the merits of a plaintiff's case. *Id.* at 498. If a court finds that there is sufficient and factual merit to a claim, the court next turns to the factors set forth in *Tabron v. Grace* to assess whether appointment of *pro bono* counsel is warranted. *Id.* at 499.¹

¹These factors include: (1) the movant's ability to present his or her own case; (2) the difficulty or complexity of the legal issues involved in the case; (3) the degree to which factual investigation will be required and the ability of the indigent plaintiff to pursue such investigation; (4) whether and to what extent the case is likely to turn on credibility determinations; (5) whether expert testimony will be required in presenting the case; and (6) whether the movant is able to retain and afford counsel on his or her own behalf. *Tabron*, 6 F.3d at 156-157.

The Court shall deny Plaintiff's motion to appoint counsel [D.I. 37] without prejudice in light of the District Court's dismissal order. As set forth in the Court's previous Order addressing Plaintiff's motion for *pro bono* counsel [D.I. 14], "at this time, a threshold determination cannot be made as to the merits of Plaintiff's complaint[.]" (Order [D.I. 35], Apr. 2, 2019.)

For the reasons set forth herein, and for good cause shown:

IT IS on this **8th** day of **August 2019**,

ORDERED that Plaintiff's motion for *pro bono* counsel [D.I. 37] shall be, and is hereby, **DENIED WITHOUT PREJUDICE**.

s/ Ann Marie Donio

ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler

APPENDIX 13

[D.I. 47]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

EL AEMER EL MUJADDID,

Plaintiff,

v.

ANDREW BREWER, et al.,

Defendants.

Civil No. 18-14021 (RBK/AMD)

ORDER

This matter comes before the Court by way of motion [D.I. 47] seeking relief from "8/8/2019 Order Denying Pro Bono Counsel and from heightened pleading standard applied to civil rights claims pursuant to Rule 60(B) and the Inherent Authority of the Court; and Motion For Appointment Of Counsel[.]" (Pl.'s Mot. [D.I. 47], Sept. 3, 2019.) The Court construes this motion as a motion for reconsideration of the Court's Order of August 8, 2019 [D.I. 45]. As set forth in the Court's Order of August 8, 2019, the District Court dismissed Plaintiff's complaint on April 1, 2019. (Order [D.I. 45] (citing Order [D.I. 33], Apr. 1, 2019.)) Subsequently, Plaintiff filed a motion to amend on April 8, 2019, [D.I. 36], which is currently pending before the District Court. Consequently, at this time, in light of the District Court's

dismissal Order and the pending motion to amend, the Court cannot address any application for *pro bono* counsel. Thus, there is no basis for reconsideration.¹ Consequently, the Court having considered the matter pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth herein, and for good cause shown:

IT IS on this **5th** day of **September 2019**,

ORDERED that Plaintiff's motion for reconsideration [D.I. 47] shall be, and is hereby, **DENIED WITHOUT PREJUDICE**.

s/ Ann Marie Donio

ANN MARIE DONIO
UNITED STATES MAGISTRATE JUDGE

cc: Hon. Robert B. Kugler

¹ Moreover, Local Civil Rule 7.1 requires that a motion for reconsideration "be served and filed within 14 days of entry of the order or judgment on the original motion by the . . . Magistrate Judge." L. Civ. R. 7.1(i). Rule 7.1 also provides that a party moving for reconsideration must set forth "concisely the matter or controlling decisions which the party believes" the Court "overlooked" in its prior decision. *Id.* "[A] party seeking reconsideration must satisfy a high burden, and must rely on one of three grounds: (1) an intervening change in controlling law; (2) the availability of new evidence not available previously; or (3) the need to correct a clear error of law or prevent manifest injustice." *Tucker v. Hewlett-Packard, Inc.*, No. 14-4699, 2017 WL 9362563, at *1 (D.N.J. Dec. 5, 2017) (citation omitted). Plaintiff does not assert that there has been an intervening change in controlling law, that new evidence is available that was not available previously, nor that there is a need to correct a clear error of law or prevent manifest injustice. Further, the Court finds no basis to support reconsideration.

APPENDIX 14

NOT FOR PUBLICATION

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
CAMDEN VICINAGE**

NEW JERSEY,

Plaintiff,

v.

El Aemer EL MUJADDID,

Defendant.

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Civil No. 19-17596 (RBK/AMD)

ORDER

KUGLER, United States District Judge:

THIS MATTER having come before the Court on Defendant El Aemer El Mujaddid's September 3, 2019 Notice of Removal (Doc. No. 1), petitioning to remove a criminal case pending in the Gloucester City Municipal Court under Ticket No. E18-002499 pursuant to 28 U.S.C. § 1443(1) (*id.* at ¶¶ 1, 46–47); and

THE COURT NOTING that 28 U.S.C. § 1443(1) permits the removal of state court criminal prosecutions to federal district court when the prosecution is pending “[a]gainst any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of the United States, or of all persons within the jurisdiction thereof;” and

THE COURT NOTING that “the filing of a notice of removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further,” 28 U.S.C. § 1455(b)(3); and

THE COURT NOTING that “[t]he United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any

exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand,” 28 U.S.C. § 1455(b)(4); and

THE COURT NOTING that on September 3, 2019, this criminal prosecution was dismissed in the Gloucester Municipal Court at the discretion of the prosecution (Doc. No. 3);

THE COURT FINDING that as the criminal prosecution Defendant seeks to remove to this Court has been dismissed, it is not “pending” as required by 28 U.S.C. § 1443(1); and

THE COURT FINDING that as the requirements of 28 U.S.C. § 1443(1) are not met, the Court must remand this case in compliance with 28 U.S.C. § 1455(b)(4); and

IT IS HEREBY ORDERED that Defendant’s petition for removal of the State criminal case, pursuant to 28 U.S.C. § 1443(1) is **DENIED**; that this case is **REMANDED** to the Gloucester City Municipal Court, Ticket No. E18-002499; and that the Clerk of Court shall close this case.

Dated: 09/20/2019

/s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

IT IS HERBY ORDERED that Defendant's Application (Doc. No. 6) is **DENIED** without prejudice; Defendant may reapply to proceed IFP using the form described above.

Dated: 10/16/2019

s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

careless driving has resulted in violations of the First, Fourth, Thirteenth, and Fourteenth Amendments of the United States Constitution, as well as various federal and state statutes; and

THE COURT OBSERVING that despite Plaintiff's inclusion of a fact section in his proposed amended Complaint, the numerous allegations throughout his proposed amended Complaint appear in the form of legal conclusions without requisite factual support;¹ and

THE COURT NOTING that Fed. R. Civ. P. 8(a) demands that factual allegations "be enough to raise a right to relief above the speculative level," *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007); and

THE COURT FURTHER NOTING that pro se complaints, while held to a less stringent standard than those drafted by legal counsel, may be dismissed under rule 8(a), *Tillio v. Spiess*, 441 Fed.Appx. 109, 110 (3d Cir. Aug. 4, 2011), particularly where, as here, a complaint is "confusing, ambiguous, redundant, vague and, in some respects, unintelligible," *Wallach v. City of Pagedale*, 359 F.2d 57 (8th Cir. 1966); and

THE COURT FINDING that none of Plaintiff's proposed amendments cure the Fed. R. Civ. P. 8 deficiencies addressed in the April 2019 Order;

IT IS HEREBY ORDERED that Plaintiff's motion to amend is **DENIED**.

Dated: 10/4/2019

s/ Robert B. Kugler
ROBERT B. KUGLER
United States District Judge

¹ For example, Plaintiff claims that Defendants "fabricated evidence" and "used the threat of prosecution for the purpose of extortion" (§9), "conspired to frame him for careless driving in a conspiracy to deny him equal protection under the law because he is a Moor" (§10), engaged in a "Jim Crow revenue scheme to gain a [] \$200.00 debt" (§10), and states that Defendants "distorted the even-handed pursuit of justice" (§11), all without requisite factual support.

APPENDIX 16

PLAINTIFFS EXHIBIT "A"

APPENDIX 16

Form 13
RECORDER FROM: Municipal Record Service (800) 596-2444 Subpoena to Testify

MUNICIPAL COURT OF
☒ Westampton ☐ Eastampton ☐ Hainesport
Telephone: (609) 267-1895

State of New Jersey to:
Name: Elance A EL-Mujaddid
Street: 25 Nutcrack Lane
City-State: Willingboro NJ 08011
Home Telephone: 609 379-1464
Business Telephone: _____

You are commanded to appear in the above court at
710 Rancocas Road, Westampton, NJ 08060
in Burlington County, New Jersey, on
The 12th day of July 2018
at 0730 (AM/PM) to testify on behalf of the State
in the case of State vs. EL-Mujaddid
Testimony for Officer Alice (Fin)
(Complaint No. EL-3459). You are commanded
to appear without prepayment of witness fee. For failure
to obey this subpoena you may be held in criminal con-
tempt and a warrant may be issued for your arrest.

I issued the subpoena and served the same upon the
above named witness on 7th June 2018
[Signature] 42747
Signature and Identification of Officer

NOTE: PLEASE CONTACT THE COURT PRIOR TO YOUR SCHEDULED
DATE TO CONFIRM YOUR COURT APPEARANCE (609) 267-1895.

Witness Copy -Fes: (White) Court Copy -Second (Yellow) Officer's Copy -Third (Red)

APPENDIX A1

ALD-077

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3756

IN RE: EL AEMER EL MUJADDID,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to D.N.J. Civ. No. 18-cv-14021)

Submitted Pursuant to Rule 21, Fed. R. App. P.
January 17, 2019
Before: MCKEE, SHWARTZ and BIBAS, Circuit Judges

JUDGMENT

This cause came to be considered on a petition for writ of mandamus submitted on January 17, 2019. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the petition for writ of mandamus be, and the same is, denied. All of the above in accordance with the opinion of the Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: January 29, 2019



A True Copy:

Patricia S. Dodszuweit

Patricia S. Dodszuweit, Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 18-3756

IN RE: EL AEMER EL MUJADDID,
Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the District of New Jersey
(Related to D.N.J. Civ. No. 18-cv-14021)

Submitted Pursuant to Rule 21, Fed. R. App. P.
January 17, 2019
Before: MCKEE, SHWARTZ and BIBAS, Circuit Judges

(Opinion filed: January 29, 2019)

OPINION*

PER CURIAM

On July 12, 2018, petitioner El Aemer El Mujaddid filed a complaint in the Superior Court of New Jersey, Law Division, Burlington County, against numerous defendants relating to a traffic citation he had received. Mujaddid alleged, inter alia, causes of action under 42 U.S.C. §§ 1983, 1985, and 1986 for the deprivation of his

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

constitutional rights. It appears that Mujaddid claimed his procedural and substantive due process rights had been violated, and that his arrest and criminal prosecution violated federal law. The matter was transferred to the Law Division, Camden County, in July 2018, and an amended complaint was filed on August 1, 2018. The named defendants thereafter removed the case to federal court the following month pursuant to 28 U.S.C. § 1441, on the basis of the District Court's original jurisdiction under 28 U.S.C. §§ 1331 and 1343(a)(3).

Mujaddid opposes the removal and filed a motion in the District Court on October 15, 2018, seeking to have the matter remanded to the Superior Court of New Jersey, Law Division, Camden County. An initial scheduling conference was held on October 23, 2018, before the Magistrate Judge to whom the matter was referred. While the defendants filed a statement of material facts in response to Mujaddid's remand motion on October 24, 2018, they sought an extension of time to file an answer or otherwise plead on October 26, 2018. Mujaddid filed a response in opposition to the defendants' motion. A telephone status conference was conducted by the Magistrate Judge on November 28, 2018. There does not appear to have been any further action in the case since that time.

Approximately three weeks after the status conference, Mujaddid filed the instant petition for writ of mandamus and prohibition seeking to compel the District Court to remand the matter to state court, to prohibit it from "proceeding" any further, and to

impose sanctions on the defendants and defense counsel. Additionally, Mujaddid seeks an award of monetary damages from the assigned District Court Judge and Magistrate Judge “under the Bivens doctrine” for what he claims are injuries suffered as a result of various violations of his constitutional rights as a result of the manner in which District Court Judge and Magistrate Judge have handled the removal action. See Pet. at 3-4. For the reasons that follow, we will deny the petition.

While Mujaddid characterizes his filing as both a petition for a writ of mandamus and prohibition, the same standard applies regardless of how the petition is viewed. See United States v. Santtini, 963 F.2d 585, 593-94 (3d Cir. 1992) (noting that the requirements are the same for obtaining either writ); In re Sch. Asbestos Litig., 921 F.2d 1310, 1313 (3d Cir. 1990) (explaining that “the form is less important than the substantive question of whether an extraordinary remedy is available”) (internal quotations omitted).¹ Mandamus is a drastic remedy that is granted only in extraordinary cases. In re Diet Drugs Prods. Liab. Litig., 418 F.3d 372, 378 (3d Cir. 2005). Generally, mandamus is a “means ‘to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.’” United States v. Christian, 660 F.2d 892, 893 (3d Cir. 1981) (quoting Roche v. Evaporated Milk Ass’n, 319 U.S. 21, 26 (1943)). To demonstrate that mandamus is appropriate, a

¹ We have explained that “a writ of mandamus may appear more appropriate when the request is for an order mandating action, and a writ of prohibition may be more accurate when the request is to prohibit action[.]” In re Sch. Asbestos Litig., 921 F.2d at 1313.

petitioner must establish that he has “no other adequate means” to obtain the relief requested, and that he has a “clear and indisputable” right to issuance of the writ.

Madden v. Myers, 102 F.3d 74, 79 (3d Cir. 1996).

Although Mujaddid’s petition is far from a model of clarity, it is clear that he has no “indisputable” right to issuance of a writ compelling the District Court to remand the matter to state court. As set forth in 28 U.S.C. § 1441, the district courts are tasked with determining, in the first instance, whether an action was properly removed. Additionally, this Court’s jurisdiction over District Court orders remanding removed cases to state court is constrained by 28 U.S.C. § 1447(d). In the instant case, moreover, the District Court has not yet entered an order on Mujaddid’s remand motion. Even if we were to liberally construe Mujaddid’s petition as challenging the delay he has experienced in having his remand motion disposed of, we would conclude that mandamus relief is not warranted.

Although a District Court has discretion over the management of its docket, see In re Fine Paper Antitrust Litig., 685 F.2d 810, 817-18 (3d Cir. 1982), a federal appellate court “may issue a writ of mandamus on the ground that [the District Court’s] undue delay is tantamount to a failure to exercise jurisdiction.” Madden, 102 F.3d at 79. The defendants responded to Mujaddid’s remand motion at the end of October 2018, and the Magistrate Judge conducted a status conference in November 2018. Thus, little more than two to three months have lapsed since the motion has been ripe for disposition. We