No.

IN THE

Supreme Court of the United States

DANOS KALLAS,

Petitioner

v.

THERESA L. EGAN
as the Executive Deputy Commissioner of the Department of Motor Vehicles of the State of New York,

Respondent

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals For The Second Circuit

APPENDIX OF DANOS KALLAS

Danos Kallas,
Petitioner, *pro se*
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Cliffside Park, N.J.07010
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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 January, two thousand twenty-one.

PRESENT:
ROBERT A. KATZMANN,

MICHAEL H. PARK,
STEVEN J. MENASHI,
Circuit Judges.

DANOS KALLAS

Plaintiff-Appellant,

v. 20-717

THERESA L. EGAN, as the Executive Deputy Commissioner of the Department of Motor Vehicles of the State of New York,

Defendant-Appellee.

For Plaintiff-Appellant: DANOS KALLAS, pro se, Cliffside Park,NJ.

For Defendant-Appellee: MATTHEW W. GRIECO, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Steven C. Wu, Deputy Solicitor General,

Erik Fredericksen,Law Intern, *on the brief*, *for* Letitia James, Attorney General, State of New York, New York, NY.

Appeal from an order of the United States District Court for the Southern District of New York (Caproni, *J.*; Aaron, *M.J.*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of the district court is AFFIRMED.

Plaintiff-appellant, Danos Kallas, proceeding pro se, brought the instant 42 U.S.C. § 1983 action against defendant-appellee Theresa L. Egan, Executive Deputy Commissioner of the New York State Department of Motor Vehicles, alleging that unspecified vehicle and traffic law statutes

violated the equal protection and due process rights of Americans. Kallas alleged that the statutes were unconstitutional because they did not incorporate a sliding-scale schedule for traffic fines, which disproportionately burdened minorities and which, in turn, contributed to nationwide civil unrest. Also, Kallas sought a declaratory judgment imposing nationwide legislative reform, such as less severe punishment for traffic infractions. The magistrate judge recommended dismissal of the complaint on standing and *res judicata* grounds, without leave to amend. The district court adopted the report and recommendation and dismissed the complaint, and this appeal followed. We assume the parties' familiarity with the

underlying facts, the procedural history of the case, and the issues on appeal.

We review the district court's determination on standing *de novo*. *See Rajamin v. Deutsche Bank Nat'l Tr. Co.*, 757 F.3d 79, 84–8 5 (2d Cir. 2014). To establish Article III standing, "the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016).[1] "To establish injury in fact, a

[1] Unless otherwise indicated, case quotations omit all internal quotation marks, alterations, footnotes, and citations.

plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical." *Id.* at 1548. And "when the asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." *Warth v. Seldin*, 422 U.S. 490, 499 (1975); *see also DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 344 (2006) (holding that an injury a plaintiff "suffers in some indefinite way in common with people generally" is not a cognizable injury-in-fact). Even if a plaintiff has alleged an injury that satisfies the Article III standing requirements, he "generally must assert his

own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth*, 422 U.S. at 499.

Kallas argues that he had standing to bring his claims because "the right to sue governmental entities" constitutes a case or controversy. Appellant's Br. 12. However, nowhere in his complaint or various filings has he alleged any facts showing that he himself suffered any injury-in-fact from any vehicle or traffic statutes, and he did not allege that Egan's conduct caused him any harm such that he had a personal stake

in the litigation. *See Spokeo*, 136 S. Ct. at 1547–48. Even if we were to liberally construe Kallas's brief to argue that he suffered an injury-in-fact in the form of civil unrest, this is a generalized grievance that Kallas claims is shared by the American people. Accordingly, it does not constitute an injury-in-fact. *See id.* at 1548; *Warth*, 422 U.S. at 499. Further, Kallas cannot bring suit on behalf of the "American people," as he cannot establish standing by asserting the legal rights of third parties. *See Warth*, 422 U.S. at 499; *Rajamin*, 757 F.3d at 86. Because Kallas has not met the injury-in-fact requirement, he cannot establish standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)

(explaining that the three elements of standing are "an indispensable part" of a case and that a plaintiff must meet each of them).

Even if Kallas had alleged an injury-in-fact, he did not satisfy the redressability element of the standing requirements. To satisfy this element, a plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Id.* Kallas generally alleged that unspecified statutes violated Americans' equal protection and due process rights, contributing to widespread civil unrest that harmed the

American people. He requested relief in the form of a declaratory judgment that would instruct Congress and state legislatures to implement legislative reforms. However, federal courts may not require Congress and state legislatures to exercise their legislative powers. *See Liu v. United States Cong.*, No. 193054, 2020 WL 6306971, at *4 (2d Cir. Oct. 28, 2020) (summary order) ("[F]ederal courts lack the power to compel the Congress to exercise its legislative powers. The Constitution commits the federal legislative power to the Congress."); *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1358 (2018) ("It is Congress's job to enact policy and it is this Court's job to follow the policy Congress has prescribed."); U.S. Const. art. I, § 8 (delegating enumerated

legislative functions to Congress, not the federal courts); *id.*, amend. X (reserving unenumerated powers to the States).

Kallas also argues that he has standing because the Second Amendment grants citizens the right to "defend their homeland" through civil litigation, Appellant's Br. 13–14, and because it exempts citizens proceeding pro se from Article III standing requirements. We are not persuaded, as all plaintiffs must demonstrate standing even when bringing suit under the Second Amendment. *See Libertarian Party of Erie County v. Cuomo*, 970 F.3d 106, 121–22 (2d Cir. 2020) (requiring plaintiffs to establish standing with respect to their Second Amendment claims challenging the constitutionality of

firearm licensing statutes); *see also* U.S. Const. art. III, § 2,

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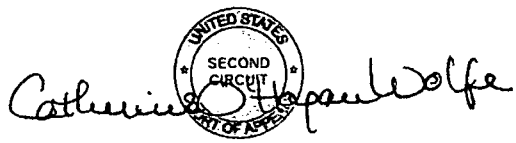
cl. 1 (establishing judicial power over cases and controversies). In addition, the district court properly declined to consider the merits of his claims, given that the threshold jurisdictional requirement of standing was not met. *See Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990) ("[B]efore a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue.").

Finally, Kallas's appellate brief does not address the district court's holding that amendment would be futile. He has therefore waived any challenge to the

district court's ruling on that issue. *See LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995) ("[W]e need not manufacture claims of error for an appellant proceeding *pro se*, especially when he has raised an issue below and elected not to pursue it on appeal."). In any event, without standing, amendment would be futile as the barriers to relief for Kallas's claims cannot be surmounted by reframing the complaint. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000).

We have considered all of Kallas's remaining arguments and have found in them no grounds for reversal. Accordingly, we **AFFIRM** the order of the district court.

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



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---------- X

DANOS KALLAS, :

Plaintiff, :

-against- :

18-cv12310(VEC)
MEMORANDUM
OPINION AND
ORDER

THERESA L. EGAN, *as the Executive Deputy Commissioner of the Department of Motor Vehicles of the State of New York* :

Defendants. :

---------- X

VALERIE CAPRONI, United States District Judge:

Pro se plaintiff Danos Kallas alleges that New York's traffic statutes violate Equal Protection and

Due Process because state law does not allow minorities, "who . . . [are] less able to pay fines," to receive lower fines. *See* Compl. (Dkt. 1) at 2. Kallas does not claim to be a member of the minority group(s) on whose behalf he purports to bring this action—indeed, he specifically disclaims any relief for himself, and instead claims to have "citizen standing" to correct a perceived injustice. *See* Compl. (Dkt. 1) at 4 ("The citizen is proceeding gratis, without regard for his/her self-interests."). Kallas has also previously commenced a separate action against the New York Department of Motor Vehicles, alleging that the issuance of two traffic tickets by the State of New York violated his constitutional rights; the earlier action was dismissed *sua sponte* as frivolous by the district court, and the dismissal was affirmed

by the Second Circuit, without leave to amend. *Kallas v. Fiala*, 591 F. App'x 30, 31 (2d Cir. 2015) ("We further note that amendment of the complaint would have been futile."), *cert. denied*, 136 S. Ct. 271 (2015). Magistrate Judge Stewart Aaron, to whom this action was referred for general pretrial and other issues, ordered Plaintiff to show cause why this action should not be dismissed for lack of standing or as barred by claim preclusion. *See* Dkt. 6. After reviewing Plaintiff's response, Judge Aaron recommended that this Court dismiss the action and deny leave to amend as futile. *See* Report & Recommendation ("R&R") (Dkt. 10) at 6–8. Although Kallas has filed timely objections, his arguments are meritless, and the Court adopts Judge Aaron's recommendation that the claims be dismissed for lack of standing, and that leave to amend be denied as futile.

DISCUSSION

Because Kallas is proceeding *pro se*, the Court construes his submissions "liberally" and interpret them "to raise the strongest arguments that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 472 (2d Cir. 2006).

In reviewing a Report and Recommendation (R&R), a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. §636(b)(1). The standard of review employed by the district court in reviewing an R&R depends on whether any party makes timely and specific objections to the report. *Williams v. Phillips*, No. 03-CV-3319, 2007 WL 2710416, at *1 (S.D.N.Y. Sept. 17, 2007). To accept those portions of the R&R to which no timely objection has been made, "a district court need only satisfy itself that there is no clear error on the face of

the record." *King v. Greiner*, No. 02-CV-5810, 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009) (quoting *Wilds v. United Parcel Service, Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003)). The Court also reviews objections that are "conclusory or general" for clear error. *See Pineda v. Masonry Const., Inc.*, 831 F. Supp. 2d 666, 671 (S.D.N.Y. 2011). Where, however, specific objections to the R&R have been made, "[t]he district judge must determine *de novo* any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 72(b)(3); *see United States v. Male Juvenile (95-*

CR-1074), 121 F.3d 34, 38–39 (2d Cir. 1997). The Court need not consider arguments and factual assertions that were not raised initially before the magistrate judge. *Robinson v. Keane,* No. 92-CV-6090, 1999 WL 459811 at *4 (S.D.N.Y. June 29,

1999) ("These issues were not raised before the Magistrate Judge and therefore were not addressed by him; accordingly, they may not properly be deemed 'objections' to any finding or recommendation made in the Report and Recommendation."); *see also Abu–Nassar v. Elders Futures, Inc.*, No. 88-CIV-7906, 1994 WL 445638 at *4 n.2 (S.D.N.Y. Aug. 17, 1994) ("If the Court were to consider [new arguments in an objection], it would unduly undermine the authority of the Magistrate Judge by allowing litigants the option of waiting until a report is issued to advance additional arguments.").

The fact that Plaintiff lacks standing in this matter is one of the few things that appears clearly on the face of the Complaint. There is no question that a plaintiff must assert "a distinct and palpable injury to [him]self" in order to have standing to maintain a claim. *Mahon v. Ticor Title Ins. Co.*, 683

F.3d 59, 64 (2d Cir. 2012) (quotation marks and citation omitted). Instead, Plaintiff forthrightly states that he is "proceeding [] without regard for his/her self-interests," "seeks no individual relief," and is instead a "citizen-litigant" acting on behalf of the American people. *See, e.g.*, Compl. (Dkt. 1) at 4. Thus, although he claims that New York law inflicts harm on minorities, he does not allege that he was injured in any way. In his objection to the R&R, Plaintiff claims in sweeping terms that he derives standing from the Second Amendment of the United States Constitution because the amendment authorizes citizens to defend their homeland. *See* Dkt. 11 at 2. Plaintiff cites no authority, and the Court is unaware of any credible source that comes close to suggesting that the Second Amendment creates an exemption to the case or controversy requirement contained in Article III of the

Constitution. *See United States v. Jimenez*, 895 F.3d 228, 232 (2d Cir. 2018) ("[A] defendant to whom a statute

constitutionally applies has no standing to challenge the statute's constitutionality [under the Second Amendment] as it applies to others differently situated."). Plaintiff's objection is therefore frivolous, and the Court agrees with Judge Aaron that Plaintiff lacks standing to seek relief purely on others' behalf.[1]

Leave to amend should be granted to a *pro se* litigant, unless it is clear that no valid claim can be stated.[2] *See Grullon v. City of New Haven*, 720 F.3d 133, 139 (2d Cir. 2013) ("A pro se complaint should not be dismissed without the Court's granting leave to amend at least once when a liberal reading of the

complaint gives any indication that a valid claim might be stated." (quotation marks and citations omitted)). Here, granting leave to amend would be futile due to a combination of standing and claim preclusion. First, unless Plaintiff abandons his allegations that he is not seeking relief on his own behalf and contradicts his current pleading that he does not stand to benefit from invalidating New York's traffic laws, he cannot demonstrate standing. If, however, Plaintiff attempts to challenge the constitutionality of his own traffic tickets, which he has already done, those claims would be barred by *res judicata* because they could have been raised in his previous litigation. *See TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 499 (2d Cir. 2014) ("To prove the affirmative defense of *res judicata* a party must show that (1) the previous action involved an adjudication on the merits; (2) the previous action

involved the plaintiffs or those in privity with them; and (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." (quotation marks and citation omitted)). might be stated." (quotation marks and citations omitted)). Here, granting leave to amend would be futile due to a combination of standing and claim preclusion. First, unless Plaintiff abandons his allegations that he is not seeking relief on his own behalf and contradicts his current pleading that he does not stand to benefit from invalidating New York's traffic laws, he cannot demonstrate standing. If, however, Plaintiff attempts to challenge the constitutionality of his own traffic tickets, which he has already done, those claims would be barred by *res judicata* because they could have been raised in his previous litigation. *See TechnoMarine SA v. Giftports, Inc.*, 758 F.3d 493, 499 (2d Cir. 2014) ("To prove the affirmative

defense of *res judicata* a party must show that (1) the previous action involved an adjudication on the merits; (2) the previous action involved the plaintiffs or those in privity with them; and (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." (quotation marks and citation omitted)).

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1 Plaintiff objects to Judge Aaron's conclusion that the complaint would also fail to state an equal protection claim on the merits under *Washington v. Davis*, 426 U.S. 229 (1976). *See* Dkt. 11 at 4; R&R at 6 n.6. Because this case fails for jurisdictional reasons, the Court does not address the merits of Plaintiff's constitutional claims.

2 Plaintiff also objects to Judge Aaron's citation to two cases, which set forth general principles regarding the grant or denial of leave to amend. *See* Dkt. 11 at 4–5. The Court finds no error. *See* R&R at 7 ("Lastly, district courts

generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, unless it would be futile to do so." (citing *Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011) and *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988))).

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CONCLUSION

Because Kallas' objections are meritless and the Court otherwise finds no clear error, the Court ADOPTS the R&R's conclusion that Plaintiff lacks standing to maintain this action and that further amendments would be futile. This action is therefore dismissed without prejudice, and leave to amend is denied.

The Clerk of Court is respectfully directed to terminate all pending motions and deadlines and

close the case. The Clerk is further requested to mail a copy of this Order to Mr. Kallas' last known address and note mailing on the docket.

SO ORDERED.

Valerie Caproni

Date: January 30, 2020
New York, NY

VALERIE CAPRONI
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kallas,

Plaintiff,

-against- 1:18;cv;12310 (VEC) (SDA)

Egan, REPORT AND RECOMMENDATION

Defendant.

STEWART D. AARON, UNITED STATES MAGISTRATE JUDGE:

TO THE HONORABLE VALERIE E. CAPRONI, UNITED STATES DISTRICT JUDGE:

On December 28, 2018, *pro se* Plaintiff Danos Kallas ("Plaintiff" or "Kallas") commenced this action by filing a Complaint, pursuant to 42 U.S.C. § 1983, alleging constitutional violations under the Fifth and Fourteenth amendments. (Compl., ECF No. 1.) On January 17, 2019, I ordered Plaintiff to show cause why his Complaint should not be dismissed. (ECF No. 6.) For the reasons set forth below, I recommend that this case be DISMISSED.

BACKGROUND

I. Prior Lawsuit

Plaintiff brought a prior lawsuit in this Court against the Commissioner of the Department of Motor Vehicles ("DMV"), *Kallas v. Fiala*, No. 13-CV-8816 (GBD) (S.D.N.Y.) (the "Prior Lawsuit"). In that lawsuit, he alleged constitutional violations pursuant to 42 U.S.C. § 1983. (*See* Compl., ECF No. 1, *Kallas v. Fiala*, No. 13UCVU8816 (S.D.N.Y.) at 5.) The purported factual basis for his claims arose out of prior traffic violations. On February 6, 2011, police officers had issued upon him two summonses in Manhattan for traffic violations,[1] which "gave rise to several legitimate fundamental national security issues." (*See* Compl., *Kallas v. Fiala*, No. 13UCVU8816 (S.D.N.Y.) at 5U6.) He was found guilty of the violations. (*Id.* at 6.) Plaintiff appealed to the DMV Appeals Board, and his appeal was denied. (*Id.*) He brought an Article 78 proceeding in New York State Supreme Court,[2] in which he argued that the state courts unconstitutionally denied him

discovery regarding national security issues that were implicated because the traffic stop occurred near "potential terrorist targets." (*Id.* at 12.) That proceeding was dismissed. (*Id.* at 6-7.) His appeal to the Appellate Division was unsuccessful, and the New York State Court of Appeals denied leave to appeal. (*Id.*)

In the Prior Lawsuit, Plaintiff sought the dismissal in this Court of the judgment and order of the New York Court of Appeals, and sought to proceed with the "resolution of the relevant legitimate fundamental national security issues in the litigation." (*Id.* at 8.) District Judge Daniels dismissed the case *sua sponte* as frivolous (Orders of Dismissal, ECF Nos. 3 and 5, *Kallas v. Fiala*, Case No. 13-CV-8816 (S.D.N.Y.)), and the Second Circuit affirmed. *See Kallas v. Fiala*, No. 14-310 (2d Cir. Jan. 30, 2015).

II. Present Lawsuit

On December 28, 2018, Plaintiff commenced the present lawsuit. In this lawsuit, he brings claims against the current Executive Deputy Commissioner of the New York State DMV, again

[1] One summons was for disobeying a traffic device and one was for driving without a seatbelt, as detailed in the State's Memorandum of Law from Plaintiff's Article 78 proceeding in New York state court (discussed *infra*), which is annexed to the complaint in the prior lawsuit. (See Compl., ECF No.1, *Kallas v. Fiala*, Case No. 13-CV-8816 (S.D.N.Y.) at 10.)

[2] See *Kallas v. Fiala*, Index No. 102481/2012 (N.Y. Sup. Ct.).

alleging violations of his constitutional rights under 42 U.S.C. § 1983. He states that he "brings the new argument that the [traffic] statutes are also Unconstitutional under Equal Protection and Due Process because they do not integrate [a] progressive (sliding scale) fine schedule, thereby having the effect of disproportionally burdening minorities." (Compl. at 2.) He makes various proposals about allowing traffic school education options to resolve summonses. (*Id.* at 6.) Although the present lawsuit appears to be based upon the prior traffic violations, Plaintiff makes no reference to any facts underlying those violations. Rather, many of Plaintiff's arguments brought in the Complaint appear to be proposals for legislative action and do not raise justiciable legal claims.

III. Order To Show Cause

On January 17, 2019, by Order to Show Cause, I directed Plaintiff to file a declaration setting forth why I should not recommend to the District Judge that this case be dismissed for lack of standing, as frivolous and as barred by the doctrine of *res judicata*. (ECF No. 6.)

On February 14, 2019, Kallas filed a Declaration in response to the Order to Show Cause. (Decl., ECF No. 7.) Although his Declaration is somewhat difficult to follow, in response to the Court's inquiry regarding standing, he seems to assert that he has "citizen standing" to bring the complaint. (*Id.* at 1.) In response to the Court's inquiry regarding whether the present lawsuit is frivolous, he seems to assert that "frivolity" is not an "addressable issue" for this Court. (*Id.*) And, in response to the Court's inquiry regarding *res judicata*, although he concedes that he brought the prior lawsuit (*id.*), he seems to argue that the issues raised in the prior lawsuit were not subject to full and fair litigation. (*Id.* at 6.)

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In the Declaration, Plaintiff does not offer specific or particular facts about his claims, but relies on general assertions. He states that this case is "nationwide in nature" and that he had a "wide range of potential defendants and courts."[3] (Decl. at 1U2.) He states that this lawsuit "should be a concerted

effort that, after full and fair litigation, should result in a win for the American people." (*Id.* at 1.) He makes generalized statements about the police.[4] He states that "the instant case is solely about the defense of a public interest" (*id.* at 3) and that "Plaintiff is proceeding *gratis* as a bare-bones United States citizen under the 2nd Amendment[5] with no private (or individual) interest in the outcome of the litigation seeking solely the gratification of watching the American people win . . . ." (*Id.* at 4.) In order "to seal" his argument that "there is nothing in it" for Plaintiff, he "specifically and expressly excludes himself from the relief of the class (the American people) and waives any and all rights to even coincidently [sic] benefit from the people's relief . . . ." (*Id.* at 5.) Further to this point, Kallas states "[t]o Plaintiff, the only thing that matters is that the American people win." (*Id.* at 7.) Towards the end of his Declaration, Plaintiff states, "[i]n the instant case, Plaintiff is seeking the uniform and harmonious nationwide

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[3] He goes on to state, "Plaintiff chose based on what was most fitting under the facts and circumstances of the prior case." (Decl. at 1-2.)

[4] *See, e.g.*, Decl. at 2 (emphasizing "unnecessarily negative police community relations (and consequent, citizen

relations) nationwide"), 9 ("The public's perception of the police is a key point in this litigation.. .. Police should be given an environment that not only protects the citizenry but the police themselves, as well.").

[5] Kallas mentions a number of times in his Declaration, for the first time in this action (*i.e.*, he did not mention it in his Complaint), the Second Amendment. (*See* Decl. at 1, 2, 4 and 6.) Similarly, he mentions, for the first time in this action in his Declaration, declaratory relief. (*See* Decl. at 1 ("[T]he statement that Plaintiff was seeking a declaratory judgment under the U.S. Constitution meant that Plaintiff was seeking declaratory relief under the 2nd Amendment (and common sense) for the American people.").)

modification of the civil (and low threshold 'victimless' misdemeanor) laws and other uniform and harmonious nationwide change." (*Id.* at 7.)

LEGAL STANDARDS

The Court has the authority to dismiss a complaint *sua sponte*, even when the plaintiff has paid the filing fee, if it determines that the action is

frivolous. *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (internal citation omitted). A claim is "frivolous when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal quotations marks and citation omitted).

Moreover, a court may raise *sua sponte* the issue of standing at any point in a litigation. *See Keepers, Inc. v. City of Milford*, 807 F.3d 24, 38 (2d Cir. 2015) (citing *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005)). To have standing to maintain a lawsuit, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "[A]t the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element." *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

A court also may raise *sua sponte* the issue of *res judicata*. *Scherer v. Equitable Life Assurance Soc'y of U.S.*, 347 F.3d 394, 398 & n.4 (2d Cir. 2003). Under the doctrine of *res judicata*, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could

have been raised in that action." *Proctor v. LeClaire*,15 F.3d 402, 411

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(2d Cir. 2013) (internal quotation marks omitted). "A party cannot avoid the preclusive effect of *res judicata* 'by asserting a new theory or a different remedy.'" *Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017) (quoting *SureHSnap Corp. v. State St. Bank and Tr. Col.*, 948 F.2d 869, 875 (2d Cir. 1991)).

The Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted).

DISCUSSION

I recommend that this action be dismissed. Neither the Complaint nor the Declaration contain any facts, general or particular, which show that Kallas suffered any injury which is redressable by a favorable judicial decision of this matter.[6] Kallas himself emphasizes that he would not personally benefit from a favorable judicial decision in this matter, stating he has "no private (or individual) interest in the outcome of the litigation" (Decl. at 4) and that he "specifically and expressly excludes himself from the relief of the class (the American people) and waives any and all rights to even

coincidently [sic] benefit from the people's relief[.] (Id. at 5.)

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[6] To the extent he makes any factual contentions, he does not provide a basis for them. Thus, the action is frivolous. See *Livingston*, 141 F.3d at 437. In my Order to Show Cause, I stated that Plaintiff's "claim that imposing fines without regard to income disproportionately affects minorities appears to be based on an indisputably meritless legal theory." (Order to Show Cause at 4) (citing *Washington v. Davis*, 426 U.S. 229 (1976) (rejecting argument that facially neutral state action violates Equal Protection solely because it has a racially disproportionate impact)). Plaintiff discusses *Washington* in his Declaration, stating that "the only notable effect *Washington* ... caused for the American people with its' [sic] essentially 'tough luck' statement to minorities was to add more steam to the civil unrest lobster pot" (Decl. at 6) and that "the federal courts should have the

opportunity to revisit *Washington*," which he characterizes as being erroneously decided. (See *id.* at 7.) The Court is not persuaded that these legal arguments have merit.

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Further, the relief which Kallas seeks — "uniform and harmonious nationwide modification of ... laws" (*id.* at 7) — appears to be legislative in nature and not addressable by judicial action.

To the extent Plaintiff argues that the Prior Lawsuit was not subject to a full and fair litigation and thus this action is not barred by *res judicata*, Kallas is wrong. Judge Daniels's *sua sponte* dismissal of the Prior Lawsuit qualifies as a final judgment on the merits for the purposes of *res judicata*. *See Soling v. New York State*, 804 F. Supp. 532, 534 (S.D.N.Y. 1992). "[T]he *res judicata* effect of such a *sua sponte* dismissal should apply as strictly to *pro se* as to other plaintiffs[.]" *Id.* Kallas does not show cause in his Declaration why the principles of *res judicata* do not apply to this action.

To the extent Plaintiff mentions the Second Amendment, there does not appear to be any factual basis to allege a violation of his Second Amendment rights. To the extent he seeks a declaratory judgment or declaratory relief "for the American people" (Decl.

at 1), there exists in this action no controversy which gives rise to such relief.

Lastly, district courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, unless it would be futile to do so. *See Hill v. Curcione*, 657 F.3d 116, 123-24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). By Order dated January 17, 2019, the Court directed Plaintiff to show cause why the Complaint should not be dismissed, and in response, he failed to articulate any valid reason why it should not be dismissed. It therefore appears that it would be futile to grant Plaintiff leave to amend, and the Court declines to recommend that the District Court grant Plaintiff leave to amend his Complaint.

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CONCLUSION

For the reasons stated above, I recommend that District Judge Caproni dismiss this action. The Clerk of Court is directed to mail a copy of this Order to the *pro se* Plaintiff, Danos Kallas, at the address provided for him on the docket, and to note service on the docket.

SO ORDERED.

DATED: New York, New York

March 1, 2019

Stewart D. Aaron

STEWART D. AARON

United States Magistrate Judge

* * *

NOTICE OF PROCEDURE FOR FILING OBJECTIONS TO THIS REPORT AND RECOMMENDATION

The parties shall have fourteen (14) days (including weekends and holidays) from service of this Report and Recommendation to file written objections pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure. *See also* Fed. R. Civ. P. 6(a), (d) (adding three additional days when service is made under Fed. R. Civ. P. 5(b)(2)(C), (D) or (F)). A party may respond to another party's objections within fourteen days after being served with a copy. Fed. R. Civ. P. 72(b)(2). Such objections, and any response to objections, shall be filed with the Clerk of the Court. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b). Any requests for an extension of time for filing objections must be addressed to Judge Caproni.

THE FAILURE TO OBJECT WITHIN FOURTEEN (14) DAYS WILL RESULT IN A WAIVER OF OBJECTIONS AND WILL PRECLUDE APPELLATE REVIEW. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(d), 72(b); *Thomas v. Arn,* 474 U.S. 140 (1985).

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kallas,

Plaintiff,

1:18-cv-12310 (VEC) (SDA)

-against- **ORDER TO SHOW CAUSE**

Egan,

Defendant.

STEWART D. AARON, United States Magistrate Judge:

Pro se Plaintiff Danos Kallas ("Plaintiff" or "Kallas") brings this action pursuant to 42 U.S.C. § 1983, alleging constitutional violations under the Fifth and Fourteenth amendments.

For the reasons set forth below, Plaintiff is

ORDERED TO SHOW CAUSE, BY FILING A DECLARATION WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS ORDER, WHY I SHOULD NOT RECOMMEND TO THE DISTRICT JUDGE DISMISSAL OF THIS ACTION FOR LACK OF STANDING, AS FRIVOLOUS AND AS BARRED BY THE DOCTRINE OF *RES JUDICATA*.

STANDARDS OF REVIEW

The Court has the authority to dismiss a complaint *sua sponte*, even when the plaintiff has paid the filing fee, if it determines that the action is frivolous. *Fitzgerald v. First E. Seventh Tenants Corp.*, 221 F.3d 362, 363-64 (2d Cir. 2000) (per curiam) (internal citation omitted). A claim is "frivolous when either: (1) the factual contentions are clearly baseless, such as when allegations are the product of delusion or fantasy; or (2) the claim is based on an indisputably meritless legal theory." *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal quotations marks and citation omitted).

Moreover, a court may raise *sua sponte* the issue of standing at any point in a litigation. *Keepers, Inc. v. City of Milford*, 807 F.3d 24, 38 (2d Cir. 2015) (citing *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005)). To have standing to maintain a lawsuit, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). "[A]t the pleading stage, the plaintiff must 'clearly . . . allege facts demonstrating' each element." *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 518 (1975)).

A court also may raise *sua sponte* the issue of *res judicata*. *Scherer v. Equitable Life Assourance Soc'y of U.S.*, 347 F.3d 394, 398 & n.4 (2d Cir. 2003).

Under the doctrine of *res judicata*, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Proctor v. LeClaire*, 715 F.3d 402, 411 (2d Cir. 2013) (internal quotation marks omitted). "A party cannot avoid the preclusive effect of *res judicata* 'by asserting a new theory or a different remedy.'" *Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017) (quoting *SureHSnap Corp. v. State St. Bank and Tr. Col.*, 948 F.2d 869, 875 (2d Cir. 1991)).

The Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they suggest." *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted).

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BACKGROUND

Plaintiff brought a prior lawsuit against the Commissioner of the Department of Motor Vehicles (DMV), *Kallas v. Fiala*, No. 13-CV-8816 (GBD) (S.D.N.Y.). In that action, he alleged that on February 6, 2011, police officers issued him two traffic summonses in Manhattan, [1] which "gave rise to several legitimate fundamental national security issues." (*See* Compl., ECF No. 1, *Kallas v. Fiala*, No. 13-CV-8816 (S.D.N.Y.) at 5-6.) He was found guilty of the violations. (*Id.* at 6.) Plaintiff appealed to the

DMV Appeals Board, and was denied. (*Id.* at 6.) He also brought an Article 78 proceeding in New York State Supreme Court, [2] in which he argued that the state courts unconstitutionally denied him discovery regarding national security issues that were implicated because the traffic stop occurred near "potential terrorist targets." (*Id.* at 12.) That proceeding was denied. (*Id.* at 6-7.) His appeal of the denial to the Appellate Division was denied, and the New York State Court of Appeals denied leave to appeal. (*Id.*)

In the prior federal lawsuit, Plaintiff sought the dismissal of the judgment and order of the Court of Appeals, and to proceed with the "resolution of the relevant legitimate fundamental national security issues in the litigation." (*Id.* at 8.) District Judge Daniels dismissed the case *sua sponte* as frivolous (Order of Dismissal, ECF Nos. 3, 5, *Kallas v. Fiala*, Case No. 13-CV-8816 (S.D.N.Y.)), and the Court of Appeals for the Second Circuit affirmed the dismissal. *See Kallas v. Fiala*, No. 14-310 (2d Cir. Jan. 30, 2015).

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[1] As detailed in the State's Memorandum of Law from Plaintiff's Article 78 proceeding in New York state court, which is annexed to Plaintiff's complaint, one summons was for disobeying a traffic signal, and one was for driving without a seatbelt. (*See* Compl., ECF No. 1, *Kallas v. Fiala*,

Case No. 13-CV-8816 (S.D.N.Y.) at 10.)

[2] *See Kallas v. Fiala*, Index No. 102481/2012 (N.Y. Sup. Ct.).

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DISCUSSION

Plaintiff's present complaint is difficult to comprehend. In this action, he brings suit against the current Executive Deputy Commissioner of the New York State DMV. He states that he "brings the new argument that the [traffic] statutes are also Unconstitutional under Equal Protection and Due Process because they do not integrate [a] progressive (sliding scale) fine schedule, thereby having the effect of disproportionally burdening minorities." (Compl., ECF No. 1 at 2.) He makes various proposals about allowing traffic school education options to resolve summonses. (*Id.* at 6.) He does not refer to his prior lawsuit, except for a general statement written in the civil cover sheet filed simultaneously with his complaint, in which he states that this case raises "some same or similar issues" in the previous case filed before Judge Daniels. (*See* ECF No. 2 at 1). He makes no reference to any specific facts underlying his prior lawsuit (*e.g.*, the prior traffic summonses). Indeed, many of Plaintiff's arguments appear to be proposals for legislative action and do not raise justiciable legal claims.

It is not clear that Plaintiff has standing to assert the claims he brings. The complaint as

currently pleaded does not contain any facts whatsoever, including those which would support a finding that Plaintiff suffered any injury. And, due to the legislative nature of the remedies plaintiff proposes, it is not clear what (if any) conduct of Defendant Plaintiff challenges, nor that a favorable judicial decision would provide any redress to him. Further, his claim that imposing fines without regard to income disproportionately affects minorities appears to be based on an indisputably meritless legal theory. *See, e.g., Washington v. Davis*, 426 U.S. 229 (1976) (rejecting argument that facially neutral state action violates Equal Protection solely because it has a racially disproportionate impact).

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Further, Judge Daniels's *sua sponte* dismissal of Plaintiff's prior lawsuit qualifies as a final judgment on the merits for the purposes of *res judicata*. *See Soling v. New York State*, 804 F. Supp. 532, 534 (S.D.N.Y. 1992). "[T]he *res judicata* effect of such a *sua sponte* dismissal should apply as strictly to *pro se* as to other plaintiffs[.]" *Id.* Plaintiff himself states that the present cases raises the "same or similar issues" to the previously-dismissed lawsuit. He may not avoid the preclusive impact of *res judicata* by the assertion of a new theory (his so-called "new argument") or remedies (*i.e.*, the proposals regarding revisions to traffic statutes).

Therefore, Kallas must show cause why I should not recommend that District Judge Caproni

dismiss this case for lack of standing, as frivolous and/or as barred by the principles of *res judicata*.

CONCLUSION

A declaration form is attached to this Order. Accordingly, Plaintiff shall show cause in writing, by filing within thirty days of the date of this Order, a declaration containing facts suggesting why his claim is not frivolous and/or barred by the doctrine of *res judicata*, and why he has standing to bring the lawsuit. If Plaintiff fails to do so, I will recommend that District Judge Caproni dismiss this matter. All future proceedings are stayed for 30 days for Plaintiff to comply with this Order.

The Clerk of Court is directed to mail a copy of this Order to the *pro se* Plaintiff, Danos Kallas, at the address provided for him on the docket, and to note service on the docket.

SO ORDERED.

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DATED: New York, New York
January 17, 2019

Stewart D. Aaron

STEWART D. AARON
United States Magistrate Judge

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 12th day of March, two thousand twenty-one.

Danos Kallas,

Plaintiff - Appellant,

ORDER

v. Docket No: 20-717

Theresa L. Egan, as the Executive Deputy Commissioner of the Department of Motor Vehicles of the State of New York,

Defendant - Appellee.

Appellant, Danos Kallas, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

Constitutional Provisions

United States Constitution, Amendment I

"Congress shall make no law... ...abridging ... ...the right of the people...to petition the Government for a redress of grievances."

United States Constitution, Amendment II

"A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

United States Constitution, Amendment IV

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

United States Constitution, Amendment V

"No person shall... ... be deprived of life liberty, or property without due process of law...."

United States Constitution, Amendment X

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

United States Constitution, Amendment XI
"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign State."

United States Constitution, Amendment XIV
"No State shall... ...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

United States Constitution, Article III, Section II
"The judicial power shall extend to all cases, in law and equity, arising under this Constitution..."

United States Constitution, Article VI, Clause II
"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof... ...shall be the Supreme Law of the Land..."

Statutes

28 United States Code Section 1254(1)
"Cases in the court of appeals may be reviewed by the Supreme Court by the following methods: (1) By writ of certiorari granted upon the petition of any party to any civil... ...case... ...after rendition of judgment or decree..."

28 United States Code Section1331
"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

42 United States Code Section 1983

"Every person who, under color of any statute, ordinance, regulation custom or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

New York State Vehicle and Traffic Law, Section 1110(a)

" Every person shall obey the instructions of any official traffic-control device applicable to him placed in accordance with the provisions of this chapter, unless otherwise directed by a traffic or police officer, subject to the exceptions granted the driver of an authorized emergency vehicle in this title."

New York State Vehicle and Traffic Law, Section 1229-c(3)(a)

" No person holding a class DJ learner's permit or class DJ license issued pursuant to section five hundred two of this chapter, shall operate a motor

vehicle unless such person is restrained by a seat belt approved by the commissioner...."

* The provisions above do not constitute an all-inclusive list.

Danos Kallas
Petitioner, *pro se*
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