N.D.N.Y.
20-cv-505
20-cv-506
20-cv-536
Baxter, M.J.
20-cv-517
Hurd, J.
Baxter, M.J.
20-cv-638
McAvoy, J.
Baxter, M.J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 22nd day of October, two thousand twenty.

Dashon Hines,

Petitioner-Appellant,

v. 20-1609

TopShelf Management,

Respondent-Appellee.

Dashon Hines,

Petitioner-Appellant,

v. 20-1627

New York State Office of Temporary and Disability Assistance,

Respondent-Appellee.

Dashon Hines,

Plaintiff-Appellant,

v. 20-1656

Erie County Department of Social Services,

Defendant-Appellee.

Dashon Hines,

Plaintiff-Appellant,

v. 20-1885

New York State Department of Labor Staff,

Defendant-Appellee.

Dashon Hines,

Plaintiff-Appellant,

v. 20-2728

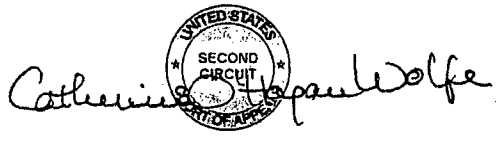
Lt. Rose J. Dell, Lt. New Haven Police Department,

Defendant-Appellee.

It is hereby ORDERED that these five proceedings are CONSOLIDATED for the purposes of this order.

In May 2016, this Court entered a leave-to-file sanction against Petitioner Dashon Hines. *In re Dashon Hines*, 2d Cir. 15-4094 (Order dated 5/5/2016). Petitioner now moves for leave to file these five appeals. Upon due consideration, it is hereby ORDERED that the motions are DENIED because the appeals do not depart from Petitioner's "prior pattern of vexatious filings." *In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v. 5:20-CV-505 (MAD/ATB)

TOPSHELF MANAGEMENT,

Defendant.

DASHON HINES, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

DECISION and ORDER

The Clerk has sent to me for initial review, a pro se complaint, submitted by plaintiff Dashon Hines. (Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has also filed an application to proceed in forma pauperis ("IFP"). (Dkt. No. 2).

I. IFP Application

Plaintiff declares in his IFP application that he is unable to pay the filing fee. (Dkt. No. 2). After reviewing his application, it is clear that plaintiff has failed to properly complete his application. He has failed to answer whether he obtains money from "any other sources." (Dkt. No. 2, ¶ 3(F)). However, based on the following analysis and because this court is transferring this action to the Western District of New York, the court will leave a determination of the merits of plaintiff's IFP application to the transferee court.

II. Complaint

Plaintiff alleges that defendant TopShelf Management fired him on March 19,

2020 in retaliation for filing complaints with the Equal Opportunity Employment Commission ("EEOC"). (Complaint ("Compl.")) (Dkt. No. 1). For a more detailed statement of plaintiff's claim, reference is made to the complaint herein.

III. Venue

A. Legal Standards

Under 28 U.S.C. § 1391(b), a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

When a case is filed in a district in which venue is improper, the court shall dismiss the case or, "if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." 28 U.S.C. § 1406(a).

B. Application

Venue in this district is improper. Plaintiff resides in Buffalo, New York which is in the Western District of New York. (Compl. ¶ 2). He is suing a company which is listed as having its place of business in Buffalo, New York. (Compl. ¶ 3). The exhibits attached to plaintiff's complaint, including the complaint that he made to the EEOC all

relate to acts or omissions that occurred in Buffalo, New York.[1] (Compl. *generally*). There is absolutely no connection to the Northern District of New York, and thus, venue is improper. The court must then determine whether the case should be dismissed, or transferred in the interests of justice.

According to the venue statute, the court could dismiss this action. However, this plaintiff appears to have filed this action in the Northern District of New York to avoid an order barring him from filing cases in the Western District of New York without permission from the court. The court notes that plaintiff has been issued bar orders in both the Western District of New York and in the Second Circuit Court of Appeals. *See In re Hines*, No. 17-2090, 2017 WL 6803304 (2d Cir. July 28, 2017) (stating that on May 5, 2016, the Second Circuit "entered an order in *In Re: Dashon Hines,* 15–4094 requiring [plaintiff] to file a motion seeking leave of this Court prior to filing any future appeals"); *In re Hines*, No. 13-MC-27A, 2005 WL 500800 (W.D.N.Y. Feb. 3, 2015) (barring plaintiff from bringing actions in the Western District of New York for a year). The Western District's decision in *In re Hines* was reversed by the Second Circuit to the extent that it barred plaintiff from filing any type of case for any reason.

The Second Circuit remanded the case to the Western District of New York to give plaintiff the opportunity to argue against this additional sanction. *In re Hines*, No. 15-359 (2d Cir. Apr. 15, 2015) (Dkt. No. 26 in 15-359). After giving plaintiff the

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[1] The court also notes that plaintiff has used the incorrect form-complaint to file this action. He has filed the case on a form used for 42 U.S.C. § 1983 cases which are reserved for suing defendants who act unconstitutionally, under color of state law. Plaintiff is claiming employment discrimination under 42 U.S.C. § 2000e et seq. The form-complaint is not relevant to the transfer of this case.

opportunity for argument, on November 24, 2015, the court in the Western District of New York issued another order, requiring that plaintiff file a request for permission to file a lawsuit in the Western District and holding that plaintiff would be fined if he had three or more request denied. (Dkt. No. 13 in 13-MC-27A). Plaintiff's subsequent appeal of the new Western District order was denied by the Second Circuit on August 23, 2017. (Dkt. No. 25 in 13-MC-27A).

On March 1, 2018, the Second Circuit issued another order dismissing three consolidated appeals filed by this plaintiff because the appeals did not "depart from 'Petitioner's prior pattern of vexatious filings.'" *In re Hines*, Nos. 18-233, 18-310, 18-312 (2d Cir. Mar. 1, 2018) (Dkt. No. 18 in Second Circuit consolidated appeal).

This is the second action in less than one month that plaintiff has filed with improper venue in this district. On April 29, 2020, I ordered the transfer of *Hines v. IRS*, No. 5:20-CV-469 (DNH/ATB) (N.D.N.Y. Apr. 29, 2020). The fact that plaintiff has filed another case with clearly improper venue in the Northern District of New York solidifies this court's suspicion that plaintiff is simply trying to avoid the Western District's bar order, which provides for sanctions if plaintiff files three or more requests which are denied. As I stated in *Hines v. IRS*, plaintiff should not be allowed to avoid these requirements by filing another lawsuit in a different district. Thus, instead of recommending dismissal, this court will order plaintiff's case to be transferred to the Western District of New York, where it should have been filed and where plaintiff may have to accept the consequences of any finding that his complaint does not comply with the Western District's orders.

This court is also concerned that plaintiff is going to make a habit of these

intentionally improper filings and hereby **warns** plaintiff that if he continues to file cases which clearly belong in the Western District of New York, **the court may initiate the procedure to have plaintiff barred in the Northern District of New York as well.**

Based upon the foregoing, the Court finds that venue of plaintiff's action is not proper in this District. The Court further determines that it is in the interest of justice to transfer this action under Section 1406(a) to the United States District Court for the Western District of New York. The Court makes **no ruling as to the sufficiency of the Complaint or the merits of Plaintiff's IFP Application, thereby leaving those determinations to the Western District.**

WHEREFORE, it is

ORDERED that, pursuant to 28 U.S.C. § 1406(a), the Clerk of this Court shall transfer this action to the United States District Court for the Western District of New York; and it is further

ORDERED that the Clerk of this Court advise the Clerk of the Western District of New York of the entry of this Decision and Order and provide all information necessary for the Clerk of the Western District to electronically access the documents filed in this action. The Court hereby waives the fourteen (14) day waiting period provided for in Local Rule 83.6; and it is further,

ORDERED that the Clerk serve a copy of this Decision and Order on the Plaintiff.

Dated: May 6, 2020

Andrew T. Baxter
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

1:20-CV-506
(DNH/ATB)

NEW YORK STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE STAFF,

Defendants.

DASHON HINES, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

DECISION and ORDER

The Clerk has sent to me for initial review, another pro se complaint, submitted by plaintiff Dashon Hines. (Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has also filed an application to proceed in forma pauperis ("IFP"). (Dkt. No. 2).

I. IFP Application

Plaintiff declares in his IFP application that he is unable to pay the filing fee. (Dkt. No. 2). It does not appear that plaintiff has completed the form properly. He appears to allege that he has absolutely no funds from any sources whatsoever, and yet, this complaint involves his "challenge" to a finding that he is entitled to public assistance benefits. In any event, this court will not make any determination of the plaintiff's application for IFP status because I am transferring this action to the Western District of New York, where the court can make a proper determination.

II. Complaint

Plaintiff has filed this action on a form utilized for claims under 42 U.S.C. § 1983, which provides for a cause of action alleging that plaintiff's federal constitutional rights have been violated by a person acting under color of state law. (Complaint ("Compl.")) (Dkt. No. 1). In his statement of facts, plaintiff cites a March 19, 2020 decision of the New York State Office of Temporary & Disability Assistance, finding that the "Agency's" determination to deny plaintiff's public assistance "cannot be sustained and is reversed." (Compl. ¶ 4 (FACTS)). No further explanation or factual statement is included.

On the next page of the complaint, plaintiff's First Cause of Action states that on March 19, 2020, the New York State Office of Temporary & Disability Assistance "issued a decision reversal indicating that Petitioner's civil rights were violated . . . ." (Compl. ¶ 5) (First Cause of Action). Plaintiff seeks one million dollars in damages. (Compl. ¶ 6). The defendants are listed as "New York State Office of Temporary & Disability Assistance ***Staff***." (Compl. ¶ 3(a)) (emphasis added).

III. Venue

A. Legal Standards

Under 28 U.S.C. § 1391(b), a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action

may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

When a case is filed in a district in which venue is improper, the court shall dismiss the case or, "if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." 28 U.S.C. § 1406(a). Even if venue is proper, a district court may sua sponte transfer an action in the interest of justice and for the convenience of the parties and witnesses to any other district where it might have been brought. 28 U.S.C. § 1404(a); *Ferens v. John Deere Co.*, 494 U.S. 516, 530 (1990); *Lead Indus. Ass'n, Inc. v. Occupational Safety & Health Admin.*, 610 F.2d 70, 79 n.17 (2d Cir. 1979) (citing cases); Kelly v. Kelly, 911 F. Supp. 70, 71 (N.D.N.Y. 1996). "The purpose of section 1404(a) is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Flaherty v. All Hampton Limousine, Inc.*, No. 01-CV-9939, 2002 WL 1891212, at *1 (S.D.N.Y. Aug. 16, 2002) (internal quotations marks omitted).

When considering whether to transfer an action sua sponte, courts follow the same traditional analysis used when a party moves for a change of venue. *See, e.g.*, *Flaherty*, 2002 WL 1891212, at *1-2; *Haskel v. FPR Registry, Inc.*, 862 F. Supp. 909, 916 (E.D.N.Y. 1994). Specifically, "[m]otions to transfer venue are governed by a two-part test: (1) whether the action to be transferred might have been brought in the transferee venue; and (2) whether the balance of convenience and justice favors transfer." *Flaherty*, 2002 WL 1891212, at *1.

B. Application

Venue in this district is likely improper. Plaintiff seems to be claiming that, because the appeal from his benefits case was decided in his favor, the original hearing decision was in violation of his "civil rights."[1] Although plaintiff has listed the address of the New York State Office of Temporary & Disability Assistance "Staff" as Albany, New York which is located in the Northern District of New York, the Albany address is where the appeal was decided in his favor. Plaintiff's appeal was from "a determination by the Erie County Department of Social Services."[2] (Compl. at CM/ECF p.6). The fair hearing was held in "Erie County before an Administrative Law Judge." (*Id.*) If anything, plaintiff is attempting to claim that the Erie County Fair Hearing was in violation of his "civil rights." Clearly, deciding the appeal in plaintiff's favor was not the "violation" to which plaintiff is referring.

Erie County is in the Western District of New York. The Fair Hearing that plaintiff appealed took place in the Western District of New York, and the "staff" that allegedly denied plaintiff's civil rights is, if anywhere, in the Western District of New York. Although plaintiff has not specifically alleged what actions violated his civil rights, all of those acts or omissions related to plaintiff's claim took place in the Western District of New York. There is no connection to the Northern District of New York.

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[1] Plaintiff does not actually mention the "constitution" or what "civil rights" he believes were violated.

[2] Plaintiff has attached these documents as exhibits to his complaint. Because he has failed to number the pages of his exhibits, the court will cite to the pages as assigned by the court's electronic filing system, CM/ECF.

Plaintiff's attempt at creating venue in this district is improper. The court must then determine whether the case should be dismissed, or transferred in the interests of justice. Even if plaintiff could have brought this case in the Northern District of New, the court must consider whether the action could have been brought in the transferee district, and whether the balance of convenience and justice favors transfer.

According to the venue statute, the court could dismiss this action. However, this plaintiff appears to have filed this action in the Northern District of New York to avoid an order barring him from filing cases in the Western District of New York without permission from the court. The court notes that plaintiff has been issued bar orders in both the Western District of New York and in the Second Circuit Court of Appeals. *See In re Hines*, No. 17-2090, 2017 WL 6803304 (2d Cir. July 28, 2017) (stating that on May 5, 2016, the Second Circuit "entered an order in *In Re: Dashon Hines,* 15–4094 requiring [plaintiff] to file a motion seeking leave of this Court prior to filing any future appeals"); *In re Hines*, No. 13-MC-27A, 2005 WL 500800 (W.D.N.Y. Feb. 3, 2015) (barring plaintiff from bringing actions in the Western District of New York for a year). The Western District's decision in *In re Hines* was reversed by the Second Circuit to the extent that it barred plaintiff from filing any type of case for any reason.

The Second Circuit remanded the case to the Western District of New York to give plaintiff the opportunity to argue against this additional sanction. *In re Hines*, No. 15-359 (2d Cir. Apr. 15, 2015) (Dkt. No. 26 in 15-359). After giving plaintiff the opportunity for argument, on November 24, 2015, the court in the Western District of

New York issued another order, requiring that plaintiff file a request for permission to file a lawsuit in the Western District and holding that plaintiff would be fined if he had three or more request denied. (Dkt. No. 13 in 13-MC-27A). Plaintiff's subsequent appeal of the new Western District order was denied by the Second Circuit on August 23, 2017. (Dkt. No. 25 in 13-MC-27A).

On March 1, 2018, the Second Circuit issued another order dismissing three consolidated appeals filed by this plaintiff because the appeals did not "depart from 'Petitioner's prior pattern of vexatious filings.'" *In re Hines*, Nos. 18-233, 18-310, 18-312 (2d Cir. Mar. 1, 2018) (Dkt. No. 18 in Second Circuit consolidated appeal).

Plaintiff has now filed multiple actions with improper venue in this district. On April 29, 2020, I ordered the transfer of *Hines v. IRS*, No. 5:20-CV-469 (DNH/ATB) (N.D.N.Y. Apr. 29, 2020). On May 6, 2020, I ordered plaintiff's employment discrimination complaint transferred to the Western District of New York. *Hines v. TopShelf Management*, No. 5:20-CV-505 (MAD/ATB) (N.D.N.Y. May 6, 2020). The fact that plaintiff has filed another case with improper venue in the Northern District of New York solidifies this court's suspicion that plaintiff is simply trying to avoid the Western District's bar order, which provides for sanctions if plaintiff files three or more requests which are denied. As I stated in *Hines v. IRS*, plaintiff should not be allowed to avoid these requirements by filing another lawsuit in a different district. Thus, instead of recommending dismissal, this court will order plaintiff's case to be transferred to the Western District of New York, where it should have been filed and where plaintiff may have to accept the consequences of any finding that his complaint

does not comply with the Western District's orders.

Although this court makes no finding on the merits of this action, it is arguable that plaintiff is filing yet another frivolous case. In my May 6, 2020 transfer order, I expressed my concern that plaintiff was going to make a habit of filing cases in the Northern District of New York with improper venue in order to avoid his fate in the Western District. Therefore, I warned plaintiff that if he continued to file cases which clearly belong in the Western District of New York, **the court may initiate the procedure to have plaintiff barred in the Northern District of New York as well.** Because plaintiff has filed several cases in quick succession, and this case was filed on May 4, 2020, he did not have the chance to see my warning prior to filing this action. Thus, I will reiterate my warning here.

Based upon the foregoing, the Court finds that venue of plaintiff's action is not proper in this District, and even if venue were proper, the balance of justice and convenience favors transfer. The Court will transfer this action under Section 1406(a) and/or 1404(a) to the United States District Court for the Western District of New York. The Court makes **no ruling as to the sufficiency of the Complaint or the merits of Plaintiff's IFP Application, thereby leaving those determinations to the Western District.**

WHEREFORE, it is

ORDERED that, pursuant to 28 U.S.C. § 1406(a) and/or 1404(a), the Clerk of this Court shall transfer this action to the United States District Court for the Western District of New York; and it is further

ORDERED that the Clerk of this Court advise the Clerk of the Western District of New York of the entry of this Decision and Order and provide all information necessary for the Clerk of the Western District to electronically access the documents filed in this action. The Court hereby waives the fourteen (14) day waiting period provided for in Local Rule 83.6; and it is further,

ORDERED that the Clerk serve a copy of this Decision and Order on the Plaintiff.

Dated: May 12, 2020

Andrew T. Baxter

Hon. Andrew T. Baxter
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

1:20-CV-536
(DNH/ATB)

ERIE COUNTY DEPARTMENT OF SOCIAL SERVICES,

Defendants.

DASHON HINES, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

DECISION and ORDER

The Clerk has sent to me for initial review, another pro se complaint, submitted by plaintiff Dashon Hines. (Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has also filed an application to proceed in forma pauperis ("IFP"). (Dkt. No. 2).

I. IFP Application

Plaintiff declares in his IFP application that he is unable to pay the filing fee. (Dkt. No. 2). Because I am transferring this action to the Western District of New York, I decline to address plaintiff's application, and the transferee court may make a proper determination of plaintiff's motion.

II. Complaint

Plaintiff has filed this action on a form utilized for claims under 42 U.S.C. § 1983, which provides for a cause of action alleging that plaintiff's federal constitutional rights have been violated by a person acting under color of state law. (Complaint ("Compl.")) (Dkt. No. 1). In his statement of facts, plaintiff states that on

May 1, 2020, the Erie County Department of Social Services issued public assistance in the amount of $352 in cash and $194 in SNAP per month from May 1, 2020 through February 28, 2021. (Complaint ("Compl.") ¶ 4). No further facts are stated. Plaintiff's "First Cause of Action" repeats the above statement verbatim, with no additional facts. (Compl. ¶ 5). Plaintiff then seeks one million dollars. (Compl. ¶ 6).

III. Venue

A. Legal Standards

Under 28 U.S.C. § 1391(b), a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

When a case is filed in a district in which venue is improper, the court shall dismiss the case or, "if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." 28 U.S.C. § 1406(a). Even if venue is proper, a district court may sua sponte transfer an action in the interest of justice and for the convenience of the parties and witnesses to any other district where it might have been brought. 28 U.S.C. § 1404(a); *Ferens v. John Deere Co.*, 494 U.S. 516, 530 (1990); *Lead Indus. Ass'n, Inc. v. Occupational Safety & Health Admin.*, 610 F.2d 70, 79 n.17

(2d Cir. 1979) (citing cases); Kelly v. Kelly, 911 F. Supp. 70, 71 (N.D.N.Y. 1996). "The purpose of section 1404(a) is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Flaherty v. All Hampton Limousine, Inc.*, No. 01-CV-9939, 2002 WL 1891212, at *1 (S.D.N.Y. Aug. 16, 2002) (internal quotations marks omitted).

When considering whether to transfer an action sua sponte, courts follow the same traditional analysis used when a party moves for a change of venue. *See, e.g.*, *Flaherty*, 2002 WL 1891212, at *1-2; *Haskel v. FPR Registry, Inc.*, 862 F. Supp. 909, 916 (E.D.N.Y. 1994). Specifically, "[m]otions to transfer venue are governed by a two-part test: (1) whether the action to be transferred might have been brought in the transferee venue; and (2) whether the balance of convenience and justice favors transfer." *Flaherty*, 2002 WL 1891212, at *1.

B. Application

Venue in this district is improper. Aside from the likely frivolous nature of plaintiff's "complaint," Erie County is in the Western District of New York. Although plaintiff has not alleged why the issuance of public assistance or SNAP benefits violated his constitutional rights, nor has he named any individual responsible for whatever violation he thinks he has suffered, any act or omission occurred in the Western District of New York. Plaintiff lives in the Western District of New York, and any relevant evidence or witnesses to the violation would be located in the Western District of New York. There is no connection to the Northern District of New York, and thus, venue is improper. The court must then determine whether the case should be

dismissed, or transferred in the interests of justice.

According to the venue statute, the court could dismiss this action. However, this plaintiff appears to have filed this action in the Northern District of New York to avoid an order barring him from filing cases in the Western District of New York without permission from the court. The court notes that plaintiff has been issued bar orders in both the Western District of New York and in the Second Circuit Court of Appeals. *See In re Hines*, No. 17-2090, 2017 WL 6803304 (2d Cir. July 28, 2017) (stating that on May 5, 2016, the Second Circuit "entered an order in *In Re: Dashon Hines,* 15–4094 requiring [plaintiff] to file a motion seeking leave of this Court prior to filing any future appeals"); *In re Hines*, No. 13-MC-27A, 2005 WL 500800 (W.D.N.Y. Feb. 3, 2015) (barring plaintiff from bringing actions in the Western District of New York for a year). The Western District's decision in *In re Hines* was reversed by the Second Circuit to the extent that it barred plaintiff from filing any type of case for any reason.

The Second Circuit remanded the case to the Western District of New York to give plaintiff the opportunity to argue against this additional sanction. *In re Hines*, No. 15-359 (2d Cir. Apr. 15, 2015) (Dkt. No. 26 in 15-359). After giving plaintiff the opportunity for argument, on November 24, 2015, the court in the Western District of New York issued another order, requiring that plaintiff file a request for permission to file a lawsuit in the Western District and holding that plaintiff would be fined if he had three or more request denied. (Dkt. No. 13 in 13-MC-27A). Plaintiff's subsequent appeal of the new Western District order was denied by the Second Circuit on August

23, 2017. (Dkt. No. 25 in 13-MC-27A).

On March 1, 2018, the Second Circuit issued another order dismissing three consolidated appeals filed by this plaintiff because the appeals did not "depart from 'Petitioner's prior pattern of vexatious filings.'" *In re Hines*, Nos. 18-233, 18-310, 18-312 (2d Cir. Mar. 1, 2018) (Dkt. No. 18 in Second Circuit consolidated appeal).

Plaintiff has now filed multiple actions with improper venue in this district. On April 29, 2020, I ordered the transfer of *Hines v. IRS*, No. 5:20-CV-469 (DNH/ATB) (N.D.N.Y. Apr. 29, 2020). On May 6, 2020, I ordered plaintiff's employment discrimination complaint transferred to the Western District of New York. *Hines v. TopShelf Management*, No. 5:20-CV-505 (MAD/ATB) (N.D.N.Y. May 6, 2020). On May 12, 2020, I ordered the transfer of *Hines v. New York State Office of Temporary & Disability Assistance Staff*, No. 1:20-CV-506 (DNH/ATB) (N.D.N.Y. May 12, 2020). The fact that plaintiff has filed another case with improper venue in the Northern District of New York further supports this court's suspicion that plaintiff is simply trying to avoid the Western District's bar order, which provides for sanctions if plaintiff files three or more requests which are denied. As I have stated in each transfer order, plaintiff should not be allowed to avoid these requirements by filing another lawsuit in a different district. Thus, instead of recommending dismissal, this court will order plaintiff's case to be transferred to the Western District of New York, where it should have been filed and where plaintiff may have to accept the consequences of any finding that his complaint does not comply with the Western District's orders.

Although this court makes no finding on the merits of this action, it is arguable

that plaintiff is filing yet another frivolous case.[1] In my May 6, 2020 transfer order, I expressed my concern that plaintiff was going to make a habit of filing cases in the Northern District of New York with improper venue in order to avoid his fate in the Western District. Therefore, I warned plaintiff that if he continued to file cases which clearly belong in the Western District of New York, **the court may initiate the procedure to have plaintiff barred in the Northern District of New York as well.** I repeated this warning in my May 12, 2020 transfer order. Because plaintiff has filed several cases in quick succession, and this complaint was signed on May 5, 2020, he may not have the chance to see my warning prior to filing this action. Thus, I will repeat my warning here.

Based upon the foregoing, the Court finds that venue of plaintiff's action is not proper in this District. The Court will transfer this action under Section 1406(a) to the United States District Court for the Western District of New York. The Court makes **no ruling as to the sufficiency of the Complaint or the merits of Plaintiff's IFP Application, thereby leaving those determinations to the Western District.**

WHEREFORE, it is

ORDERED that, pursuant to 28 U.S.C. § 1406(a), the Clerk of this Court shall

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[1] Although not addressing the merits of this action, I note that plaintiff has failed to state any violation of his constitutional rights in this complaint. He merely states that the Erie County Department of Social Services issued benefits in his favor. In addition, plaintiff may not sue an "agency" or "department." Departments that are merely administrative arms of a municipality do not have a legal identity separate from the municipality and may not sue or be sued. *Rose v. County of Nassau*, 904 F. Supp. 2d 244, 247 (E.D.N.Y. Nov. 9, 2012) (citing *Hall v. City of White Plains*, 185 F. Supp. 2d 293, 303 (S.D.N.Y.2002) (dismissing claim against the police department); *Umhey v. County of Orange*, 957 F. Supp. 525, 530–31 (S.D.N.Y. 1997) (dismissing case against the County Board of Ethics).

transfer this action to the United States District Court for the Western District of New York; and it is further

ORDERED that the Clerk of this Court advise the Clerk of the Western District of New York of the entry of this Decision and Order and provide all information necessary for the Clerk of the Western District to electronically access the documents filed in this action. The Court hereby waives the fourteen (14) day waiting period provided for in Local Rule 83.6; and it is further,

ORDERED that the Clerk serve a copy of this Decision and Order on the Plaintiff.

Dated: May 15, 2020

Hon. Andrew T. Baxter
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

-v- 1:20-CV-517
(DNH/ATB)

NEW YORK STATE DEPARTMENT OF LABOR STAFF,

Defendant.

APPEARANCES:

DASHON HINES
Plaintiff pro se
1629 Elmwood Avenue
Apartment # 14
Buffalo, NY 14207

DAVID N. HURD
United States District Judge

DECISION and ORDER

Pro se plaintiff Dashon Hines brought this alleged civil rights action on May 7, 2020. On May 18, 2020, the Honorable Andrew T. Baxter, United States Magistrate Judge advised by Order and Report-Recommendation that plaintiff's complaint be dismissed without prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), but that he be given thirty (30) days within which to amend his complaint. On May 20, 2020, this Court received from plaintiff a form civil rights complaint dated and signed May 6, 2020, which was docketed as an amended complaint. ECF No. 4. Plaintiff thereafter filed an amended

motion for leave to proceed in forma pauperis, ECF No. 5, and objections to the Order and Report-Recommendation, ECF No. 6.[1]

Based upon a de novo review of the portions[2] of the Order and Report-Recommendation to which plaintiff objected, the Order and Report-Recommendation is accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1).

A review of plaintiff's amended complaint and accompanying submissions pursuant to 28 U.S.C. § 1915(e) affirms that his claim, on these facts, is not viable. The amended complaint differs from the original pleading in that it states "ON MAY 6, 2020, THE NEW YORK STATE DEPARTMENT OF LABOR STAFF ISSUED AN UNEMPLOYMENT BENEFIT TOTAL OF $5,174.00." Am. Compl. ¶¶ 4, 5. The amended complaint includes exhibits showing the New York State Department of Labor did in fact grant unemployment benefits to plaintiff.

With his amended complaint, plaintiff has also included copies of decisions in four different civil actions filed within this District, in this year alone, but provides no explanation for their relevance. *See Hines v. IRS*, No. 5:20-CV-469; *Hines v. TopShelf Mgmt.*, No. 5:20-CV-505; *Hines v. N.Y.S. Office of Temp. & Disability Assistance Staff*, No. 1:20-CV-506;

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[1] It is also noted that on June 4, 2020, plaintiff emailed five attachments to the Northern District of New York's Jury Administration Office email address, Jury@nynd.uscourts.gov. Plaintiff is reminded that in accordance with the Federal Rules of Civil Procedure, N.D.N.Y. Local Rule 5.1, and the N.D.N.Y. Pro Se Handbook, Chapter VI, C, pro se litigants must either deliver documents to the Clerk of the Court in person, or send documents in the mail. Filings are not accepted by email.

[2] According to plaintiff's submission, he objects to "**The ENTIRE Report and Recommendation**." ECF No. 6 (emphasis in original).

Hines v. Bryant & Stratton Coll., No. 5:20-CV-507. Each of those cases have been transferred to the Western District of New York.[3]

As Judge Baxter opined in his Order and Report-Recommendation, "[a]s it is written, plaintiff's complaint does not state a claim and borders on the frivolous." ECF No. 3, 8. The amended complaint is no different. If anything, it is even more confusing because plaintiff acknowledges that defendant did, in fact, issue him unemployment benefits, the very failure of which plaintiff complained of in his initial complaint. In his objections, plaintiff confirms that defendant granted his claim for unemployment benefits but asserts that they have not been issued to his bank of choice. He again claims unreasonable delay in the issuance of benefits, but his own documentation shows that benefits were granted to him on May 6, 2020, effective as of March 9, 2020. Plaintiff does not allege that he made any further attempts to contact defendant regarding the bank deposit issue, and he has not shown an "unreasonable delay" sufficient to state a due process claim. *See, e.g., David v. Comm'r of Labor*, No. 91 Civ. 7987, 1992 WL 25200 (S.D.N.Y. Jan. 31, 1992).

Generally, when the court dismisses a pro se complaint sua sponte, the court should afford the plaintiff the opportunity to amend at least once, however, leave to re-plead may be denied where any amendment would be futile. *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993). Futility is present when the problem with plaintiff's causes of action is substantive such that better pleading will not cure it. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (citation omitted). Plaintiff's amended complaint

[3] Though not included in his submissions, plaintiff recently filed an additional civil action, which was also transferred to the Western District of New York. *See Hines v. Erie County Dep't of Soc. Servs.*, No.1:20-CV-536.

fails to cure the deficiencies in his initial complaint identified by Judge Baxter. Based on plaintiff's submissions, the court is doubtful that he can amend his complaint to state a claim, and he has already been permitted an opportunity to do so once. Accordingly, plaintiff's amended complaint will be dismissed, without prejudice, and without the opportunity for amendment.

There is no need to consider plaintiff's amended motion for leave to proceed in forma pauperis and that motion will be denied as moot.

Therefore, it is

ORDERED that

1. Plaintiff's amended complaint, ECF No. 4, is DISMISSED in its entirety without prejudice and without the opportunity for amendment;

2. Plaintiff's amended motion for leave to proceed in forma pauperis, ECF No. 5, is DENIED as moot; and

3. The Clerk is directed to enter judgment accordingly and close the file.

IT IS SO ORDERED.

United States District Judge

Dated: June 5, 2020,
Utica, New York.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

1:20-CV-517
(DNH/ATB)

NEW YORK STATE DEPARTMENT OF LABOR STAFF,

Defendants.

DASHON HINES, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

ORDER and REPORT-RECOMMENDATION

The Clerk has sent to me for initial review, another pro se complaint, submitted by plaintiff Dashon Hines. (Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has also filed an application to proceed in forma pauperis ("IFP"). (Dkt. No. 2).

I. IFP Application

Plaintiff declares in his IFP application that he is unable to pay the filing fee. (Dkt. No. 2). Upon close review of the document, this court finds that plaintiff may not have completed the application properly. Plaintiff claims that in the past 12 months, he has not received income from any of the five listed sources on the form. (Dkt. No. 2, ¶ 3). However, in *Hines v. TopShelf Management*, No. 5:20-CV-505 (MAD/ATB), plaintiff alleged that, until March 19, 2020, he was employed, and presumably was getting paid for his employment. (Dkt. No. 1 in 20-CV-505). Thus, to say that he has received no money from any sources for the past twelve months is clearly incorrect. In addition, in various of his other lawsuits, he is complaining about money that he

received or money that was deposited in his bank account.[1] Thus, plaintiff's IFP is likely incorrect, either intentionally or because of a misunderstanding of the information requested by the form.[2] Thus, it is unclear whether plaintiff meets the financial criteria for proceeding IFP. However, because plaintiff is currently unemployed and he is receiving public assistance benefits, the court will determine for purposes of this Order and Report-Recommendation, that plaintiff meets the financial criteria for proceeding IFP.

In addition to determining whether plaintiff meets the financial criteria to proceed IFP, the court must also consider the sufficiency of the allegations set forth in the complaint in light of 28 U.S.C. § 1915, which provides that the court shall dismiss the case at any time if the court determines that the action is (i) 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)(i) -(iii).

In determining whether an action is frivolous, the court must consider whether the complaint lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Dismissal of frivolous actions is appropriate to prevent abuses of court process as well as to discourage the waste of judicial resources. *Neitzke*, 490 U.S. at 327; *Harkins v. Eldridge*, 505 F.2d 802, 804 (8th Cir. 1974). Although the court has

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[1] *See Hines v. IRS*, No. 5:20-CV-469 (IRS deposited money into plaintiff's bank account); *Hines v. Erie County Dep't of Soc. Services*, No. 1:20-CV-536 (DSS awarded plaintiff public assistance and SNAP benefits).

[2] The plaintiff's previous IFP applications all suffered from some problem in the completion of the form, but this court has not yet been required to address the issue because all of plaintiff's previous lawsuits have been transferred to the Western District of New York, without consideration of the merits of plaintiff's IFP application.

a duty to show liberality toward *pro se* litigants, and must use extreme caution in ordering *sua sponte* dismissal of a *pro se* complaint before the adverse party has been served and has had an opportunity to respond, the court still has a responsibility to determine that a claim is not frivolous before permitting a plaintiff to proceed. *Fitzgerald v. First East Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000) (finding that a district court may dismiss a frivolous complaint *sua sponte* even when plaintiff has paid the filing fee).

To survive dismissal for failure to state a claim, the complaint must contain sufficient factual matter, accepted as true, to state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* (citing *Bell Atl. Corp.*, 550 U.S. at 555).

II. Complaint

Plaintiff has filed this action on a form utilized for claims under 42 U.S.C. § 1983, which provides for a cause of action alleging that plaintiff's federal constitutional rights have been violated by a person acting under color of state law. (Complaint ("Compl.")) (Dkt. No. 1). In his statement of facts, plaintiff states that on March 20, 2020, the New York State Department of Labor ("DOL") Staff refused to process his DOL claim. (Complaint ("Compl.") ¶ 4) (Dkt. No. 1). Plaintiff repeats this statement verbatim in his First Cause of Action. (Compl. ¶ 5). In his request for relief, plaintiff asks that plaintiff's DOL Unemployment Insurance claim "be issued to Dashon

Hines." (Compl. ¶ 6).

Plaintiff has attached exhibits to his complaint, consisting of what appears to be either all, or part of an online application for Unemployment Insurance benefits, based on plaintiff's former employment at Top Shelf Management, LLC, a company located in Buffalo, New York. (Compl. at 6).[3]

III. Venue

A. Legal Standards

Under 28 U.S.C. § 1391(b), a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

When a case is filed in a district in which venue is improper, the court shall dismiss the case or, "if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." 28 U.S.C. § 1406(a). Even if venue is proper, a district court may sua sponte transfer an action in the interest of justice and for the convenience of the parties and witnesses to any other district where it might have been brought. 28 U.S.C. § 1404(a); *Ferens v. John Deere Co.*, 494 U.S. 516, 530 (1990);

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[3] Plaintiff has not numbered the pages of his exhibits, and therefore, this court will cite to the page numbers as assigned by the court's electronic filing system ("CM/ECF").

Lead Indus. Ass'n, Inc. v. Occupational Safety & Health Admin., 610 F.2d 70, 79 n.17 (2d Cir. 1979) (citing cases); Kelly v. Kelly, 911 F. Supp. 70, 71 (N.D.N.Y. 1996). "The purpose of section 1404(a) is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Flaherty v. All Hampton Limousine, Inc.*, No. 01-CV-9939, 2002 WL 1891212, at *1 (S.D.N.Y. Aug. 16, 2002) (internal quotations marks omitted).

When considering whether to transfer an action sua sponte, courts follow the same traditional analysis used when a party moves for a change of venue. *See, e.g.*, *Flaherty*, 2002 WL 1891212, at *1-2; *Haskel v. FPR Registry, Inc.*, 862 F. Supp. 909, 916 (E.D.N.Y. 1994). Specifically, "[m]otions to transfer venue are governed by a two-part test: (1) whether the action to be transferred might have been brought in the transferee venue; and (2) whether the balance of convenience and justice favors transfer." *Flaherty*, 2002 WL 1891212, at *1.

B. Application

1. Transfer

The court has considered transferring this action because it is well-aware that plaintiff resides in the Western District of New York and likely filed this case in the Northern District of New York because he is attempting to avoid a bar order in the Western District. However, because plaintiff has named the DOL in Albany, and because plaintiff apparently applied for benefits online, rather than transferring this action, I will conduct the initial review, assuming that venue is appropriate in the Northern District of New York.

2. Merits

In this case, plaintiff has named the DOL "Staff" as a defendant.[4] Plaintiff has listed the defendant's address as a location in Albany, New York. (Compl. ¶ 3(a)). Plaintiff claims that he applied for unemployment insurance on March 20, 2020, but the defendant failed to process the application. From what this court can interpret,[5] plaintiff's claim is that a representative of the DOL failed to contact plaintiff about his claim within 72 hours, as promised on the website.[6] (Compl. at 7). Another document attached to plaintiff's complaint indicates that on May 1, 2020, he submitted an "Unemployment Insurance Technical Help Form," stating that he needed to speak with an "investigator" to complete his claim and requesting that an investigator call him back. (Compl. at 10).

In *David v. Commissioner of Labor*, No. 91 Civ. 7987, 1992 WL 25200 (S.D.N.Y. Jan. 31, 1992), plaintiff sued, inter alia, the Commissioner of Labor for an injunction, awarding him unemployment insurance benefits. The court dismissed the action for failure to state a claim. *Id.* The court recognized that plaintiff's right to be considered for unemployment benefits could not be deprived without due process, that

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[4] Plaintiff does not specify any particular individual or individuals as the "staff." Plaintiff applied for his benefits online and would be unlikely to know who was processing his application. Thus, this court will refer to the defendant in the singular.

[5] The court must interpret pro se complaints to raise the strongest arguments they suggest. *See Burgos v. Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994) (pro se papers are interpreted liberally to raise the strongest arguments suggested therein).

[6] The court notes that the date on the online application "receipt" that plaintiff has provided is April 10, 2020, not March 20, 2020. (Compl. at 7).

exhaustion of state remedies was not required before bringing a section 1983 claim, and that administrative delay might in some cases give rise to a due process violation. *Id.* at *1-2 (citations omitted). However, the court dismissed the action, after finding that the plaintiff was being heard in the administrative proceeding, his challenge was to the result of the proceedings, rather than the procedure employed, and his complaint failed to disclose any "unreasonable delay" in the procedure. *Id.*

Plaintiff in this action has not proceeded very far in his application. According to the documents attached to his complaint, he applied for benefits on April 10, 2020, and submitted an online request to the DOL for assistance on May 1, 2020. Plaintiff states that the DOL "refused" to consider his application. However, there is absolutely no basis for plaintiff's statement, given the short time that has elapsed since his submission to the agency and the unprecedented number of claims for unemployment filed in New York as a result of the ongoing COVID-19 pandemic.[7] Although plaintiff may be able to challenge the procedure used in the DOL,[8] he may not, as he has in this complaint, simply request that the court grant him benefits. In addition, plaintiff has

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[7] In this case, it is generally known that the COVID-19 shutdown has resulted in the unemployment of many individuals in New York, potentially overloading the system. The court may take judicial notice of facts regarding the COVID-19 pandemic that are generally known within the court's jurisdiction. *See, e.g., Basank v. Decker*, No. 20 CIV. 2518, 2020 WL 1953847, at *7 (S.D.N.Y. Apr. 23, 2020) ("The Court takes judicial notice that COVID-19 causes severe medical complications and has increased lethality amongst people of advanced age, and those with underlying health problems, or both.") (collecting cases).

[8] *See e.g. Moore v. Ross*, 502 F. Supp. 503 (S.D.N.Y. 1980), *aff'd*, 687 F.2d 604 (2d Cir. 1982), *cert. denied*, 459 U.S. 1115 (1983) (action brought challenging constitutionality of procedures employed by New York State Unemployment Insurance Appeal Board). The challenge was brought to the procedures employed by the Appeal Board, not to the individual results of cases. In *Moore*, the District Court distinguished between cases in which the intrinsic procedure of the agency was challenged, with cases challenging the substantiality of the evidence supporting the agency's decision, which would be the responsibility of the state forum. 502 F. Supp. at 552-53.

not shown an "unreasonable" delay, sufficient to state a due process claim.

As it is written, plaintiff's complaint does not state a claim and borders on the frivolous. Plaintiff appears to claim that he did not get the agency's response as quickly as the website required, and thus asks the court to grant plaintiff his unemployment insurance benefits. Plaintiff does not allege that he made any other attempts to contact the DOL. Thus, even though venue is arguably proper in this action, I will recommend dismissal without prejudice for failure to state a claim.

IV. Opportunity to Amend

A. Legal Standards

Generally, when the court dismisses a pro se complaint *sua sponte*, the court should afford the plaintiff the opportunity to amend at least once, however, leave to re-plead may be denied where any amendment would be futile. *Ruffolo v. Oppenheimer & Co.*, 987 F.2d 129, 131 (2d Cir. 1993). Futility is present when the problem with plaintiff's causes of action is substantive such that better pleading will not cure it. *Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) (citation omitted).

B. Application

As stated above, plaintiff may not request that this court issue a decision granting him benefits. At best, he may try to claim some sort of due process violation based on an alleged delay in the administrative process. However, he has not done so in the existing complaint. Although the court is doubtful that plaintiff can amend his complaint to state a claim because he has failed to even allow the agency the opportunity to consider his claim, the court will recommend dismissal without prejudice

to allowing plaintiff to amend his complaint.

WHEREFORE, based on the findings above, it is

ORDERED, that plaintiff's application for IFP (Dkt. No. 2) be **GRANTED FOR PURPOSES OF THIS ORDER AND REPORT-RECOMMENDATION ONLY**, and it is

RECOMMENDED, that the complaint be **DISMISSED IN ITS ENTIRETY WITHOUT PREJUDICE for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)**, and it is

RECOMMENDED, that if the court adopts this recommendation, plaintiff be given **THIRTY (30) DAYS WITHIN WHICH TO AMEND HIS COMPLAINT**, and if plaintiff files a proposed amended complaint within the time provided or within any time extended by the court, the proposed amended complaint be sent to me for further review, and it is

RECOMMENDED, that if the court adopts this recommendation and plaintiff fails to submit a proposed amended complaint within the allotted time or any time extended by the court, the complaint be dismissed without prejudice, but without the opportunity for amendment, and it is

ORDERED, that the Clerk serve a copy of this Order and Report-Recommendation on plaintiff by regular mail.

Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO**

THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW. *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)(citing *Small v. Secretary of Health and Human Services*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72.

Dated: May 18, 2020

Andrew T. Baxter

Hon. Andrew T. Baxter
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

vs. **5:20-CV-638 (TJM/ATB)**

Lt. ROSE J. DELL, New Haven Police Department,

Defendant.

Thomas J. McAvoy,
Sr. U.S. District Judge

DECISION & ORDER

The Court referred this *pro se* civil action, brought pursuant to 42 U.S.C. § 1983, to Magistrate Judge Andrew T. Baxter for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff alleges that the Defendant, a Lieutenant in the New Haven, Connecticut, Police Department, violated his rights by ordering him not to contact Patricia King about an incident he wanted the New Haven Police Department to Investigate. Patricia King is New Haven Corporate Counsel. Plaintiff resides in Buffalo, New York.

Magistrate Judge Baxter's Report-Recommendation, dkt. # 157, issued on June 11, 2020, recommends that Plaintiff's complaint be dismissed without prejudice to Plaintiff filing the Complaint in a proper venue. Magistrate Judge Baxter notes that Plaintiff, who resides in the Western District of New York, is subject to a filing restriction in that District,

and has recently filed a number of cases in this District, apparently in an effort to avoid that restriction. Magistrate Judge Baxter also finds that venue in this District is improper because neither of the parties reside in this District, and none of the events giving rise to the Complaint occurred in the District. Given Plaintiff's past attempts to manipulate venue to avoid filing restrictions, however, he does not recommend that the Court transfer the case to a proper venue. Instead, he recommends that the Court dismiss the case without prejudice to Plaintiff filing the case in a proper court.

Plaintiff objected to the Report-Recommendation. See dkt. # 4. When a party objects to a magistrate judge's Report-Recommendation, the Court makes a "*de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." Id.

Plaintiff's objections largely repeat and amplify the allegations in his Complaint, which are that he complained about an incident in New Haven to Patricia King. When she did not respond to that and another request, Defendant Rose Dell of the New Haven Police Department contacted Plaintiff and asked him to contact Police, rather than King, about the incident he wanted investigated. None of Plaintiffs objections address the reason for dismissal of the action–lack of venue–or the reasons why Magistrate Judge Baxter does not recommend transferring venue to the District of Connecticut. Having considered all of Plaintiff's objections, the Court concludes that Report-Recommendation should be accepted and adopted for the reasons stated therein.

Accordingly,

Plaintiff's objections to the Report-Recommendation of Magistrate Judge Baxter, dkt. # 4, are hereby **OVERRULED**. The Report-Recommendation, dkt. # 3, is hereby **ACCEPTED** and **ADOPTED**. The Plaintiff's Complaint is hereby **DISMISSED** without prejudice for lack of venue. The Clerk of Court is directed to **CLOSE** the case.

IT IS SO ORDERED.

Dated: August 5, 2020

Thomas J. McAvoy
Senior, U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

5:20-CV-638 (TJM/ATB)

LT. ROSE J. DELL, Lt. New Haven Police Dep't,

Defendant.

DASHON HINES, Plaintiff pro se

ANDREW T. BAXTER
United States Magistrate Judge

ORDER and REPORT-RECOMMENDATION

The Clerk has sent to me for initial review, another pro se complaint, submitted by plaintiff Dashon Hines. (Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has also filed an application to proceed in forma pauperis ("IFP"). (Dkt. No. 2).

I. IFP Application

Plaintiff declares in his IFP application that he is unable to pay the filing fee. (Dkt. No. 2). However, the form also indicates that he has no money from any sources, whatsoever, something which this court knows from other cases filed by this plaintiff is untrue. In any event, the court will allow the filing of this action for the sole purpose of recommending dismissal.

II. Complaint

Plaintiff has filed this action on a form utilized for claims under 42 U.S.C. § 1983, which provides for a cause of action alleging that plaintiff's federal constitutional rights have been violated by a person acting under color of state law.

(Complaint ("Compl.")) (Dkt. No. 1). Plaintiff has sued a Lieutenant in the New Haven, Connecticut Police Department. Plaintiff's only facts are as follows:

> On June 4, 2020, Lt. Rose J. Dell stated: "Mr. Hines, please do not contact Patricia King of Corporate Counsel regarding the incident you wanted investigated by the Police Department. You need to speak with the investigating Officer. Please call either the non-emergency number at at [sic] 203-946-6316 or 203-946-6255 to speak with the Front Desk Sergeant.

(Compl. ¶ 4) (Facts). The plaintiff's "First Cause of Action" merely repeats the above paragraph word for word. (Compl. ¶ 5). Plaintiff requests one million dollars in damages. (Compl. ¶ 6).

As exhibits to the complaint, plaintiff has attached two copies of the actual email sent by Lt. Dell, who apparently is the officer in charge of the Records Unit of the New Haven, Connecticut Police Department. (Compl. at CM/ECF p.5-6).[1] Lieutenant Dell's email is dated June 4, 2020 at 1:06 p.m. (*Id.*) Plaintiff apparently responded to defendant Dell's email at 7:39 p.m., stating that in his

> capacity as a pro se petitioner before the United States District Court for the Northern District of New York, I demand that you notify your supervisor of my wish to file a complaint against you regarding your previous response. . . . In the event that I do not hear from your supervisor, I will assume you did nothing concerning requests to speak with your supervisor and submit formal complaints against you for misconduct.

(*Id.*) This action was filed on June 8, 2020.

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[1] Plaintiff has not numbered the pages of his "exhibits," thus this court will cite to the pages assigned by the court's electronic filing system, CM/ECF.

III. Venue

A. Legal Standards

Under 28 U.S.C. § 1391(b), a civil action may be brought in "(1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." 28 U.S.C. § 1391(b).

When a case is filed in a district in which venue is improper, the court "***shall dismiss***" the case or, "if it be in the interest of justice, transfer such case to any district . . . in which it could have been brought." 28 U.S.C. § 1406(a) (emphasis added). Even if venue is proper, a district court may sua sponte transfer an action in the interest of justice and for the convenience of the parties and witnesses to any other district where it might have been brought. 28 U.S.C. § 1404(a); *Ferens v. John Deere Co.*, 494 U.S. 516, 530 (1990); *Lead Indus. Ass'n, Inc. v. Occupational Safety & Health Admin.*, 610 F.2d 70, 79 n.17 (2d Cir. 1979) (citing cases); Kelly v. Kelly, 911 F. Supp. 70, 71 (N.D.N.Y. 1996). "The purpose of section 1404(a) is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Flaherty v. All Hampton Limousine, Inc.*, No. 01-CV-9939, 2002 WL 1891212, at *1 (S.D.N.Y. Aug. 16, 2002) (internal quotations

marks omitted).

When considering whether to transfer an action sua sponte, courts follow the same traditional analysis used when a party moves for a change of venue. *See, e.g.*, *Flaherty*, 2002 WL 1891212, at *1-2; *Haskel v. FPR Registry, Inc.*, 862 F. Supp. 909, 916 (E.D.N.Y. 1994). Specifically, "[m]otions to transfer venue are governed by a two-part test: (1) whether the action to be transferred might have been brought in the transferee venue; and (2) whether the balance of convenience and justice favors transfer." *Flaherty*, 2002 WL 1891212, at *1.

B. Application

Venue in this district is clearly improper. Plaintiff resides in Buffalo, in the Western District of New York, and defendant resides in Connecticut. There is absolutely no connection to the Northern District of New York and thus, venue is improper. The court must then determine whether the case should be dismissed, or transferred in the interests of justice.

According to the venue statute, the court "shall" dismiss this action. Mr. Hines is well aware of the venue statute having filed multiple cases in the Northern District of New York to avoid a bar order in the Western District of New York.[2] The Northern District of New York case which plaintiff cited to defendant Dell has also been

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[2] *See Hines v. IRS*, No. 5:20-CV-469; *Hines v. TopShelf Mgmt.*, No. 5:20-CV-505; *Hines v. N.Y.S. Office of Temp. & Disability Assistance Staff*, No. 1:20-CV-506; *Hines v. Bryant & Stratton Coll.*, No. 5:20-CV-507; *Hines v. Erie County Dep't of Soc. Svces.*, No. 1:20-CV-536. Each of those cases were transferred to the Western District of New York. Plaintiff has also been barred from filing appeals in the Second Circuit Court of Appeals without prior approval. *See In re Hines*, No. 17-2090, 2017 WL 6803304 (2d Cir. July 28, 2017) (stating that on "May 5, 2016 this Court entered an order in *In Re: Dashon Hines* 15–4094 requiring appellant to file a motion seeking leave of this Court prior to filing any future appeals.")

dismissed without the opportunity to amend. *See Hines v. New York Dep't of Labor Staff*, No. 1:20-CV-517 (DNH/ATB), 2020 WL 3035574 (N.D.N.Y. June 5, 2020). Before recommending dismissal, I will also address the "interests of justice" in transferring this case to the District of Connecticut.

Plaintiff's other cases were transferred to the Western District of New York because the "interests of justice" weighed in favor of transfer. This was not because the plaintiff simply made a mistake in filing the actions, but because plaintiff was clearly trying to avoid the bar order as well as paying a fine in the Western District which would have been imposed upon him for attempting to file frivolous actions.[3] Thus, I found that it was in the interests of justice to transfer plaintiff's cases to the Western District of New York where he would have to justify his filing and suffer the consequences of his frivolous lawsuits.

However, in this case, while venue is still improper, plaintiff's unsuspecting defendant is in Connecticut, where it appears from the court's electronic filing system, plaintiff has not yet filed any lawsuits, frivolous or otherwise. Transfer is not in the interests of justice. Rather than transfer this frivolous action,[4] I will recommend dismissal. If plaintiff wishes to file an action in Connecticut, he must do so himself.

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[3] As I explained in my transfer order in *Hines v. IRS*, "on November 24, 2015, the court in the Western District of New York issued [an] order, requiring that plaintiff file a request for permission to file a lawsuit in the Western District and holding that plaintiff would be fined if he had three or more request[s] denied. *Hines v. IRS*, No. 5:20-CV-469 (DNH/ATB) (Dkt. No. 4 at 5) (citing Dkt. No. 13 in *In re Hines*, No. 13-MC-27A).

[4] If venue had been proper in this district, this court would find that plaintiff's action is frivolous. Plaintiff is upset because defendant Dell told plaintiff in an email that he needed to contact another individual in order to get information. There is absolutely no violation stated, constitutional or otherwise. Plaintiff appears to try to use the court as an attempt to manipulate and harass others.

He will not be assisted by this court.

WHEREFORE, based on the findings above, it is

ORDERED, that the plaintiff's motion to proceed IFP (Dkt. No. 2) be **GRANTED ONLY TO THE EXTENT NECESSARY TO FILE THIS ACTION,** and it is

RECOMMENDED, that the entire action be **DISMISSED WITHOUT PREJUDICE** for improper venue in accordance with 28 U.S.C. § 1406(a).

and it is

ORDERED, that the Clerk serve a copy of this Order and Report-Recommendation on plaintiff by regular mail.

Pursuant to 28 U.S.C. § 636(b)(1) and Local Rule 72.1(c), the parties have fourteen (14) days within which to file written objections to the foregoing report. Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir. 1993)(citing *Small v. Secretary of Health and Human Services*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72.

Dated: June 11, 2020

Andrew T. Baxter
U.S. Magistrate Judge