APPENDIX A

MANDATE

W.D.N.Y.
13-mc-27
Arcara, 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 15th day of April, two thousand fifteen.

Present:

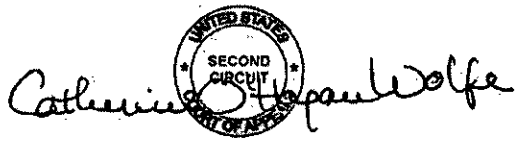
Guido Calabresi,
Jose A. Cabranes,
Christopher F. Droney,
Circuit Judges.

In re: Dashon Hines, 15-359

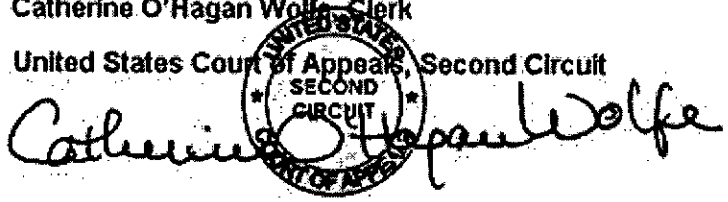
Defendant-Appellant.

Appellant, pro se, moves for leave to proceed *in forma pauperis*. Upon due consideration, it is hereby ORDERED that the motion is GRANTED. It is further ORDERED that the well-reasoned order entered by the district court on February 5, 2015, which imposed a filing sanction barring Appellant from filing any new action of any type in the district court for one year, is hereby VACATED. The matter is REMANDED to the district court to give Hines the opportunity to respond to the proposed new sanction and so that the district court may consider whether a more narrowly crafted sanction would suffice to deter Hines's prior abusive litigation practices while not completely denying him access to the district court. We intimate no view on the terms of any such order, which we leave to the informed discretion of the District Court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit



MANDATE ISSUED ON 05/13/2015

APPENDIX B

MANDATE

N.D.N.Y.
21-cv-600
21-cv-601
21-cv-626
Hurd, J.
Baxter, M.J.
S.D.N.Y.-N.Y.C.
21-cv-4629
21-cv-5528
Swain, C.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 30th day of September, two thousand twenty-one.

Dashon Hines,

Petitioner,

v. 21-1629

Office of Temporary and Disability Assistance Staff, et al.,

Respondent.

Dashon Hines,

Petitioner,

v. 21-1648

New York State Office of Temporary and Disability Assistance Staff,

Respondent.

MANDATE ISSUED ON 09/30/2021

Dashon Hines,

Petitioner,

v. 21-1651

New York State Department of Labor Staff, et al.,

Respondent.

Dashon Hines,

Petitioner,

v. 21-1665

New York State Division of Human Rights Staff,

Respondent.

Dashon Hines,

Petitioner,

v. 21-1914

Katie S. Blum, Esq., New York State Division of Human Rights,

Respondent.

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

A True Copy
Catherine O'Hagan Wolfe, Clerk
United States Court of Appeals, Second Circuit

APPENDIX C

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

APPENDIX D

OAH-4482/10 (Rev. 6/10) Pg. 1

From: **New York State Office of Temporary and Disability Assistance**
P.O. Box 1930
Albany, NY 12201 - 1930

TRANSMITTAL OF FAIR HEARING DECISION TO APPELLANT

Fair Hearing #: **8311046Y**
Hearing Date: **08/04/21**
Decision Date: **09/27/21**
Case #: **P128053BZP**
Category/Subcategory: **FA**

Agency: **ERIE**
Representative:

****
*** ***
*** ENCLOSED IS THE DECISION FOR YOUR FAIR HEARING ***
*** ***
****

TO: **DASHON HINES**
124 FULTON ST APT 5C
BUFFALO, NY 14204-4000

If the decision shows that you won your hearing and your local social services Agency is directed to take certain action, the Agency should do this forthwith (as quickly as possible). If you do not feel that the Agency has taken the action which the decision tells it to take within 10 days after you receive this decision, you may fill out the attached form and send it to:

New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
Compliance Unit
P. O. Box 1930
Albany NY 12201 - 1930

OR PHONE:
1-800-342-3334

NOTE: If the decision says that you must provide information or documents to the agency, or if the agency asks you for additional information to comply with the fair hearing decision, you should give it to the agency as soon as possible. If you do not provide the information promptly, the agency may not be able to comply with the decision within normal time frames.

If you did not win your hearing, you may bring a lawsuit in accordance with Article 78 of the Civil Practice Law and Rules against the State agency whose name appears at the top left of the decision. If you wish to bring a lawsuit and do not know how, you should contact the legal resources available to you (e.g. - County Bar Association, Legal Aid, Legal Services, etc.). You must start a lawsuit within 4 months after the date of decision.

A copy of this Decision has been mailed to any Representative listed above.

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NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE **ALBANY, NEW YORK**

REQUEST FOR COMPLIANCE

DASHON HINES
124 FULTON ST APT 5C
BUFFALO, NY 14204-4000

Fair Hearing #: **8311046Y**
Hearing Date: **08/04/21**
Decision Date: **09/27/21**
Case #: **P128053BZP**
Category/Subcategory: **FA**

Agency: **ERIE**
Representative:

IF THERE HAS BEEN A CHANGE IN YOUR ADDRESS, PLEASE NOTE BELOW:

If you do not feel that the local social services Agency has complied with your fair hearing decision, state the reason below and return this entire form to the address indicated below:

New York State Office of Temporary and Disability Assistance
Office of Administrative Hearings
Compliance Unit
P. O. Box 1930
Albany, NY 12201 - 1930
OR PHONE:
1-800-342-3334

Please be as specific as you can in describing what action has not been complied with or what benefits have not been provided--giving dollar amounts and dates where possible.

I do not feel that the local social services Agency has complied with my decision because:

Be sure to include your Social Security number and a phone number where you can be reached in the space below.

Signature | Social Security Number | Phone Number | Date

OAH-4482 Summary (Rev. 09/15)

NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE **ALBANY, NEW YORK**

SUMMARY OF ENCLOSED FAIR HEARING DECISION
APPELLANT: DASHON HINES
FAIR HEARING NUMBER: 8311046Y

This is a summary of the decision for the fair hearing that you attended on August 4, 2021. Please see the enclosed State Fair Hearing Decision for complete details. If you need help understanding the Fair Hearing Decision, you may call 1 (800) 342-3334.

Action	Issue	Notice Date	Outcome*	Reason
FAMILY ASSISTANCE - ADEQUACY	GENERAL INADEQUACY OF GRANT, INCLUDING RETROACTIVE BENEFITS	05/28/2021	AFFIRM	AGENCY AFFIRMED
SNAP - ADEQUACY	GENERAL INADEQUACY OF GRANT, INCLUDING RETROACTIVE BENEFITS	--	AFFIRM	AGENCY AFFIRMED

*What do the Outcomes Mean?	
REVERSE	This means that the agency's action was wrong. The State Fair Hearing Decision may order the agency to take an action to correct its mistake. It may also order it to repay benefits that you lost because of the action.
REMAND	This means that the agency didn't give the hearing officer enough evidence to prove that it was correct. The State Fair Hearing Decision may order the agency to go back and look at its action again. It may also order it to repay benefits that you lost because of the action.
AGENCY AGREEMENT	This means that the agency decided not to take the action it had originally wanted to take. The State Fair Hearing Decision may order the agency not to take the action. It may also order it to repay any benefits that you lost because of the action.
CORRECT WHEN MADE	This means that there were facts that the agency didn't know about when it took its action. Now that it knows them, it shouldn't take the action. The State Fair Hearing Decision may order the agency not to take the action. It may also order it to repay any benefits that you lost because of the action.
AFFIRM	This means that the State Fair Hearing decision has found that the agency's action was correct.
OTHER	This means that the State can't review the action. This may be because too much time has passed, it was already reviewed, it's an action the State isn't allowed to review or you asked the State not to review it.

STATE OF NEW YORK
OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE

REQUEST: June 16, 2021
CASE #: P128053BZP
AGENCY: Erie
FH #: 8311046Y

In the Matter of the Appeal of

Dashon Hines

from a determination by the Erie County Department of Social Services

DECISION AFTER FAIR HEARING

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR (hereinafter Regulations), a fair hearing was held on August 4, 2021, in Erie County, before Concetta Chiarolanza, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

Dashon Hines, Appellant (by telephone)

For the Social Services Agency

Ms. Jensen, Fair Hearing Representative (by telephone)

ISSUE

Was the Agency's May 28, 2021 computation of the Appellant's entitlement for Public Assistance benefits correct?

Was the Agency's May 28, 2021 determination as to the adequacy of the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. On April 19, 2021 the Appellant (age 43) applied for Public Assistance benefits for a household of one person.

2. Beginning June 2, 2021, the Agency provided the Appellant's household with a pro-rated Public Assistance grant in the amount of $226.90 monthly distributed as follows:

Semi-monthly cash grant	$88.45
Restricted shelter payment	$50.00

3. By Notice # U14A0E6595 the Agency notified the Appellant of a Public Assistance overpayment resulting in a monthly recoupment payment deduction. This Notice is not an issue for this fair hearing.

4. Beginning July 1, 2021 the Agency is providing the Appellant's household with a Public Assistance grant in the amount of $233.00 monthly distributed as follows:

Semi-monthly cash grant	$79.85
Restricted shelter payment	$50.00
Recoupment of overpayment	$23.30

5. The Appellant's household does not receive any income other than the Appellant's grant of Public Assistance.

6. The Agency computed Appellant's household's monthly Public Assistance budget as follows:

Basic Needs	$158.00
Shelter Allowance	$50.00
Home Energy Allowance	$14.10
Supplemental Home Energy Allowance	$11.00
Total Needs ($233.10 rounded down)	$233.00
Gross Semi-Monthly Unearned Income	$0.00
Net Unearned Income	$0.00
Gross Semi-Monthly Earned Income	$0.00
Net Budgetable Earned Income	$0.00
Total Available Income	$0.00
Budget Deficit (rounded down)	$233.00
Recoupment Deduction	-$23.30
Total	$209.70

7. The Appellant's household has a monthly expense for shelter in the amount of $50.00.

8. The Appellant's household does not include any children.

9. The Appellant was in receipt of SNAP benefits in the amount of $234.00 for a household of one person.

10. Beginning June 7, 2021, the Agency determined to reduce the Appellant's household monthly SNAP benefits to $211.00 due to a change in shelter costs, a change in Public Assistance benefits and an inadvertent household error recoupment.

11. The Appellant's household does not contain a member sixty years of age or older or disabled.

12. The Appellant incurs a monthly expense for shelter in the amount of $50.00.

13. The Appellant incurs a monthly expense for heating/cooling.

14. By Notices #s U14A4T1600 and U14A4T1574 the Agency notified the Appellant of a SNAP overpayment resulting in a monthly recoupment payment deduction. Neither Notice is an issue for this fair hearing.

15. The Agency calculated the Appellant's SNAP budget as of June 7, 2021 as follows:

Income	
Gross Earned Income	$0.00
Gross Unearned Income (PA)	$290.70
Total Income (Gross Earned Income plus Gross Unearned Income)	$290.70
Deductions	
Earned Income Deduction	$0.00
Standard Deduction	$167.00
Allowable Medical Costs	$0.00
Dependent Care	$0.00
Total Deductions	$167.00
Adjusted Income (Total Income minus Total Deductions)	$0.00
Shelter Costs	
Rent or Mortgage	$50.00
Combined Heating/Cooling, Utilities and Telephone	$661.00
Other Shelter Costs	$0.00
Total Shelter Costs	$711.00
50% of Adjusted Income	$0.00
Excess Shelter Costs (Total Shelter Cost minus 50% of Adjusted Income)	$711.00
Shelter Deduction (maximum allowable)	$586.00

Net Income (Adjusted Income minus Shelter Deduction)	$0.00
Maximum SNAP benefit (Household of 1)	$234.00
Expected Household Contribution to Food Costs (30% of Net Income: $0.00 x .30 = $0.00)	$234.00 (rounded up)
Monthly SNAP Entitlement ($234.00 - $0.00)	$234.00
Recoupment Deduction	-$23.00
Total	$211.00

16. By Notice dated May 28, 2021, the Agency determined to approve the Appellant's April 19, 2021 application for Public Assistance pro-rated to the amount of $226.90 for the month of June 2021 and in the amount of $233.00 monthly from July 1, 2021 to March 31, 2022. By the same Notice, the Agency notified the Appellant that beginning June 7, 2021, the Agency determined to reduce the Appellant's household monthly SNAP benefits to $211.00 due to a change in shelter costs, a change in Public Assistance benefits and an inadvertent household error recoupment.

17. On June 16, 2021, the Appellant requested this fair hearing. The Appellant was granted aid continuing with regards to the SNAP reduction.

APPLICABLE LAW

Public Assistance

Section 131-a.2 of the Social Services Law establishes the standard of monthly need for Public Assistance households depending upon size of household. The standard of monthly need, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount. When the estimate of regularly recurring monthly need as set forth in Section 131-a.2 exceeds available income and/or resources, the difference is known as a budget deficit. In any month in which a budget deficit of $10.00 or more exists, a household is entitled to Public Assistance. Where the budget deficit is less than $10.00, the household is not considered to be in need of or entitled to any cash assistance; however, household members are considered recipients of Public Assistance for other purposes such as eligibility for Medical Assistance. Social Services Law 131-a.2; 18 NYCRR 352.29.

Households determined to be in need for Public Assistance receive a monthly grant equal to the standard of need based on household size minus any income available to the household. This monthly grant includes a basic allowance, an amount for shelter, and amount for fuel for heating when heat is not included in the cost of shelter, a home energy allowance, a supplemental home energy allowance, an amount for the additional costs of meals for persons who are unable to prepare meals at home, and an amount for other special items of need.

Regulations at Title 18 NYCRR provide that "each social services district must provide a monthly allowance for rent in the amount actually paid, for cases with a verified rental obligation..." 18 NYCRR 352.3. The maximum shelter allowance is determined by reference to tables set forth in Section 352.3 of the Regulations, which list amounts which depend upon county of residence, family size, and whether there are children residing in the home. For purposes of determining maximum shelter allowance, a child is defined by Section 369.3(c) to be an individual under age 18, or under age 19 if regularly attending a secondary school or equivalent level of vocational or technical training on a full-time basis. Additionally, a needy pregnant woman whose pregnancy has been medically verified and is therefore eligible for Family Assistance in accordance with Section 369.5(c) is considered, for purposes of determining the maximum shelter allowance, to have a child in the home.

Section 131-a(8)(a)(v) of the Social Services Law provides that the first $100 received for one child and the first $200 received for two or more children in a month which represent support payments timely paid in and for such month and the first $100 received for one child and the first $200 received for two or more children in such month which represent support payments timely paid in and for each of any prior months, including support payments collected and paid to the Public Assistance household by the Agency are exempt and disregarded.

SNAP

Under the SNAP Program in order to be eligible for SNAP benefits all households must meet a monthly gross income eligibility standard (gross income test) unless the household meets certain exemption requirements. Households in which all members are recipients of or authorized to receive Family Assistance, Safety Net Assistance or Supplemental Security Income are deemed categorically eligible for SNAP benefits and therefore are exempt from the gross and net income tests. 7 CFR 273.2(j), 18 NYCRR 387.14(a)(5). In addition, households containing a member who is elderly (sixty years of age or older) or who is disabled are not subject to the gross income test. Such households, however, must meet a net income eligibility standard. 7 CFR 273.9(a) and 18 NYCRR 387.10(a).

Pursuant to Administrative Directive 07 ADM-09 and Informational Letter 12 INF-12, recipients of a particular TANF-funded service may also be deemed categorically eligible for SNAP benefits. This TANF-funded service is the provision to SNAP applicants and recipients of certain information describing the range of services available to households in need. This information (and thus the service) is provided to all SNAP recipients, either in the form of a brochure or as a part of the Notice of Acceptance provided upon application or recertification. In order to be deemed categorically eligible, a household receiving the required information must meet the 130 percent gross income test or, if the household has an elderly or disabled member, the 200 percent gross income test. If that test is passed, the household will be deemed categorically eligible for a period of one year and will not be subject to gross or net income tests or to the SNAP resource test. Note that this does not apply to households which are disqualified due to an intentional program violation or a sanction.

Administrative Directive 09 ADM-06 provides that, effective March 1, 2009, a household receiving the above-referenced brochure will be subject to a 200 percent gross income test rather than the 130 percent test if such household has out-of-pocket dependent care expenses.

Administrative Directive 16-ADM-06 provides that, effective July 1, 2016, the gross income threshold for categorical eligibility for the Supplemental Nutrition Assistance Program (SNAP) for households with earned income budgeted for the purpose of determining SNAP eligibility and benefit amount is being increased from 130% of federal poverty level to 150% of the federal poverty level. SNAP households without budgeted earned income, without out-of pocket dependent care expenses, and without any household members who are aged/disabled remain subject to the 130% of the federal poverty level gross income test.

The amount of earned income used to determine SNAP benefits is based on an estimate of average monthly earnings. To project average monthly income, the Agency must average no less than the most recent four weeks of income, or if there has been a change expected to last at least 30 days, use the new information regarding the amount of pay and the frequency of pay. Income which is not of a continuing nature must not be included for purposes of projecting average income. Average monthly income is applied against need to determine the amount of SNAP benefits for each calendar month of a certification period. The amount of average earned income applied must be recalculated at recertification and when a periodic report is received by the Agency. Adjustments to benefits will be made prospectively whenever information is received from a household required to report changes in working hours on a monthly basis because of ABAWD eligibility requirements. 18 NYCRR 387.17(d).

Exclusions are allowed for certain items including in-kind benefits, vendor payments, loans, reimbursements for past or future expenses (to the extent they do not exceed actual expenses and do not represent a gain or benefit to the household), non-recurring lump sum payments, costs of producing self-employment income, and monies withheld to recover certain prior overpayments. In addition, all educational grants, loans and scholarships provided for education purposes other than living expenses, including work study income that is earned as part of a financial aid or educational assistance package, are excluded from a household's income. The earned income of children who are members of the household, and are enrolled as elementary or high school students on at least a half time basis, and who have not attained their 18th birthday is also excluded, including money earned during temporary breaks and vacations. Legally obligated child support payments made by a SNAP household member to non-household members are also excluded from consideration in determining eligibility or amount of entitlement. 7 CFR 273.9; 18 NYCRR 387.11; Administrative Directive 02 ADM-07.

Categorically eligible households are assumed, without further investigation or verification, to have met appropriate resource limits because of the household's eligibility for Family Assistance, Safety Net Assistance and/or SSI. Also, social security number, sponsored alien information and residency information as provided to establish and maintain eligibility for Family Assistance, Safety Net Assistance and/or SSI are assumed to be correct, without further investigation or verification. 7 CFR 273.2(j)(2)(i), 18 NYCRR 387.14(a)(5)(i)(b).

DISCUSSION

At the hearing, the Agency presented evidence including a summary page, its May 28, 2021 Notice of Decision, both current Public Assistance and SNAP calculation budgets, and an updated landlord statement for the Appellant received April 16, 2021 containing notes that the Appellant's rent was reduced to $50.00 as of April 1. 2021.

For the hearing, the Appellant submitted 290 pages of documentation, including a copy of the American Rescue Plan Act of 2021, party search results from Pacer Case Locator, a Dwelling Lease signed by the Appellant on February 23, 2021 showing a $259.00 monthly rent expense, two money orders to Buffalo Municipal Housing Authority (BMHA) for $876.00 and a copy of HR 1319-2.

Public Assistance

The Agency's May 28, 2021 computation of the Appellant's entitlement for Public Assistance benefits was correct.

The Agency computed Appellant's household's monthly Public Assistance budget as follows:

Basic Needs	$158.00
Shelter Allowance	$50.00
Home Energy Allowance	$14.10
Supplemental Home Energy Allowance	$11.00
Total Needs ($233.10 rounded down)	$233.00
Gross Semi-Monthly Unearned Income	$0.00
Net Unearned Income	$0.00
Gross Semi-Monthly Earned Income	$0.00
Net Budgetable Earned Income	$0.00
Total Available Income	$0.00
Budget Deficit (rounded down)	$233.00
Recoupment Deduction	-$23.30
Total	$209.70

Although the Appellant provided documentation for the hearing, he did not dispute the amounts used by the Agency to calculate his Public Assistance budget. The Appellant repeated that when performing their calculations, the Agency did not abide by the American Rescue Plan Act of 2021, specifically Section 1108 (Pandemic EBT Program), however, he was not able to provide detail as to what was incorrect about the Agency's calculation.

The record reflects that the Agency correctly calculated Appellant's Public Assistance budget using $0.00 in income and $50.00 shelter expense. The Agency provided Appellant with all allowances and deductions to which he was entitled. Consequently, the Agency's decision as to the adequacy of the Appellant's Public Assistance benefit is sustained.

SNAP

The Agency's May 28, 2021 determination as to the adequacy of the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits was correct.

The Agency calculated the Appellant's SNAP budget as of June 7, 2021 as follows:

Income	
Gross Earned Income	$0.00
Gross Unearned Income	$290.70
Total Income (Gross Earned Income plus Gross Unearned Income)	$290.70
Deductions	
Earned Income Deduction	$0.00
Standard Deduction	$167.00
Allowable Medical Costs	$0.00
Dependent Care	$0.00
Total Deductions	$167.00
Adjusted Income (Total Income minus Total Deductions)	$0.00
Shelter Costs	
Rent or Mortgage	$50.00
Combined Heating/Cooling, Utilities and Telephone	$661.00
Other Shelter Costs	$0.00
Total Shelter Costs	$711.00
50% of Adjusted Income	$0.00
Excess Shelter Costs (Total Shelter Cost minus 50% of Adjusted Income)	$711.00
Shelter Deduction (maximum allowable)	$586.00
Net Income (Adjusted Income minus Shelter Deduction)	$0.00
Maximum SNAP benefit (Household of 1)	$234.00
Expected Household Contribution to Food Costs (30% of Net Income: $0.00 x .30 = $0.00)	$234.00 (rounded up)
Monthly SNAP Entitlement ($234.00 - $0.00)	$234.00

Recoupment Deduction	-$23.00
Total	$211.00

Although the Appellant provided documentation for the hearing, he did not dispute the amounts used by the Agency to calculate his SNAP budget. The Appellant repeated that when performing their calculations, the Agency did not abide by the American Rescue Plan Act of 2021, specifically Section 1108 (Pandemic EBT Program), however, he was not able to provide detail as to what was incorrect about the Agency's calculation.

In response, the Agency representative testified that the Agency was not provided with any additional guidance with regards to calculating applicant SNAP budgets in relation to the American Rescue Plan Act of 2021, but added that the Federal government was allowing $95.00 in additional benefits to clients with an active SNAP case.

The regulations require certain income guidelines of eligibility and the Appellant is subject to these income guidelines. Here, the Agency properly determined the Appellant to be entitled to the $234.00 maximum amount of SNAP benefits for a household of one person. Consequently, the Agency's decision as to the adequacy of the Appellant's SNAP benefit is sustained.

DECISION

The Agency's May 28, 2021 computation of the Appellant's entitlement for Public Assistance benefits was correct and is affirmed.

The Agency's May 28, 2021 determination as to the adequacy of the Appellant's Supplemental Nutrition Assistance Program (SNAP) benefits was correct and is affirmed.

DATED: Albany, New York
09/27/2021

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

Robert F. Gonnen

Commissioner's Designee

APPENDIX E

APPENDIX E

HINES V. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE 21-CV-601

HINES V. NEW YORK STATE OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE 21-CV-626

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

1:21-CV-601
(DNH/ATB)

NEW YORK STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE STAFF,

Defendants.

DASHON HINES,

Plaintiff,

v.

1:21-CV-626
(DNH/ATB)

NEW YORK STATE OFFICE OF TEMPORARY & DISABILITY ASSISTANCE 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, two more civil rights complaints, submitted by plaintiff Dashon Hines. (21-CV-601 and 21-CV-626)[1] (Dkt. No. 1 - in each case). Plaintiff has also filed an application to proceed in forma pauperis ("IFP") in each action. (Dkt. No. 2 - in each action).

I. IFP Application

Plaintiff declares in each IFP application that he is unable to pay the filing fee.

[1] The court will refer to each complaint by its civil action number: (Complaint ("Compl.") 601 and Compl. 626).

The court would first note that plaintiff's IFP applications are inconsistent with each other, even though they were filed within four days of each other. In the IFP application filed in 21-CV-601, plaintiff states that in the past 12 months, he has obtained $20,000.00 in New York State Unemployment Benefits and $327.00 in "SNAP" benefits from the New York State Office of Temporary and Disability Assistance ("OTDA") (defendant in the above actions). (Dkt. No. 2 in 21-CV-601). However, in plaintiff's IFP application, filed in 21-CV-626, he claims that he has received no income in the past year from any sources. (Dkt. No. 2 in 21-CV-626).

This is not the first time that plaintiff has filed conflicting or incomplete motions to proceed IFP. However, the court will assume that plaintiff meets the financial criteria for proceeding without payment of fees and allow filing for the sole purpose of recommending dismissal of this action.

II. Complaints

Plaintiff has filed these actions 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. The complaints were filed within a week of each other.

A. Compl. 601

Plaintiff filed[2] Compl. 601 on May 24, 2021, alleging that on April 19, 2021, the OTDA "Staff" refused to provide "federal relief" as "outline[d] in the American Rescue Plan Act of 2021," which was signed into law by President Biden on March 21, 2021.

[2] The 601 complaint was signed on May 21, 2021. (Compl. 601 at p.4).

(Compl. 601 ¶ 4 - Facts). Plaintiff states that he was provided $327.00 in "SNAP"[3] benefits "as outline[d] in Notice Numbers U14BPE9547 and U14BM68804 (Medical Treatment for Covid-19)." Plaintiff's First, and only, Cause of Action repeats that the defendant "Staff, et al." denied plaintiff's application for temporary assistance on April 19, 2021 in violation of the American Rescue Plan Act of 2021 ("ARPA"). (Compl. 601 ¶ 5 - First Cause of Action). Plaintiff seeks one million dollars in damages. (Compl. 601 ¶ 6 - Relief).

Attached to Compl. 601 appears to be a page printed from the website Congress.gov which refers to the ARPA (H.R. 1319, 117th Congress), together with the first page of the act. (Compl. 601 at 6). The next page is a copy of Notice No. U14BM68804, dated April 19, 2021 from the Erie County Department of Social Services, addressed to plaintiff and states that it is a "Notice of Extension of Medicaid Coverage." (Compl. 601 at 7). The next page is a copy of Notice No. U14BPE9547 from the Erie County Department of Social Services, dated April 24, 2021. (Compl. 601 at 8). The notice, again addressed to plaintiff, states that a decision on plaintiff's public assistance had not yet been made, but he would be notified when such decision was made. (*Id.*) The notice further stated that plaintiff's SNAP benefit application was approved from April 19, 2021 through March 31, 2022. The "Unit" or "Worker Name" is listed as "Ms. Jensen." (*Id.*)

The next page of plaintiff's exhibits is a form dated April 22, 2021, addressed to plaintiff from the Erie County Department of Social Services, which notifies that

[3] SNAP stands for Supplemental Nutrition Assistance Program. https://www.ny.gov/services/apply-snap.

plaintiff of "Documentation Requirements" for benefit eligibility. (Compl. 601 at 9). Ms. Jensen is listed as the "Worker"[4] on this form. (*Id.*) The next page is a notice to plaintiff that he was scheduled for a "phone interview" with Ms. Jensen listed as the "Examiner assigned." (Compl. 601 at 10). The notice states that the purpose of the "EFP" interview was to determine plaintiff's eligibility for "Temporary Assistance: including SNAP and Medicaid, if appropriate." (*Id.*) The "Interview Date" is listed as April 23, 2021. (*Id.*) The notice lists all the information that plaintiff would be required to "bring" to the interview. (*Id.*) The last two pages of plaintiff's exhibits are a copy of the "confirmation" of a Fair Hearing Request, dated May 3, 2021 from the "Office of Administrative Hearings" in Albany, New York. (Compl. 601 at 11-12).

B. Compl. 626

In Compl. 626, plaintiff alleges that on May 24, 2021 at 2:00 p.m., the OTDA "Staff, et al." denied plaintiff's right to participate in Fair Hearing No. 8292273H. (Compl. 626 ¶ 4). Plaintiff claims that he was denied the right to cross-examine "the witness for Defendant's case." (*Id.*) Plaintiff's first cause of action repeats the same facts, but names the witness as Mrs. Jensen. (Compl. 626 ¶ 5 - First Cause of Action). Plaintiff seeks one million dollars in damages. (Compl. 626 ¶ 6). Plaintiff signed this complaint on May 25, 2021 and filed it on May 28, 2021. (Compl. 626 at p.4).

The first "exhibit" attached to Compl. 626 is identical to the last exhibit attached to Compl. 601, a copy of the Fair Hearing confirmation, dated May 3, 2021. (Compl. 626 at 6-8). The second exhibit is a copy of the Congress.gov print-out with the first

[4] It appears that by "Worker," the form is referring to an employee of the Erie County Department of Social Services.

page of the ARPA.[5] (Compl. 626 at 9). The last exhibit attached to Compl. 626 appears to be a cryptic email from plaintiff which may quote some notice he received from the Office of Administrative Hearings ("OAH") in Albany, New York. Plaintiff's email is date May 24, 2021,[6] and indicates that it may have contained various PDF attachments,[7] including the Fair Hearing Request Confirmation page, a copy of the ARPA, a "receipt," "Paper Transaction Histories," and other documents. (Compl. 626 at 10-11).

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***

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[5] Plaintiff does not appear to rely specifically upon the ARPA in this action, even though he has included an exhibit which contains a small portion of the statute.

[6] The court notes that plaintiff appears to have sent this email at 8:25 a.m. on May 24, 2021 for a 1:00 p.m. hearing on May 24, 2021, but the language that he quotes from an OAH notice indicates that exhibits were to be sent "at least two business days before the hearing." (Compl. 626 at 10).

[7] The attachments themselves are not exhibits. The copy of plaintiff's email has only the PDF icon, which must have been the link to the PDF document in the email. Some of the documents may be duplicates of items that plaintiff has attached to the instant complaints.

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 improper. Although plaintiff lists the OTDA as "Albany, New York," plaintiff lives in Buffalo, and the exhibits attached to his complaints show

that he dealt with the Erie County Department of Social Services. Erie County is in the Western District of New York. To the extent that plaintiff is alleging any acts or omissions, they appear to have occurred in the Western District of New York. Based upon plaintiff's "exhibits," Ms. Jensen appears to be the "worker" assigned to the plaintiff's case, but there is no indication that she resides in the Northern District of New York. It is also unclear where plaintiff's "Fair Hearing" took place, although, given his residence in Buffalo, it is unlikely that he went to Albany for his hearing.

This is not the first time that plaintiff has attempted to create venue in the Northern District of New York by suing an "agency" whose headquarters is in Albany.[8] *See Hines v. OTDA*, 1:20-CV-506 (N.D.N.Y.). It is also not the first time that plaintiff has intentionally[9] filed an action in the wrong district. In 20-CV-506, I recommended transferring plaintiff's action to the Western District of New York because I found that

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[8] Plaintiff has now filed multiple cases improperly venued in the Northern District of New York, not all of which are against defendants that "arguably" have a presence in the Northern District of New York. *See e.g. Hines v. IRS*, No. 5:20-CV-469; *Hines v. TopShelf Mgmt.*, No. 5:20-CV-505 (private company in Buffalo); *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 (private school in Erie County); *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.") On October 22, 2020, the Second Circuit consolidated the plaintiff's appeals in five cases from the Northern District of New York, (20-CV-505, 506, 517, 536, and 638) and held that "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). *Hines v. TopShelf Mgmt.*, No. 20-1609, 20-1627, 20-1656, 20-1885, 20-2728 (2d Cir. Oct. 22, 2020) (consolidated appeals).

[9] The court must interpret plaintiff's actions as intentional because he has been warned multiple times that venue is improper in the Northern District of New York.

plaintiff should not be allowed to circumvent the bar order issued in that district by filing actions in the Northern District of New York which should have been filed in the Western District of New York.

However, plaintiff is making a bad faith habit of filing cases in the Northern District which do not belong here. I have warned plaintiff that if he continues to file frivolous actions in the wrong district, he could be referred for a hearing to evaluate sanctions against him. Sanctions may include barring plaintiff from filing actions without permission in the Northern District. In this case, rather than transferring the action, I will recommend dismissal in accordance with 28 U.S.C. § 1404(a) which provides for such dismissal when a case is filed in a district in which venue is improper.

I find that transfer of these two cases would not be in the interests of justice, and I will recommend dismissing them without prejudice. If plaintiff chooses to file in the Western District he may attempt to do so himself. If the Western District Court finds that these cases are not frivolous, he may be allowed to proceed there, notwithstanding the bar order.[10]

WHEREFORE, based on the findings above, it is

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[10] The court would note that plaintiff may not sue the OTDA "staff" under section 1983 because the agency is immune from liability for damages under the Eleventh Amendment. *See Naples v. Stefanelli*, 972 F. Supp. 2d 373, 390-91 (E.D.N.Y. 2013) (quoting *Russell v. Dunston*, 896 F.2d 664, 667 (2d Cir. 1990) (citations omitted); *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001)) ("'The Eleventh Amendment to the Constitution bars suits against a state in federal court unless that state has consented to the litigation or Congress has permissibly enacted legislation specifically overriding the state's immunity.'") A claim against a state agency such as the OTDA is considered a claim against the state and is also barred by the Eleventh Amendment. Plaintiff's attempt to circumvent this by naming "staff" cannot succeed. If plaintiff wishes to sue an individual for specific constitutional violations, he must name a person and specify how that individual violated his constitutional or statutory rights. Plaintiff's generalities do not state a claim.

ORDERED, that plaintiff's motion to proceed IFP in 21-CV-601 and 21-CV-626 be **GRANTED FOR PURPOSES OF FILING ONLY**, and it is

RECOMMENDED, that 21-CV-601 and 21-CV-626 be **DISMISSED WITHOUT PREJUDICE FOR IMPROPER VENUE** pursuant to 28 U.S.C. § 1406(a), and it is

ORDERED, that the Clerk file a copy of this Order and Report-Recommendation in both 21-CV-601 and 21-CV-626, 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 7, 2021

Andrew T. Baxter
U.S. Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -

DASHON HINES,

Plaintiff,

-v- 1:21-CV-601

OFFICE OF TEMPORARY
AND DISABILITY ASSISTANCE
STAFF, ET AL.

Defendant.

- -

APPEARANCES: OF COUNSEL:

DASHON HINES
Plaintiff, Pro Se
124 Fulton Street
Apartment Number 5C
Buffalo, NY 14204

DAVID N. HURD
United States District Judge

ORDER ADOPTING REPORT & RECOMMENDATION

On May 24, 2021, pro se plaintiff Dashon Hines ("plaintiff") filed this civil rights action alleging that defendant denied his application for temporary assistance in violation of federal law. Dkt. No. 1. Plaintiff also sought leave to proceed *in forma pauperis* ("IFP"). Dkt. No. 2.

On June 7, 2021, U.S. Magistrate Judge Andrew T. Baxter granted plaintiff's IFP application for the purpose of filing only. Dkt. No. 5. Judge Baxter further advised by Report & Recommendation ("R&R") that plaintiff's complaint be dismissed without prejudice for improper venue. *Id.* Plaintiff has filed objections to the R&R. Dkt. No. 7.

Upon *de novo* review of the portions to which plaintiff has objected, the Report & Recommendation is accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

ORDERED that

1. The Report & Recommendation (Dkt. No. 5) is accepted and adopted; and

2. Plaintiff's complaint is DISMISSED.

IT IS SO ORDERED.

David N. Hurd
U.S. District Judge

Dated: June 24, 2021
Utica, New York.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JUDGMENT IN A CIVIL CASE

Dashon Hines,
Plaintiff,
vs.

CASE NUMBER: 1:21-CV-0601 (DNH/ATB)

Office of Temporary and Disability Assistance Staff, et al.,
Defendant.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: that the Report and Recommendation (Dkt. No. 5) is ACCEPTED and ADOPTED and that Plaintiff's complaint is DISMISSED.

All of the above pursuant to the order of the Honorable U.S. District Court Judge David N. Hurd, dated the 24th day of June, 2021.

DATED: June 24, 2021

John Domurad
Clerk of Court

s/ Helen M. Reese
Helen M. Reese
Deputy Clerk

Federal Rules of Appellate Procedure
Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;
(ii) a United States agency;
(iii) a United States officer or employee sued in an official capacity; or
(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf — including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv) to alter or amend the judgment under Rule 59;

(v) for a new trial under Rule 59; or

(vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or

(ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.

APPENDIX E

HINES V. NEW YORK STATE DEPARTMENT OF LABOR STAFF, 21-CV-600

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

v.

1:21-CV-600
(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). This court finds 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 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).

Notwithstanding the liberality afforded to pro se litigants, their pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 475 (2d Cir. 2006). The Supreme Court has held that, under Rule 8, a complaint must include enough facts to

state a claim for relief "that is plausible on its face." *Id.* A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. *Morris V. President Donald J. Trump*, No. 21-CV-4445 (LTS), 2021 WL 2227797, at *1 (S.D.N.Y. June 1, 2021).

II. Complaint

Once again, plaintiff has filed an 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). This is not the first time that plaintiff, a Buffalo resident, has sued the New York State Department of Labor ("DOL") in Albany. *See Hines v. New York State Dep't of Labor Staff*, No. 1:20-CV-517.

In this complaint, plaintiff alleges that the defendant "refuse[d]" to issue "granted benefits in accordance with the American Rescue Plan Act of 2021 (HR 1319 . . .) Sign[ed] into law by President Joe Biden on March 11, 2021." (Complaint ("Compl.") ¶ 4, Facts). Plaintiff repeats these limited facts and legal conclusion in his "First Cause of Action." (Compl. ¶ 5). Plaintiff seeks one million dollars in damages. (Compl. ¶ 6).

Plaintiff has attached exhibits to his complaint. The first page of his exhibits appears to be a copy of H.R. 1319 - The American Rescue Plan Act of 2021 ("ARPA"), printed from "Congress.gov." (Compl. at CM/ECF p. 6).[1] The second page of the exhibits appears to be the copy of a "notice," printed from the DOL website, informing

[1] Plaintiff has not numbered the pages of his exhibits. Thus, the court will cite to the pages assigned by the court's electronic filing system ("CM/ECF") but will not repeat the electronic filing designation.

the plaintiff that on April 22, 2021, he "successfully completed the Pandemic Unemployment Assistance (PUA) Application." (Compl. at 7). The notice also tells the plaintiff how to access his benefits "if" he is approved. (*Id.*)

The next document is another notice to plaintiff, printed from the DOL website which is entitled: "Unemployment Insurance Monetary Benefit Determination." (Compl. at 8-9). This document contains a "Weekly Benefit Rate" amount, but also states that "[t]his is NOT a decision on your eligibility for Unemployment Insurance Benefits." (*Id.*) It appears to be a notice telling plaintiff how his weekly rate would be calculated based upon the information that the DOL had on file for plaintiff. (*Id.*) The next page includes "instructions" which the plaintiff "must follow" before any benefits can be issued. (Compl. at 10). The next page appears to be a copy of plaintiff's Key2Benefits Card information, indicating that plaintiff had .08 dollars in his account as of May 12, 2021. (Compl. at 11).

The next document contains a list of the DOL forms which plaintiff "completed" and the date upon which they were submitted online. (Compl. at 12-13). This form shows that plaintiff submitted his PUA Application on April 22, 2012, but also submitted an application for Mixed Earner Unemployment Compensation on April 24, 2021 and filed several requests for a "Hearing" in April of 2021, prior to his PUA application. (*Id.*) The last two pages of plaintiff's exhibits appear to be some sort of resumé,[2] listing the Erie County Department of Social Services under the headings

[2] Page 14 is a duplicate of page 15.

"Experience" and "Education," with dates and "Job Skills."[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); *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

[3] This document appears to state that from February 2011 until May 2021, plaintiff received a "Certificate (Job Skills)" from the Erie County Department of Social Services. This information is listed under the heading "Education." Under the heading "Experience," the Erie County Department of Social Services is listed, but under that, plaintiff has written "Appellant."

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. Analysis

1. Transfer

I have considered transferring this action because I am well-aware that plaintiff resides in the Western District of New York and has 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 again 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 as I did in plaintiff's previous case against the DOL (20-CV-517).

2. Merits

In this case, as in 20-CV-517, 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)). From what this court can interpret of plaintiff's vague statement of claim,[5] plaintiff is alleging that the DOL has somehow refused to pay him benefits that have been "granted" based on the American Rescue Plan Act of 2021.[6] It is unclear whether plaintiff has submitted the exhibits attached to the complaint in an effort to show that the DOL granted benefits, but then refused to pay or whether DOL failed to grant benefits that plaintiff believes he is entitled to based on the ARPA. Plaintiff states that the "refusal" took place on May 20, 2021. However, unlike his previous action in which he was simply asking for his benefits to be paid, plaintiff has instead requested one million dollars in damages from the DOL "staff."

1. Eleventh Amendment

a. Legal Standards

"'The Eleventh Amendment to the Constitution bars suits against a state in federal court unless that state has consented to the litigation or Congress has permissibly enacted legislation specifically overriding the state's immunity.'" *Naples v.*

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[4] Plaintiff does not specify any particular individual or individuals as the "staff." Plaintiff applied for his benefits online and may not know who processed his application. Thus, this court will refer to the defendant "staff" 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 summary of the statute attached to plaintiff's complaint shows that the law provides for many types of relief, only part of which is the extension of unemployment benefits which were provided by the Coronavirus Aid, Relief and Economic Security ("CARES") Act, 15 U.S.C. § 9021(c). https://www.congress.gov/bill/117th-congress/ house-bill/1319/text#toc-HC01DC9A26CE9432AA 9C1A1E56CBF5517 (for full text of the ARPA). The ARPA amends the CARES Act section by extending the Pandemic Unemployment Assistance from March 24, 2021 until September 6, 2021. 15 U.S.C. § 9021(c).

Stefanelli, 972 F. Supp. 2d 373, 390-91 (E.D.N.Y. 2013) (quoting *Russell v. Dunston*, 896 F.2d 664, 667 (2d Cir. 1990) (citations omitted); *Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356, 363 (2001)). A claim against a state agency is considered a claim against the state and implicates the Eleventh Amendment because the state is the "real" party in interest. *Id.* at 391 (citing *P.R. Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993)). The Eleventh Amendment also bars suits against state agencies and state officers in their official capacities. *See Huang v. Johnson*, 251 F.3d 65, 70 (2d Cir. 2001).

b. Analysis

To the extent that the complaint may be read as suing for damages against New York State or the DOL as an agency of the state, any such claim would be barred by the Eleventh Amendment, notwithstanding plaintiff's reference to "staff." Plaintiff has not named any individual defendant, and thus, his claims would appear to be made against the agency itself. Plaintiff's claim for one million dollars in damages must be dismissed with prejudice.

2. Unemployment Benefits

Even if plaintiff had named an individual in this case who was subject to suit under section 1983, it is completely unclear from the complaint how plaintiff believes that any defendant violated either the federal law or the constitution. Plaintiff has not shown or properly stated that his benefits were granted, and the DOL "refused" to pay. Nor has plaintiff stated how the defendant's actions violated the ARPA. In fact, the documents attached to the complaint only indicate that plaintiff successfully "applied"

for the PUA benefits, not that he was granted or denied any benefits. Plaintiff has simply attached a copy of the statute which provides for a wide variety of relief and claims that the defendant "violated" this statute, purportedly with respect to plaintiff's unemployment benefits.[7] Plaintiff's complaint is so vague and confusing that it violates Rule 8 and fails to state any kind of a claim against any defendant.[8]

Unfortunately, it appears that every time that plaintiff believes that an agency, state or federal, has decided a claim improperly, or has failed to decide quickly enough, plaintiff files an action in federal court. This behavior has caused him to be barred from filing cases without permission in the Western District of New York and in the

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[7] The ARPA is a long statute, containing eleven "Titles" and multiple subsections of each Title, covering a variety of funds and programs. The section of the ARPA which plaintiff relies upon does not provide a private cause of action for damages due to "violations" of the act. In fact, the section of the CARES Act regarding unemployment benefits which the ARPA amends provides that an individual may "appeal any determination or redetermination regarding the rights to pandemic unemployment assistance under this section made by the State." 15 U.S.C. § 9021(c)(5)(A). However, the appeals are to be conducted by the applicable State under the same procedures as the State uses for "rights to regular compensation under state law." 15 U.S.C. § 9021(c)(5)(b). There is no provision for a private cause of action for damages against the State for a violation of the statute. Whether an implied cause of action exist depends upon whether there is "a clear manifestation of congressional intent to create" one. *Lopez v. Jet Blue Airways*, 662 F.3d 593, 596 (2d Cir. 2011). Such a "clear manifestation" exists where the statute's text and structure show an intention to create a federal right through rights-creating language, an intention to create a private remedy, and consistency of a private remedy with the statutory scheme. *See Rep. of Iraq v. ABB AG*, 768 F.3d 145, 170 (2d Cir. 2014). As stated above, a review of the section upon which plaintiff relies shows no intention of creating a federal damages remedy, but specifically provides for appeals pursuant to State law, determined by the State under its own procedures. The ARPA amends that portion of the CARES Act which provides a deadline for benefits, extending that period of time. Thus, neither statute provides plaintiff with a cause of action for damages.

[8] The New York State Department of Labor website contains information regarding the unemployment insurance ramifications of the ARPA. https://dol.ny.gov/unemployment/unemployment-insurance-assistance. This cite contains a link to further details regarding who is eligible and what those individuals are required, or not required, to do in order to obtain continuation of their unemployment insurance funds. Plaintiff has not indicated how the defendant has acted or refused to act in violation of this statute.

Second Circuit.[9] Plaintiff is now continuing his abuse of the court system in the Northern District of New York.[10] This court has not sanctioned plaintiff yet, but **plaintiff is warned that if he continues this trend, the court will consider referring his case for potential bar in the Northern District of New York**. Thus, the court recommends dismissal of this action with prejudice.

WHEREFORE, based on the findings above, it is

ORDERED, that plaintiff's motion to proceed IFP (Dkt. No. 2) be **GRANTED FOR PURPOSES OF FILING ONLY**, and it is

RECOMMENDED, that the complaint be **DISMISSED WITH PREJUDICE**.

Pursuant to 28 U.S.C. § 636(b)(1), the parties have 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 14 DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85 (2d

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[9] *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.") On October 22, 2020, the Second Circuit consolidated the plaintiff's appeals in five cases from the Northern District of New York, (20-CV-505, 506, 517, 536, and 638) and held that "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). *Hines v. TopShelf Mgmt.*, No. 20-1609, 20-1627, 20-1656, 20-1885, 20-2728 (2d Cir. Oct. 22, 2020) (consolidated appeals).

[10] In a separate Order and Report-Recommendation, I am recommending dismissal of two other actions that plaintiff filed within four days of this action against the Office of Temporary Disability and Assistance Staff: 1:21-CV-601 (plaintiff filed 21-CV-601on the same day as the instant action), 1:21-CV-626 (filed 5/28/2021). Both of these actions make claims under the ARPA, are clearly filed in the Northern District of New York to avoid his bar order in the Western District, and are too vague to state any claim against a New York State Agency defendant which is also immune from damage claims because of the Eleventh Amendment.

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. 72, 6(a), 6(e).

Dated: June 7, 2021

Andrew T. Baxter
U.S. Magistrate Judge

APPENDIX E

HINES V. NEW YORK STATE DIVISION OF HUMAN RIGHTS, 21-CV-600

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS STAFF,

Defendant.

21-CV-4629 (UA)

ORDER GRANTING IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

SO ORDERED.

Dated: June 4, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

-against-

NEW YORK STATE DIVISION OF HUMAN RIGHTS,

Defendant.

21-CV-4629 (LTS)

ORDER OF DISMISSAL AND TO SHOW CAUSE UNDER 28 U.S.C. § 1651

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action under the Court's federal question jurisdiction, alleging a violation of the American Rescue Plan Act of 2021. By order dated May 24, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*. (ECF 1 at 10-11.)

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, 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) (emphasis in original). But the "special solicitude" in *pro se* cases, *id.* at 475 (citation omitted), has its limits –

to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

The Supreme Court has held that under Rule 8, a complaint must include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

BACKGROUND

Plaintiff filed this complaint against unidentified "staff" of the Bronx office of the New York State Division of Human Rights (NYSDHR). The complaint sets forth the following facts. Plaintiff, a Buffalo resident, filed a discrimination complaint against Bryant & Stratton College, located in Albany. On February 16, 2021, a NYSDHR staff member in the Bronx office told Plaintiff that his discrimination complaint against the college had been selected for the "Early Resolution Pilot Program." But instead, the matter was dismissed on April 1, 2021. (ECF 1 at 5.) Plaintiff seeks $1 million in damages. (*Id.* at 6.) Plaintiff's complaint is 268 pages long, most of which is the text of the American Rescue Plan Act of 2021.

DISCUSSION

The Court construes the complaint as asserting a claim under 42 U.S.C. §1983. To state a claim under section § 1983, a plaintiff must allege both that: (1) a right secured by the Constitution or laws of the United States was violated, and (2) the right was violated by a person acting under the color of state law, or a "state actor." *West v. Atkins*, 487 U.S. 42, 48-49 (1988).

"[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states' Eleventh Amendment immunity . . . ." *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). "The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state." *Id.*; *see also Huang v. Johnson*, 261 F.3d 65, 69-70 (2d Cir. 2001) (holding that the Eleventh Amendment extends immunity to state officials sued in their official capacities, where the state is the "real, substantial party in interest.") New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states' immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm'n*, 557 F.2d 35, 40 (2d Cir. 1977).

Courts have repeatedly recognized that the NYSDHR is an arm of the state for the purposes of the Eleventh Amendment. *See McGill v. Buzzelli,* 828 F. App'x 76, 78 (2d Cir. 2020) (summary order) ("To the extent McGill sought damages from the NYSDHR for its purported mishandling of his complaints, the Eleventh Amendment bars suits against it because it is a state agency."); *McPherson v. Plaza Athenee, NYC*, No. 12-CV-0785 (AJN), 2012 WL 3865154, at *6 (S.D.N.Y. Sept. 4, 2012), *aff'd sub nom. McPherson v. Hotel Plaza Athenee, NYC*, 538 F. App'x 109 (2d Cir. 2013) (same) (summary order); *see also Baba v. Japan Travel Bureau Int'l,* 111 F.3d 2, 5 (2d Cir. 1997) (per curiam) (holding that plaintiff' s claim brought against DHR, seeking to vacate a DHR administrative decision, was barred under the Eleventh Amendment).

Any claim for damages that Plaintiff is asserting against the NYSDHR or its staff is therefore barred by the Eleventh Amendment and is dismissed as frivolous. *See Montero v. Travis*, 171 F.3d 757, 760 (2d Cir. 1999) ("A complaint will be dismissed as 'frivolous' when 'it is clear that the defendants are immune from suit.'" (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989))).[1]

DENIAL OF LEAVE TO AMEND

Generally, a court should not dismiss a *pro se* complaint "without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Dolan v. Connolly*, 794 F.3d 290, 295 (2d Cir. 2015) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation marks omitted)). But a court has inherent power to dismiss without leave to amend or replead in "where ... the substance of the claim pleaded is frivolous on its face," *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir.1988) (citation omitted), or where amendment would otherwise be futile, *Hill v. Curcione*, 657 F. 3d 116, 123-24 (2d Cir. 2011).

Because the defects in Plaintiff's complaint cannot be remedied, the Court declines to grant him leave to amend his complaint.

[1] Plaintiff asserts that he resides in Buffalo, and that the respondent college is located in Albany. It is not clear why the Bronx office of the NYSDHR handled Plaintiff's administrative complaint. The Northern District noted Plaintiff's penchant for "attempt[ing] to create venue" in cases filed in that district. *See Hines v. New York State Office of Temp. & Disability Assistance Staff*, Nos. 21-CV-601, 21-CV-626, 2021 WL 2313630, at *4 n.8 (N.D.N.Y. June 7, 2021) ("Plaintiff has now filed multiple cases improperly venued in the Northern District of New York, not all of which are against defendants that "arguably" have a presence in the Northern District of New York.")

LITIGATION HISTORY AND ORDER TO SHOW CAUSE

A review of the Public Access to Court Electronic Records (PACER) system shows that Plaintiff has filed scores of civil actions and appeals; the vast majority of those cases were filed in the Second Circuit Court of Appeals and in the Northern and Western Districts of New York. *See Hines v. Application Svcs. Ctr.*, No. 13-CV-529 (W.D.N.Y. Feb. 27, 2014) (describing Plaintiff's litigation history as, "in a word, 'abusive.'") After the Second Circuit and the Western District imposed filing injunctions against Plaintiff, *see In Re: Dashon Hines*, 15–4094 (2d Cir. May 5, 2016) (requiring Plaintiff to seek leave of court before filing any future appeals); *In re Hines*, 13-MC-27-A, 2015 WL 500800 (W.D.N.Y. Feb. 3, 2015) (requiring Plaintiff to seek prior leave before proceeding IFP), he began filing cases in the Northern District of New York. *See Hines v. Dell*, No. 20-CV-638, 2020 WL 3100260, at *2 (N.D.N.Y. June 11, 2020) (noting that Plaintiff began filing "multiple cases in the Northern District of New York to avoid a bar order in the Western District of New York.") Notwithstanding these filing injunctions, Plaintiff has continued to file new complaints and appeals lacking merit. *See, e.g., Hines v. TopShelf Mgmt.*, No. 20-1609, 20-1627, 20-1656, 20-1885, 20-2728 (2d Cir. Oct. 22, 2020) (consolidating five appeals and denying Plaintiff leave to file all of them because those matters did "not depart from [Plaintiff's] prior pattern of vexatious filings.").

In light of this litigation history, the Court orders Plaintiff to show cause why he should not be barred from filing any further actions in this Court IFP without first obtaining permission from this Court to file his complaint. *See Moates v. Barkley*, 147 F.3d 207, 208 (2d Cir. 1998) (per curiam) ("The unequivocal rule in this circuit is that the district court may not impose a filing injunction on a litigant *sua sponte* without providing the litigant with notice and an opportunity to be heard."). Within thirty days of the date of this order, Plaintiff must submit to this Court a declaration setting forth good cause why the Court should not impose this injunction

upon him. If Plaintiff fails to submit a declaration within the time directed, or if Plaintiff's declaration does not set forth good cause why this injunction should not be entered, he will be barred from filing any further actions IFP in this Court unless he first obtains permission from this Court to do so.

CONCLUSION

The complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a), is dismissed as frivolous and for failure to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(i), (ii). Plaintiff shall have thirty days to show cause by declaration why an order should not be entered barring Plaintiff from filing any future action *in forma pauperis* in this Court without prior permission. A declaration form is attached to this order.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Plaintiff has consented to electronic service. (ECF 1 at 8.)

SO ORDERED.

Dated: June 14, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the first and last name of each plaintiff or petitioner.

Case No. _____ CV _____

-against-

Write the first and last name of each defendant or respondent.

DECLARATION

Briefly explain above the purpose of the declaration, for example, "in Opposition to Defendant's Motion for Summary Judgment," or "in Response to Order to Show Cause."

I, _____, declare under penalty of perjury that the following facts are true and correct:

In the space below, describe any facts that are relevant to the motion or that respond to a court order. You may also refer to and attach any relevant documents.

Attach additional pages and documents if necessary.

Executed on (date) Signature

Name Prison Identification # (if incarcerated)

Address City State Zip Code

Telephone Number (if available) E-mail Address (if available)

APPENDIX E

HINES V. BLUM, 21-CV-5528

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

-against-

KATIE S. BLUM, ESQ., New York State Division of Human Rights,

Defendant.

21-CV-5528

ORDER GRANTING IFP APPLICATION

LAURA TAYLOR SWAIN, Chief United States District Judge:

Leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

SO ORDERED.

Dated: July 20, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DASHON HINES,

Plaintiff,

-against-

KATIE S. BLUM, ESQ., New York State Division of Human Rights,

Defendant.

21-CV-5528 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action under the Court's federal question jurisdiction, alleging that Defendant violated his rights under the First Amendment to the United States Constitution. By order dated July 20, 2021, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* (IFP). (ECF 1, at 10-11.) For the reasons set forth below, the Court dismisses the complaint.

STANDARD OF REVIEW

The Court must dismiss an IFP complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3).

BACKGROUND

Plaintiff brings this action against Katie Blum, an attorney who works for the New York State Division of Human Rights (NYSDHR), regarding statements she made to Plaintiff during Plaintiff's proceedings in the NYSDHR. Plaintiff previously filed a substantially similar

complaint against unidentified "staff" employed at Blum's NYSDHR office. The Court dismissed that action on June 14, 2021, and directed Plaintiff to show cause by declaration why he should not be barred under 28 U.S.C. § 1651 from filing IFP actions without first receiving permission to do so. *See Hines v. New York State Div. of Human Rights*, ECF 1:21-CV-4629, 3 (S.D.N.Y. June 15, 2021). On July 13, 2021, Plaintiff filed a response to the Court's June 14, 2021, order, but he did not address this Court's instruction that he show cause why he should not be barred.[1]

DISCUSSION

Plaintiff's claims against Defendant Katie Blum, a government attorney who works for the NYSDHR, must be dismissed because this Defendant is immune from any liability arising from her conduct during the NYSDHR proceedings. See *Mangiafico v. Blumenthal*, 471 F.3d 391, 396 (2d Cir. 2006) ("As a general principle, a government attorney is entitled to absolute immunity when functioning as an advocate of the [government] in a way that is intimately associated with the judicial process.") (citing *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). This doctrine of absolute immunity for government attorneys covers "the functions of a government attorney 'that can fairly be characterized as closely associated with the conduct of litigation or potential litigation' in civil suits—including the defense of such actions." *Id.* (quoting *Barrett v. United States*, 798 F.2d 565, 572 (2d Cir. 1986)).

Here, Plaintiff's claims against Blum are based on actions within the scope of her official duties and associated with the judicial process and conduct of Plaintiff's NYSDHR litigation. Therefore, these claims are dismissed because they seek monetary relief against a defendant who is immune from suit. *See* 28 U.S.C. § 1915(e)(2)(b)(iii).

[1] Plaintiff also filed a notice of appeal. (ECF 4.)

DENIAL OF LEAVE TO AMEND

Generally, a court should not dismiss a *pro se* complaint "without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." *Dolan v. Connolly*, 794 F.3d 290, 295 (2d Cir. 2015) (quoting *Chavis v. Chappius*, 618 F.3d 162, 170 (2d Cir. 2010) (internal quotation marks omitted)). But a court has inherent power to dismiss without leave to amend or replead in "where ... the substance of the claim pleaded is frivolous on its face," *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir.1988) (citation omitted), or where amendment would otherwise be futile, *Hill v. Curcione*, 657 F. 3d 116, 123-24 (2d Cir. 2011).

Because the defects in Plaintiff's complaint cannot be remedied, the Court declines to grant him leave to amend his complaint.

CONCLUSION

The complaint, filed IFP under 28 U.S.C. § 1915(a), is dismissed. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

Plaintiff has consented to electronic service. (ECF 3.)

SO ORDERED.

Dated: July 26, 2021
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge