No.

IN THE

SUPREME COURT OF THE UNITED STATES

Ibrahim Donmez - Petitioner

v.

NYC Department of Consumer Affairs, et al. - Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI

Ibrahim Donmez
6936 Greenhill Place
Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com

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APPENDIX A

Court of Appeals Order Dismissing Petitioner's Appeal Sua Sponte (July 14, 2021)

S.D.N.Y.–N.Y.C.
20-cv-5586
Stanton, 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 14th day of July, two thousand twenty-one.

Present:

Rosemary S. Pooler,
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Circuit Judges.

Ibrahim Donmez,

Plaintiff-Appellant,

v.

20-3830 (L),
21-91 (Con)

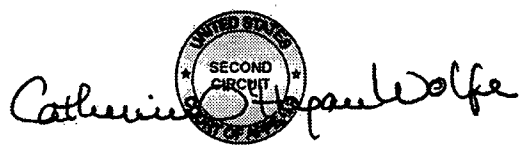
New York City Department of Consumer Affairs, et al.,

Defendants-Appellants.

Appellant moves for a stay pending his appeals of the district court's initial review order dismissing his complaint with leave to amend and subsequent denials of various motions. Upon due consideration, it is hereby ORDERED that the motion is DENIED. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007).

It is further ORDERED that the appeals are DISMISSED because they "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

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



APPENDIX B

District Court Order to Amend (October 5, 2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants.

20-CV-5586 (LLS)

ORDER TO AMEND

LOUIS L. STANTON, United States District Judge:

Plaintiff Ibrahim Donmez, who is appearing *pro se*, filed this 2,135-page submission, which includes (1) a notice of removal to remove to this Court an action purportedly pending in the Midtown Community Court, *see New York v. Donmez*, No. 2016SC011016; and (2) a new civil action raising claims arising out of this state-court action. By order dated September 29, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.[1]

For the reasons set forth below, the Court grants Plaintiff 30 days' leave to file an amended complaint.

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon 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), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). 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.

[1] Plaintiff did not initially file an application to proceed IFP, and the Court directed him to do so. (ECF No. 4.)

2009), and interpret them to raise the "strongest [claims] that they suggest," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff, who was a pedicab driver in New York City, brings this complaint asserting claims arising out of his alleged violations in 2016 of New York City traffic laws while operating his pedicab. His pleading includes a notice of removal and a complaint. In the notice of removal, he states that he seeks to remove to this Court the proceeding at the Midtown Community Court addressing his 2016 traffic violations.

In the complaint, Plaintiff asserts constitutional claims arising out of the 2016 violations and more recent interactions with New York City government actors. He names as defendants: New York City (NYC) and New York State, as well as departments of both, including: (1) NYC Department of Consumer Affairs (Consumer Affairs); (2) NYC Department of Parks & Recreation (Parks Department); (3) NYC Police Department (NYPD); (4) NYC Office of Administrative Trials & Hearings (OATH); and (4) New York State Department of Motor Vehicles (DMV). Plaintiff also names as individual defendants: (1) NYC Parks Department Officers Asha Harris and Henderson; (2) NYPD Officer Oceline; (3) NYC Deputy Counsel Sanford Cohen, a government lawyer who represented New York City during proceedings at the Midtown Community Court; (4) New York State Judge Charlotte Davidson, a judge who presided over proceedings at the Midtown Community Court; and (5) NYPD and Parks Department John Doe Officers.

Plaintiff previously filed in this Court a civil action, which was initiated on August 15, 2016, where he sought to remove his state-court action at Midtown Community Court and challenged the suspension of his pedicab license. *See Donmez v. City of New York*, ECF 1:16-CV-

6458, 2 (S.D.N.Y. Dec. 16, 2016). The Court (1) dismissed for lack of standing those claims Plaintiff attempted to bring on behalf of other pedicab drivers; (2) held that the request for removal was improper because the submission failed to comply with the removal statute; (3) dismissed for failure to state a claim Plaintiff's federal constitutional due process claims challenging the suspension of his license; and (4) under *Younger v. Harris*, 401 U.S. 37 (1971), declined to intervene in the state-court matter.

DISCUSSION

A. Plaintiff's Notice of Removal

Plaintiff has filed a notice of removal regarding a 2016 proceeding at the Midtown Community Court. Plaintiff previously filed a civil action, in which he also requested to remove this action, but because he had failed to file a notice of removal, the action was not removed. *See Donmez*, No. 16-CV-6458. In any event, it appears that this state-court action is closed, as the last event Plaintiff describes related to those proceedings occurred on June 16, 2017, when Defendant Judge Davidson issued a warrant for Plaintiff's arrest. (*See* ECF No. 1, at 302.) If the state-court action is closed, this Court does not have subject-matter jurisdiction over the action and will remand it to the Midtown Community Court. *See Kenmore Assocs., L.P. v. Burke*, 367 F. App'x 168, 169 (2d Cir. 2010) (after finding that "the district court correctly determined that it lacked subject matter jurisdiction over [a] case" where final judgment had been entered, holding that the proper course for the district court is remand).

The Court therefore grants Plaintiff 30 days' leave to amend his notice of removal to state facts showing that the proceeding at Midtown Community Court is pending. The notice of removal must comply with the removal statute, which states that

> [a] defendant . . . shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing **a**

> **short and plain statement of the grounds for removal**, together with a copy of **all process, pleadings, and orders served upon such defendant** or defendants in such action.

28 U.S.C. § 1446(a) (emphasis added). The Court therefore directs Plaintiff to submit a short and plain statement no longer than 10 pages and all pleadings and orders served upon him in the Midtown Community Court.

B. The Court construes the complaint as asserting claims under 42 U.S.C. § 1983

Because Plaintiff alleges that individuals who work for the New York City government violated his rights, the Court construes his complaint as asserting claims under 42 U.S.C. § 1983. To state a claim under § 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).

C. Plaintiff names Defendants who cannot be sued or are immune from suit under 42 U.S.C. § 1983.

1. New York City Departments

New York City Departments are not entities that can be sued in their own name. N.Y. City Charter ch. 17, § 396 ("[A]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the city of New York and not in that of any agency, except where otherwise provided by law."). The Court therefore dismisses from this action Consumer Affairs, the Parks Department, the NYPD, and OATH for failure to state a claim. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

2. State Defendants

"[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.* 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). The Eleventh Amendment therefore bars Plaintiff's § 1983 claims against New York State and the DMV from proceeding in federal court, and the Court dismisses Plaintiff's claims against these defendants. *See* 28 U.S.C. § 1915(e)(2)(B)(iii).

3. Judicial Immunity

Judges are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, "acts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). "Even allegations of bad faith or malice cannot overcome judicial immunity." *Id.* (citations omitted). This is because "[w]ithout insulation from liability, judges would be subject to harassment and intimidation . . . ." *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994).

In addition, as amended in 1996, § 1983 provides that "in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated, or declaratory relief was unavailable." 42 U.S.C. § 1983.

Judicial immunity does not apply when the judge takes action "outside" his judicial capacity, or when the judge takes action that, although judicial in nature, is taken "in absence of jurisdiction." *Mireles,* 502 U.S. at 9-10; *see also Bliven,* 579 F.3d at 209-10 (describing actions that are judicial in nature). But "the scope of [a] judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump v. Sparkman,* 435 U.S. 349, 356 (1978).

Plaintiff's claims against Judge Charlotte Davidson arise of out of her rulings and actions while presiding over Plaintiff's Midtown Community Court proceedings; such rulings and actions were within the scope of her judicial capacity and jurisdiction. The Court therefore dismisses Plaintiff's claims against Judge Davidson under the doctrine of judicial immunity and as frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i), (iii); *Mills v. Fischer*, 645 F.3d 176, 177 (2d Cir. 2011) ("Any claim dismissed on the ground of absolute judicial immunity is 'frivolous' for purposes of [the *in forma pauperis* statute].").

4. Government Attorney

"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." *Mangiafico v. Blumenthal*, 471 F.3d 391, 396 (2d Cir. 2006) (citing *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). This general principle has been expanded to include "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 NYC Deputy Counsel Sanford Cohen are based on actions within the scope of this government attorney's official duties and associated with the judicial process and conduct of 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).

D. Plaintiff is precluded from bringing claims previously raised in his prior action, or claims that could have been raised in that action

In Plaintiff's prior federal lawsuit, filed on August 15, 2016, he raised many of the same claims raised here. He is therefore barred from raising those claims, as well as any claims he could have raised, in this lawsuit.

Under the doctrine of claim preclusion, also known as "*res judicata*," a litigant may not bring a new case that includes claims or defenses that were or could have been raised in an earlier case in which the same parties were involved if that case resulted in a judgment on the merits. *Brown v. Felsen*, 442 U.S. 127, 131 (1979). Claim preclusion "bars a plaintiff from relitigating claims against a defendant that it lost in a previous action against the same defendant and claims that the plaintiff could have brought in that earlier action but did not." *Marcel Fashions Grp. Inc. v. Lucky Brand Dungarees, Inc.*, 898 F.3d 232, 236-37 (2d Cir. 2018).

The doctrine "'serves the interest of society and litigants in assuring the finality of judgments, [and] also fosters judicial economy and protects the parties from vexatious and expensive litigation.'" *Id.* at 237 (quoting *Curtis v. Citibank, N.A.*, 226 F.3d 133, 138 (2d Cir. 2000)). Claim preclusion generally applies if "(i) an earlier action resulted in an adjudication on the merits; (ii) that earlier action involved the same counterparty or those in privity with them; and (iii) the claim sought to be precluded was raised, or could have been raised, in that earlier action." *Id.*

To determine if a claim could have been raised in an earlier action, courts look to whether the present claim arises out of the same transaction or series of transactions asserted in the earlier action, *see Pike v. Freeman,* 266 F.3d 78, 91 (2d Cir. 2001), or, in other words, whether facts essential to the second suit were present in the first suit, *NLRB v. United Techs. Corp.*, 706 F.2d 1254, 1260 (2d Cir. 1983).

Although claim preclusion is an affirmative defense to be pleaded in a defendant's answer, *see* Fed. R. Civ. P. 8(c), the Court may, on its own initiative, raise the issue. *See, e.g.*, *Grieve v. Tamerin*, 269 F.3d 149, 154 (2d Cir. 2001) (affirming district court's dismissal on grounds of issue preclusion even though defendant failed to plead that defense, and noting that "principles of preclusion involve" not only "the rights and interests of the parties," but also "important interests of the public and the courts in avoiding repetitive litigation and potentially inconsistent decisions"); *Doe v. Pfrommer*, 148 F.3d 73, 80 (2d Cir. 1998) (affirming *sua sponte* application of collateral estoppel in motion for summary judgment); *Salahuddin v. Jones*, 992 F.2d 447, 449 (2d Cir. 1993) ("The failure of a defendant to raise *res judicata* in [an] answer does not deprive a court of the power to dismiss a claim on that ground.").

Here, claim preclusion applies. In Plaintiff's prior lawsuit (16-CV-6458), the Court considered Plaintiff's claims – arising out of his July 14, 2016 summonses for violating municipal codes related to his driving his pedicab – on the merits and dismissed the action. In both lawsuits, Plaintiff names the City of New York and New York City actors, arguing that these parties were responsible for violating his rights.[2] As this Court has already addressed Plaintiff's 2016 violation claims on the merits, he is barred under the doctrine of claim preclusion from relitigating those claims *and* from litigating any new claims that arise out of the 2016 violations. *See Brown Media Corp. v. K&L Gates, LLP*, 854 F.3d 150, 157 (2d Cir. 2017) ("A party cannot avoid the preclusive effect of *res judicata* by asserting a new theory or a different remedy." (internal quotation marks and citation omitted)). Thus, the Court dismisses under the doctrine of

[2] In both suits, Plaintiff named as defendants the City of New York and the NYPD. In the prior lawsuit, Plaintiff also named Mayor Bill de Blasio, former Commissioner of the NYPD, William Bratton, and John Doe NYPD officers.

claim preclusion all claims arising out of Plaintiff's 2016 violations that occurred on or before August 15, 2016.

E. The Court grants Plaintiff leave to file an amended complaint to bring claims that arose after August 15, 2016 and that complies with Rule 8 of the Federal Rules of Civil Procedure

The Court's "special solicitude" for *pro se* pleadings, *Ruotolo v. IRS*, 28 F.3d 6, 8 (2d Cir. 1994), has its limits, because *pro se* pleadings still must comply with Rule 8(a) of the Federal Rules of Civil Procedure. Under Rule 8(a)(2), a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Thus, a complaint's statement of claim should not be overly lengthy or contain unnecessary details. *See Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988).

Generally, district courts must construe *pro se* complaints liberally, but "even a *pro se* litigant cannot simply dump a stack of exhibits on the court and expect the court to sift through them to determine if some nugget is buried somewhere in that mountain of papers, waiting to be unearthed and refined into a cognizable claim." *Carmel v. CSH & C*, 32 F. Supp. 3d 434, 436 (W.D.N.Y. 2014).

Plaintiff fails to make a short and plain statement showing that he is entitled to relief for any claim that arose after August 15, 2016. Rather, he submits a 2,135-page submission, apparently expecting the Court "to sift through" it to find Plaintiff's claims. *Carmel*, 32 F. Supp. 3d at 436. In recognition of the "special solicitude" afforded *pro se* litigants, the Court grants Plaintiff 30 days' leave to submit an amended complaint that complies with Rule 8 of the Federal Rules of Civil Procedure. The amended complaint must contain a short and plain statement showing that he is entitled to relief and may not contain claims disposed of in this order, that is, any claim arising out of Plaintiff's July 2016 violations and that occurred on or before August 15, 2016. **Plaintiff's amended complaint must be limited to 20 pages.** The Court strongly

encourages Plaintiff to use the Court's amended complaint form. Should Plaintiff file an amended complaint, **it will completely replace his original complaint**.

F. Pro Bono Counsel

The factors to be considered in ruling on an indigent litigant's request for counsel include the merits of the case, Plaintiff's efforts to obtain a lawyer, and Plaintiff's ability to gather the facts and present the case if unassisted by counsel. *See Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989); *Hodge v. Police Officers*, 802 F.2d 58, 60-62 (2d Cir. 1986). Of these, the merits are "[t]he factor which command[s] the most attention." *Cooper*, 877 F.2d at 172. Because it is too early in the proceedings for the Court to assess the merits of the action, Plaintiff's motion for counsel is denied without prejudice to renewal at a later date.

CONCLUSION

The Court dismisses from the action the New York City Department of Consumer Affairs, the New York City Department of Parks & Recreation, the New York City Police Department, the New York City Office of Administrative Trials & Hearings, the New York State Department of Motor Vehicles, the City of New York, the State of New York, Judge Charlotte Davidson, and NYC Deputy Counsel Sanford Cohen, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii)-(iii).

The Court grants Plaintiff leave to file an amended notice of removal that complies with the standards set forth above. **Plaintiff's amended notice of removal must be limited to 10 pages.**

The Court grants Plaintiff leave to file an amended complaint that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within thirty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 20-CV-5586 (LLS). An Amended Complaint form is attached to this order. **Plaintiff's amended complaint must be limited to 20**

pages. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the complaint will be dismissed for failure to state a claim upon which relief may be granted.

Plaintiff's application requesting the appointment of counsel (ECF No. 9.) is denied without prejudice to renewal at a later stage. All other motions should be terminated.

Plaintiff has consented to electronic service. (ECF No. 7.)

SO ORDERED.

Dated: October 5, 2020
New York, New York

Louis L. Stanton

Louis L. Stanton
U.S.D.J.

APPENDIX C

District Court Order Denying Petitioner's Motion Requesting Modification of Order to Amend (November 6, 2020)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants.

20-CV-5586 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

By order dated October 5, 2020, the Court granted Plaintiff 30 days' leave to file an amended complaint, not to exceed 20 pages. The Court cautioned Plaintiff that failure to comply with the October 5, 2020 order would result in dismissal of the action for failure to state a claim. On October 23, 2020, the Court received Plaintiff's "motion requesting modification of order to amend." (ECF No. 14.) The motion is denied. The Court grants Plaintiff an additional 30 days from the date of this order to file his amended complaint. No further extensions shall be granted.

SO ORDERED.

Dated: November 6, 2020
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

APPENDIX D

District Court Order Denying Petitioner's Three Motions (January 7, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants.

20-CV-4610 (LLS)

ORDER

LOUIS L. STANTON, United States District Judge:

By order dated October 5, 2020, the Court granted Plaintiff leave to file an amended complaint to address deficiencies contained in the original pleading. (ECF 13), and on November 6, 2020, the Court granted Plaintiff an additional 30 days to submit the pleading (ECF 15). In response, on November 9, 2020, Plaintiff filed a notice of appeal as to both orders. (ECF 16.) After filing this notice of appeal, on November 24, 2020, Plaintiff filed four motions: "renewed motion for clerical errors" ((ECF 17); "motion for removal & amendment of defendants" (ECF 18); "notice for indicative rulings" (ECF 19); and "motion for service by U.S. Marshals" (ECF 20).

DISCUSSION

The notice of appeal is premature, as the Court has issued only nonfinal orders that have not been certified for interlocutory appeal. *See, e.g., United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996) (deeming a notice of appeal from a nonfinal order to be "premature" and a "nullity," and holding that the notice of appeal did not divest the district court of jurisdiction); *Gortat v. Capala Bros., Inc.*, No. 07-CV-3629 (ILG), 2008 WL 5273960, at *1 (E.D.N.Y. Dec. 18, 2008) ("An exception . . . [to the general rule that an appeal deprives a district court of

jurisdiction] applies where it is clear that the appeal is defective, for example, because the order appealed from is not final and has not been certified for an interlocutory appeal.").

The Court denies Plaintiff's four motions as frivolous and grants him an additional 14 days to file an amended complaint. If he fails to file the submission, and cannot show good cause for failing to do so, the Court shall dismiss the complaint for failure to state a claim.

CONCLUSION

The Court denies Plaintiff's motions (ECF 17-20) as frivolous and grants Plaintiff 14 days from the date of this order to file an amended complaint.

Plaintiff has consented to electronic service. (ECF 7.)

Dated: January 7, 2021
New York, New York

Louis L. Stanton
U.S.D.J.

APPENDIX E

District Court Order Dismissing Petitioner's Complaint in its Entirety (January 28, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants.

20-CV-5586 (LLS)

ORDER OF DISMISSAL

LOUIS L. STANTON, United States District Judge:

By order dated October 5, 2020, the Court granted Plaintiff leave to file an amended complaint to address deficiencies in the original pleading. (ECF 13.) In response, Plaintiff filed four motions (ECF 17-20), but he did not file an amended complaint within the deadline for doing so. On January 7, 2021, the Court denied Plaintiff's motions and provided Plaintiff an additional 14 days to file an amended complaint. (ECF 21.) The order noted that should Plaintiff fail to file an amended complaint, the Court would dismiss the complaint for failure to state a claim. (*Id.*) Seven days later, Plaintiff filed a notice of appeal, challenging the non-final January 7, 2021 order. (ECF 22.)

A premature notice of appeal from a nonfinal order is a "nullity" and does not divest the district court of jurisdiction. *United States v. Rodgers*, 101 F.3d 247, 252 (2d Cir. 1996). Because the Court has issued only nonfinal orders, which have not been certified for interlocutory appeal, the Court retains jurisdiction over this matter even though Plaintiff has filed a notice of appeal. Plaintiff has not filed an amended complaint, despite several opportunities to do so. Accordingly, the Court dismisses the complaint for failure to state a claim, without prejudice to his moving to reopen the action within 30 days of the date of this order. This order is a final order, from which Plaintiff can appeal. Should he choose to appeal this order of dismissal, he must file a new notice

of appeal. Should Plaintiff move to reopen this action, he also must submit a proposed amended complaint.

CONCLUSION

The Court dismisses the complaint for failure to state a claim, without prejudice to Plaintiff's moving to reopen this action within 30 days of the date of this order.

Plaintiff has consented to electronic service. (ECF 7.)

Dated: January 28, 2021
New York, New York

Louis L. Stanton
Louis L. Stanton
U.S.D.J.

APPENDIX F

District Court Civil Judgment Dismissing Petitioner's Complaint in its Entirety (February 3, 2021)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

NYC DEPARTMENT OF CONSUMER AFFAIRS, *et al.*,

Defendants.

20-CV-5586 (LLS)

CIVIL JUDGMENT

Pursuant to the order issued January 28, 2021, dismissing the complaint,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to Plaintiff and note service on the docket.

SO ORDERED.

Dated: February 3, 2021
New York, New York

Louis L. Stanton

Louis L. Stanton
U.S.D.J.

APPENDIX G

Court of Appeals Order Dismissing Petitioner's Motion for Reconsideration/Reconsideration En Banc (October 14, 2021)

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 14th day of October, two thousand twenty-one.

Ibrahim Donmez,

Plaintiff - Appellant,

v.

New York City Department of Consumer Affairs, New York City Department of Parks and Recreation, New York City Police Department, New York City Office of Administrative Trials and Hearings, New York State Department of Motor Vehicles, Officer Henderson, NYC Parks Department, Officer Ocelin, NYC Parks Department, Officer John Doe, NYC Parks Department,Sanford Cohen, NYC Deputy Counsel, NYC Judge Charlotte Davidson, The City of New York, The State of New York,

Defendants - Appellees.

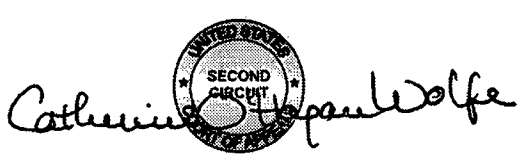
ORDER

Docket Nos: 20-3830 (Lead)
21-91 (Con)

Appellant, Ibrahim Donmez, filed a motion for panel reconsideration, or, in the alternative, for reconsideration *en banc*. The panel that determined the appeal has considered the request for reconsideration, and the active members of the Court have considered the request for reconsideration *en banc*.

IT IS HEREBY ORDERED that the motion is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk



APPENDIX H

District Court Order Dismissing Petitioner's Complaint in its Entirety (December 16, 2016)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK; MAYOR WILLIAM DE BLASIO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; THE NEW YORK POLICE DEPARTMENT; NEW YORK POLICE COMMISSIONER WILLIAM BRATTON, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; POLICE OFFICERS JOHN DOE AND JOHN DOE IN THEIR INDIVIDUAL CAPACITIES,

Defendants.

16-CV-6458 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, appearing *pro se*, brings this action alleging that Defendants violated his constitutional rights. By order dated November 21, 2016, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.

STANDARD OF REVIEW

The Court must dismiss an *in forma pauperis* complaint, or portion thereof, 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, 474-75 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

BACKGROUND

Plaintiff, a pedicab driver, brings this complaint seeking to "remove the adjudication and the trial of the NYC Administrative Code § 20-258(b) violation charge [for Plaintiff's failure to wear his pedicab drivers license] issued to Plaintiff on July 14, 2016 by New York Police Department officers returnable at Midtown North Community Court. . . ." (Compl. at ¶ 2.). Plaintiff does not deny that he violated NYC Administrative Code § 20-258(b), but he asserts that the evidence seized was the "fruit of an unconstitutional seizure of an unconstitutional search," and that "due process and a fair trial is [sic] not possible at the busy Midtown Community Court (Criminal Court)." (*Id.*)

Plaintiff alleges that the New York Police Department "aggressively continues to set up these unconstitutional checkpoints and conducts unconstitutional inspections to issue summons returnable at Midtown Community Court." (*Id.* at ¶ 7.) He asserts further that unconstitutional pedicab checkpoints and inspections happen on a daily basis and that Defendants' unconstitutional policies and targeting have caused dozens of licensed pedicab drivers to have their licenses suspended, revoked, or not renewed.

Plaintiff asserts that he has ongoing lawsuits in the state appellate courts regarding previous unconstitutional pedicab inspections. In addition to seeking to remove the charge issued to Plaintiff on July 14, 2016, Plaintiff also seeks to consolidate this case with *Capital Pedicabs, LLC, et al. v. City of New York, et al.*, No. 16-CV-1925 (LTS) (S.D.N.Y. filed March 15, 2016). Additionally, Plaintiff seeks unspecified monetary damages.

DISCUSSION

A. Standing

To the extent that Plaintiff seeks to assert claims on behalf of other pedicab drivers, these claims must be dismissed. Article III, Section 2, of the Constitution limits the jurisdiction of the federal courts "to the resolution of 'cases' and 'controversies.'" *Mahon v. Ticor Title Ins. Co.*, 683 F.3d 69, 62 (2d Cir. 2012) (citation and internal quotation marks omitted). Standing to bring a lawsuit is a threshold requirement that prevents a plaintiff from bringing claims before a court unless there exists a case or controversy. *See Warth v. Seldin*, 422 U.S. 490, 498-99 (1975) ("[W]hether the plaintiff has made a 'case or controversy' . . . within the meaning of Article III . . . is the threshold question in every federal case, determining the power of the court to entertain suit."); *see also Arizonians for Official English v. Arizona*, 520 U.S. 43, 64 (1997). The burden of establishing standing to bring a lawsuit rests with the party bringing the action. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). To demonstrate standing, Plaintiff must show that: (1) he has suffered "an invasion of a legally protected interest which is concrete and particularized, and actual and imminent, not conjectural or hypothetical"; (2) his injury is "fairly traceable to the challenged action of the defendant"; and (3) "the injury will be redressed by a favorable decision." *Id.* at 560-61(internal quotations omitted). "'If [a] plaintiff[] lack[s] Article III standing, a [federal] court has no subject matter jurisdiction to hear [his] claim.'" *Mahon*, 683 F.3d at 62 (citation omitted). And "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the [claim]." Fed. R. Civ. P. 12(h)(3).

Plaintiff's allegation that Defendants violated the rights of other pedicab drivers does not describe a particularized injury sufficient to establish standing under Article III. *Lujan*, 504 U.S. at 573-74 ("[A] plaintiff raising only a generally available grievance about government . . . and

seeking relief that no more directly and tangibly benefits him than it does the public at large – does not state an Article III case or controversy.").

B. Removal

Insofar as Plaintiff brings this action to remove the adjudication of the violation charge from state court to this Court, this action must be dismissed. A party seeking to remove a civil action from state court to federal court must comply with the procedures of the removal statute, and that statute is construed narrowly. *See, e.g., Somlyo v. Lu-Rob Enters, Inc.,* 932 F.2d 1043, 1045-46 (2d Cir. 1991). If there is a defect in the removal procedure, courts are authorized to remand a case to the state court in which the action originated. 28 U.S.C. § 1447(c); *see also LaFarge Coppee v. Venezolana De Cementos, S.A.C.A.*, 31 F.3d 70, 72 (2d Cir. 1994). The removing party bears the burden of demonstrating that the removal was procedurally proper. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 171 (S.D.N.Y. 2003).

A defendant removing an action to federal district court is required to file a notice of removal within 30 days of the defendant's receipt "of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendants, which ever period is shorter." 28 U.S.C. § 1446(b)(1). A notice of removal also may be filed "within 30 days after receipt by the defendant . . . of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable." *Id.* § 1446(b)(3). Defendant has not complied with these statutory deadlines as the charge was issued on July 14, 2016, more than 30 days from the date he filed this action.

Because Plaintiff has not filed a notice of removal, and even if he had, the notice would not have been timely filed, the request for removal must be denied. *See Quick v. Shell Oil*, 399 F.

Supp. 2d 356, 362 (S.D.N.Y. 2005) ("If the removing party cannot establish its right to removal by competent proof, the removal is improper, and the district court must remand the case to the court in which it was filed.").

C. Due Process Claim

The Due Process Clause only protects "against deprivations without due process of law." *Rivera–Powell v. N.Y. City Board of Elections*, 470 F.3d 458, 464 (2d Cir. 2006) (quoting *Parratt v. Taylor*, 451 U.S. 527, 537 (1981)). "The fundamental requisite of due process of law is the opportunity to be heard . . . at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citations omitted). Determining whether the process provided is adequate requires a weighing of: (1) the private interest affected; (2) the risk of erroneous deprivation and the probable value of further safeguards; and (3) the governmental interest at issue. *See Rivera–Powell*, 470 F.3d at 466 (citing *Mathews v. Eldridge*, 424 U.S. 319, 355 (1976)).

Generally, some kind of pre-deprivation process must be provided before liberty or property rights are infringed upon. *See Hodel v. Va. Surface Mining & Reclamation Ass'n, Inc.*, 452 U.S. 264, 299 (1981); *DiBlasio v. Novello*, 344 F.3d 292, 302 (2d Cir. 2003). Where a person is deprived of a property right because of a random and unauthorized act, rather than through the operation of established state procedures, the Due Process Clause is satisfied if the state provides an adequate postdeprivation remedy. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding that a "random and unauthorized" deprivation of a protected interest does not result in a violation of procedural due process, as long as the state provides an adequate postdeprivation remedy); *Rivera–Powell*, 470 F.3d at 465 (holding that "[w]hen the state conduct in question is random and unauthorized, the state satisfies procedural due process requirements so long as it provides meaningful post-deprivation remedy.").

Moreover, the state must simply make an adequate procedural remedy available to the plaintiff; the plaintiff need not have availed himself of that remedy. *See, e.g., McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 38-39 & n.21 (1990) ("The availability of a pre-deprivation hearing constitutes a procedural safeguard against unlawful deprivations sufficient by itself to satisfy the Due Process Clause, and [litigants] cannot complain if they fail to avail themselves of this procedure.").

In his complaint, it is clear that Plaintiff did avail himself of a predeprivation remedy by appearing for trial at Midtown Community Court. The decision to suspend and subsequently revoke Plaintiff's pedicab driver's license was made after proceedings were concluded in Midtown Community Court. Plaintiff then sought review of the decision to suspend and subsequently revoke his pedicab license by filing three separate Article 78 proceedings in state court. Plaintiff asserts that two of the actions are now pending before the New York State Court of Appeals, and that with respect to the third action, on June 28, 2016, the Appellate Division, First Department, ruled in Plaintiff's favor, "but refused respond to plaintiff's constitutional questions." (Compl. at ¶ 105.)

An Article 78 proceeding satisfies due process, even though a litigant cannot recover the same relief he or she may be able to recover in a [section] 1983 action." *Lawrence v. Antonucci*, 144 F. App'x 193, 193–94 (2d Cir. 2005); *Collins v. Saratoga Cnty. Support Collection Unit*, No. 12-CV-494, 2012 WL 2571288, at *5 (N.D.N.Y. July 3, 2012).

Here, Plaintiff availed himself of both pre- and post-deprivation remedies that were available under state law. Because Plaintiff has not alleged any facts suggesting that the process provided to him was inadequate, Plaintiff's due process claim must be dismissed. See 28 U.S.C. § 1915(e)(2)(B)(ii).

D. *Younger* Abstention Doctrine

To the extent Plaintiff requests that this Court review, intervene in, enjoin, or stay any ongoing state-court proceedings, in which he is named as a party, such claims are barred by the *Younger* Abstention Doctrine.

In *Younger v. Harris*, 401 U.S. 37 (1971), the United States Supreme Court held that a federal court may not enjoin a pending state criminal proceeding in the absence of special circumstances suggesting bad faith, harassment, or irreparable injury that is both serious and immediate. *See Heicklen v. Morgenthau*, 378 F. App'x 1, 2 (2d Cir. 2010) (quoting *Gibson v. Berryhill*, 411 U.S. 564, 573-74 (1973)). This doctrine has been extended to civil actions. *See Kaufman v. Kaye*, 466 F.3d 83, 86 (2d Cir. 2006); *Diamond "D" Const. Corp. v. McGowan*, 282 F.3d 191, 198 (2d Cir. 2002) ("*Younger* generally requires federal courts to abstain from taking jurisdiction over federal constitutional claims that involve or call into question ongoing state proceedings."). Younger abstention is appropriate in only three categories of state court proceedings: (1) state criminal prosecutions; (2) civil enforcement proceedings that are "akin to criminal prosecutions"; and (3) civil proceedings "that implicate a State's interest in enforcing the orders and judgments of its courts." *Sprint Commc'n, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013).

Here, Plaintiff's request, that this Court "remove the adjudication and trial of the NYC Administrative Code § 20-258(d) violation charge issued to the plaintiff," would appear to fit within *Sprint's* second category – a civil enforcement proceeding that is "akin to a criminal prosecution" in "important respects." *Sprint*, 134 S. Ct. at 592. Thus, *Younger* abstention is warranted in this case. Because Plaintiff has failed to allege that extraordinary circumstances exist requiring a departure from *Younger* abstention, the Court must abstain from interfering in any ongoing civil proceedings.

APPENDIX H

District Court Order Dismissing Petitioner's Complaint in its Entirety (December 16, 2016)

CONCLUSION

The Clerk of Court is directed to assign this matter to my docket, mail a copy of this order to Plaintiff, and note service on the docket. Plaintiff's complaint, filed *in forma pauperis* under 28 U.S.C. § 1915(a)(1), is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and pursuant to the *Younger* Abstention doctrine. Plaintiff's request to consolidate this case with *Capital Pedicabs, LLC, et al. v. City of New York, et al.*, No. 16-CV-1925 (LTS) (S.D.N.Y. filed March 15, 2016) is denied as moot.

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).

SO ORDERED.

Dated: December 16, 2016
New York, New York

COLLEEN McMAHON
Chief United States District Judge

APPENDIX I

District Court Civil Judgment Dismissing Petitioner's Complaint in its Entirety (December 16, 2016)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IBRAHIM DONMEZ,

Plaintiff,

-against-

THE CITY OF NEW YORK; MAYOR WILLIAM DE BLASIO, IN HIS OFFICIAL AND INDIVIDUAL CAPACITIES; THE NEW YORK POLICE DEPARTMENT; NEW YORK POLICE COMMISSIONER WILLIAM BRATTON, IN HIS INDIVIDUAL AND OFFICIAL CAPACITIES; POLICE OFFICERS JOHN DOE AND JOHN DOE IN THEIR INDIVIDUAL CAPACITIES,

Defendants.

16-CV-6458 (CM)

CIVIL JUDGMENT

Pursuant to the order issued December 16, 2016, dismissing the complaint,

IT IS ORDERED, ADJUDGED AND DECREED that the complaint is dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) and pursuant to the *Younger* Abstention doctrine. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from the Court's judgment would not be taken in good faith.

IT IS FURTHER ORDERED that the Clerk of Court mail a copy of this judgment to Plaintiff and note service on the docket.

SO ORDERED.

Dated: December 16, 2016
New York, New York

COLLEEN McMAHON
Chief United States District Judge

APPENDIX J

Petitioner's Brief Scheduling Request Notification Letter (December 29, 2020)

December 29, 2020

CATHERINE O'HAGAN WOLFE
Chief Clerk of the United States Court of Appeals for the Second Circuit
40 Foley Square New York, NY 10007

Subject: Scheduling Request Notification
Ibrahim Donmez v. NYC Department of Consumer Affairs, et al.
Docket No. 20-3830

Dear Catherine O'Hagan Wolfe

Appellant requests that the Court accepts appellant's brief by February 26, 2020.

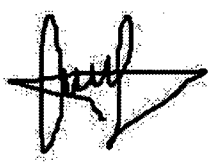
CC: New York City Law Department

CC: Office of the Attorney General

December 29, 2020
Tampa, Florida

Respectfully submitted,

IBRAHIM DONMEZ
Pro Se, Appellant
6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com



By: _____
IBRAHIM DONMEZ

APPENDIX K

Petitioner's Brief Scheduling Request Notification Letter (January 29, 2021)

January 29, 2021

CATHERINE O'HAGAN WOLFE
Chief Clerk of the United States Court of Appeals for the Second Circuit
40 Foley Square New York, NY 10007

Subject: Scheduling Request Notification
Ibrahim Donmez v. NYC Department of Consumer Affairs, et al.
Docket No. 21-91

Dear Catherine O'Hagan Wolfe

Due to voluminous record of the case and the fact that appellant will be filing a motion requesting a counsel, a motion requesting correction of the District Court record, appellant requests that the Court accepts appellant's brief by May 14, 2021.

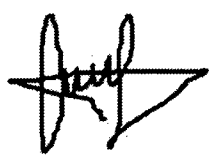
CC: New York City Law Department

CC: Office of the Attorney General

January 29, 2021
Tampa, Florida

Respectfully submitted,

IBRAHIM DONMEZ
Pro Se, Appellant
6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com



By: _____
IBRAHIM DONMEZ

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

MOTION INFORMATION STATEMENT

Docket Number(s): 20-3830 & 21-91

Caption [use short title]

Motion for: Stay of the Judgment and the Order of the District Court entered on February 5, 2021

Ibrahim Donmez

Plaintiff,

NYC Department of Consumer Affairs, et al.,

Defendants.

Set forth below precise, complete statement of relief sought:

Stay of the Judgment and the Order of the District Court entered on February 5, 2021 pending the determination of appeal

MOVING PARTY: Ibrahim Donmez
☒ Plaintiff ☐ Defendant
☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: NYC Department of Consumer Affairs, et al.

MOVING ATTORNEY: Ibrahim Donmez

OPPOSING ATTORNEY: Unknown

[name of attorney, with firm, address, phone number and e-mail]

6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com

Court-Judge/Agency appealed from: United States District Court, Southern District of New York, Justice Louis L. Stanton

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):
☐ Yes ☒ No (explain): Both NYC Corporation Counsel & NYS Attorney General declared they will not appear in this appeal and the Court terminated all defendants.

Opposing counsel's position on motion:
☐ Unopposed ☐ Opposed ☒ Don't Know

Does opposing counsel intend to file a response:
☐ Yes ☐ No ☒ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☒ No

Has this relief been previously sought in this Court? ☐ Yes ☒ No

Requested return date and explanation of emergency:

Appellant does not request a return date.
Appellant states that there is no emergency.
Appellant requests a panel review.

Is oral argument on motion requested? ☒ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☒ No If yes, enter date:

Signature of Moving Attorney:
Ibrahim Donmez

Date: 03 / 04 / 2021

Service by: ☐ CM/ECF ☐ Other [Attach proof of service]
Appellant will not serve any documents as the Court terminated all defendants.

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Ibrahim Donmez

Plaintiff,

NO. 20-3830 & 21-91

NYC Department of Consumer Affairs,
NYC Department of Parks & Recreation,
NYC Police Department,
NYC Office of Administrative Trials & Hearings,
NYS Department of Motor Vehicles,
NYC Parks Department Officer Asha Harris,
NYC Parks Department Officer Henderson,
NYC Police Department Officer Ocelin,
NYC Police Department Officer John Doe,
NYC Parks Department Officer John Doe,
NYC Deputy Counsel Sanford Cohen
NYS Judge Charlotte Davidson,
The City of New York,
The State of New York,

MOTION REQUESTING STAY OF JUDGMENT AND ORDER

Defendants.

Appellant, Ibrahim Donmez, moves this Court with this motion pursuant to Federal Rules of Appellate Procedure Rule 8 (a) (2) to stay the order and the judgment of the District Court (entered on February 5, 2021) dismissing appellant's complaint in its entirety for failure to state a claim. See District Court's February 5, 2021 Order & Judgment attached hereto.

RELEVANT FACTS

APPELLANT'S 2016 COMPLAINT IN THE DISTRICT COURT

On August 12, 2016, appellant was not incarcerated or detained in any facility at the time he filed his complaint with the District Court.

On August 12, 2016, appellant filed a complaint with the District Court and requested the District Court to 1) issue a judgment declaring the City of New York's policy of suspicion-less stops, checkpoints and inspections of the pedicabs unconstitutional and 2) issue an order enjoining the City of New York and the defendants from continuing the policy of the unconstitutional stops, checkpoints and inspections.

On August 12, 2016, with his complaint, appellant also tried to remove the proceeding still pending before Midtown Community Court to the District Court pursuant to 28 U.S.C. § 1441 because 1) he was subjected to this unconstitutional inspections/checkpoints harassment many times and appeared in multiple court proceedings before and 2) it was an established policy of the City of New York that started in the first month the pedicabs were licensed for the first time in New York City in November of 2009. See *November 22, 2009 - Police Begin Pedicab License Enforcement.* Youtube (uploaded on December 7, 2009) https://www.youtube.com/watch?v=NWY1Qy4C9T8

On August 12, 2016, with his complaint, appellant also tried to consolidate his action with Capitol Pedicabs, LLC et al v. City of New York et al, Case No. 16-cv-1925 pending before the District Court pursuant to Federal Rules of Civil Procedure 42 (a) because Capitol Pedicabs LLC filed its complaint for similar claims and requested similar reliefs.

On August 12, 2016, appellant filed his complaint pointing at the constitutional deficiencies of the City's pedicab inspection policies through facts and his complaint had more facts that required more legal discussions than the paying complaint filed by Capitol Pedicabs LLC.

On August 12, 2016, with his complaint, appellant was able to present more facts to the District Court because 1) appellant has been an activist and a community organizer for pedicab drivers and pedicab businesses and 2) appellant studied relevant 4th Amendment law for a long time as he was also pursuing similar claims at the Appellate Division, First Department and NY State Court of Appeals.

On August 12, 2016, appellant had dozens of videos to present to the District Court as evidence at the discovery and hearing stages.

On August 12, 2016, appellant had dozens of documents to present to the District Court as evidence at the discovery and hearing stages.

On November 21, 2016, Chief Justice Colleen McMahon granted a forma pauperis status for appellant.

On December 16, 2016, appellant was not incarcerated or detained in any facility at the time Chief Justice Colleen McMahon dismissed appellant's complaint in its entirety.

On December 16, 2016, Chief Justice Colleen McMahon dismissed appellant's complaint under 28 U.S.C. § 1915 (e) (2) (B) (ii) for failure to state a claim and pursuant to the Younger Abstention doctrine.

On December 16, 2016, Chief Justice Colleen McMahon, with her dismissal, 1) cited to cases that had nothing to with appellant's complaint, 2) made factually false statements, 3) reviewed claims that appellant never made, 4) ignored appellant's facts.

On December 16, 2016, Chief Justice Colleen McMahon dismissed appellant's case without giving appellant a notice.

On December 16, 2016, Chief Justice Colleen McMahon dismissed appellant's case without giving appellant a chance to amend his complaint.

On December 16, 2016, Chief Justice Colleen McMahon dismissed appellant's case without service on the defendants.

On December 16, 2016, Chief Justice Colleen McMahon dismissed appellant's case without answer from the defendants.

On December 16, 2016, Chief Justice Colleen McMahon blocked appellant's meaningful access to the Courts.

On December 16, 2016, Chief Justice Colleen McMahon applied bias, prejudice and bad faith with her dismissal of appellant's complaint.

APPELLANT'S INSTANT COMPLAINT IN THE DISTRICT COURT

On June 19, 2020 appellant was not incarcerated or detained in any facility at the time he filed his second complaint with the District Court.

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

On June 19, 2020, appellant filed his second complaint (3,113 pages of documents) with the District Court; the instant case.

On June 19, 2020, appellant filed the instant case with 60 causes of action requesting 71 reliefs.

On June 19, 2020, appellant again filed a forma pauperis application with the District Court.

On September 29, 2020, Chief Justice Colleen McMahon granted appellant's forma pauperis application.

On September 29, 2020, Chief Justice Colleen McMahon assigned the case to Justice Louis L. Stanton.

On October 6, 2020 appellant was not incarcerated or detained in any facility at the time Justice Louis L. Stanton issued his first order in the instant case.

On October 6, 2020, within only 7 days after Chief Justice Colleen McMahon assigned the case to Justice Louis L. Stanton, Justice Louis L. Stanton issued his first order without reading appellant's complaint.

In his October 6, 2020 dated order, Justice Louis L. Stanton dismissed appellant's claims against NY State Department of Motor Vehicles defendants under 28 U.S.C. § 1915 (e) (2) (B) (iii) for seeking monetary relief against a defendant who is immune from such relief without service and answer from the defendants even though appellant did not seek monetary relief from NY State Department of Motor Vehicles defendants. There is not a single fact or law relevant to NY State Department of Motor Vehicles defendants from appellant's complaint in Justice Louis L. Stanton's October 6, 2020 dated order because Justice Louis L. Stanton did not read appellant's complaint until this date. This is not a conclusory allegation. This is a fact.

In his October 6, 2020 dated order, Justice Louis L. Stanton dismissed appellant's claims against Midtown Community Court Justice Charlotte Davidson under 28 U.S.C. § 1915 (e) (2) (B) (i) as frivolous and 28 U.S.C. § 1915 (e) (2) (B) (iii) for seeking monetary relief against a defendant who is immune from such relief without service and answer from the defendants without service and answer from the defendants. Appellant is not seeking any monetary relief from Justice Charlotte Davidson. Appellant sued Justice Charlotte Davidson because she acted in the

absence of jurisdiction and appellant's complaint cites to the relevant U.S. Supreme Court case and other cases and the relevant laws for his claims against Justice Charlotte Davidson. Appellant's claims against Justice Charlotte Davidson are not frivolous at all. There is not a single fact or law relevant to Justice Charlotte Davidson from appellant's complaint in Justice Louis L. Stanton's October 6, 2020 dated order because Justice Louis L. Stanton did not read appellant's complaint until this date. This is not a conclusory allegation. This is a fact.

In his October 6, 2020 dated order, Justice Louis L. Stanton dismissed appellant's claims against New York City Department of Consumer Affairs Attorney Sanford Cohen under 28 U.S.C. § 1915 (e) (2) (B) (iii) for seeking monetary relief against a defendant who is immune from such relief without service and answer from the defendants. There is not a single fact or law relevant to NYC Department of Consumer Affairs Attorney Sanford Cohen from appellant's complaint in Justice Louis L. Stanton's October 6, 2020 dated order because Justice Louis L. Stanton did not read appellant's complaint until this date. This is not a conclusory allegation. This is a fact.

On October 6, 2020, Justice Louis L. Stanton, with his dismissals, 1) cited to cases that had nothing to with appellant's complaint, 2) made dozens of factually false statements, 3) reviewed claims that appellant never made, 4) ignored appellant's facts just like Chief Justice Colleen McMahon did.

In his October 6, 2020 dated order, Justice Louis L. Stanton ordered appellant's amended complaint to be limited to only 20 pages.

In his October 6, 2020 dated order, Justice Louis L. Stanton ordered appellant's amended notice of removal to be limited to only 10 pages.

On October 6, 2020, Justice Louis L. Stanton dismissed appellant's claims against the dismissed defendants without giving appellant a notice just like Chief Justice Colleen McMahon did.

On October 6, 2020, Justice Louis L. Stanton dismissed appellant's claims without giving appellant a chance to amend his claims against the dismissed defendants just like Chief Justice Colleen McMahon did.

On October 6, 2020, Justice Louis L. Stanton dismissed appellant's claims without service on the defendants just like Chief Justice Colleen McMahon did.

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

On October 6, 2020, Justice Louis L. Stanton dismissed appellant's claims without answer from the defendants just like Chief Justice Colleen McMahon did.

On October 6, 2020, Justice Louis L. Stanton blocked appellant's meaningful access to the Courts just like Chief Justice Colleen McMahon did.

On October 6, 2020, 2016, Justice Louis L. Stanton applied bias, prejudice and bad faith with his dismissal of appellant's claims just like Chief Justice Colleen McMahon did.

On October 23, 2020, appellant filed a Motion Requesting Modification of Order to Amend with Justice Louis L. Stanton.

In his October 23, 2020 dated motion, appellant requested Justice Louis L. Stanton to 1) reverse the decision of dismissals of the defendants, 2) reverse the order of page limitations, 3) reverse the decision of res judicata, 4) allow appellant to amend his complaint without restrictions and 5) give appellant 60 days to amend his complaint (because of the voluminous record of the case and his family circumstances due to the Covid-19 pandemic).

On November 9, 2020, Justice Louis L. Stanton entered a second order denying appellant's reasonable request, facts and legal arguments without any review and persisted on his decisions and orders.

On November 9, 2020, appellant filed a notice of appeal from Justice Louis L. Stanton's October 6, 2020 and November 9, 2020 dated orders.

On November 24, 2020, appellant filed three motions with Justice Louis L. Stanton for indicative rulings pursuant to Federal Rules of Civil Procedures § 62.1, § 60, § 60 (a), § 15 (a) and § 4 (c) (3).

On November 24, 2020, appellant filed the three motions with Justice Louis L. Stanton 1) to request the correction of clerical errors, 2) to remove and amend the defendants (amendment of the caption) and 3) to request service pursuant to Federal Rules of Civil Procedure § 4 (c) (3) and 28 U.S.C. § 1915 (d).

On January 8, 2021, Justice Louis L. Stanton issued his third order in the case denying appellant's November 24, 2020 dated three motions and declared them frivolous; again applying bias, prejudice and bad faith and complete disregard of definition of frivolous by the U.S. Supreme Court.

On January 8, 2021, Justice Louis L. Stanton argued that 1) appellant's November 9, 2020 dated notice of appeal is premature, 2) the District Court only issued non-final orders and he cited to United States v. John Frank Rodgers, 101 F.3d 247 (2nd Circuit 1996) and 3) appellant's November 9, 2020 dated notice of appeal does not divest the District Court of jurisdiction.

On January 14, 2021, appellant filed a notice of appeal from Justice Louis L. Stanton's January 8, 2021 dated order as well.

On February 5, 2021, Justice Louis L. Stanton issued his 4th order dismissing appellant's complaint in its entirety for failure to state a claim.

On February 5, 2021, in his judgment and order, Justice Louis L. Stanton again persistently argued that 1) appellant's November 9, 2020 and January 14, 2021 dated notices of appeal are premature and "nullity", 2) the District Court only issued non-final orders and he again cited to United States v. John Frank Rodgers, 101 F.3d 247 (2nd Circuit 1996) and 3) appellant's November 9, 2020 and January 14, 2021 dated notices of appeal do not divest the District Court of jurisdiction.

Furthermore, Justice Louis L. Stanton claimed that the February 5, 2021 dated order is the only final and appealable order.

Appellant disagrees. Appellant feels harassed by Justice Louis L. Stanton. Justice Louis L. Stanton not only ignores and omits the facts of appellant's complaint and motions but also the facts of his own orders. Appellant feels that he has been subjected to bias, prejudice and bad faith by dozens of judges in the past decade but he never felt harassed by a judge except Justice Louis L. Stanton.

ARGUMENT

POINT I
DISTRICT COURT ISSUED COLLATERAL ORDERS

With his October 6, 2020, Justice Louis L. Stanton dismissed 1) NYS Department of Motor Vehicles Department defendants, 2) NYS Midtown Community Court Justice Charlotte Davidson and 3) NYC Department of Consumer Affairs Attorney Sanford Cohen.

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

In his October 6, 2020 dated decision, Justice Louis L. Stanton decided 1) NYS Department of Motor Vehicles Department defendants, 2) NYS Midtown Community Court Justice Charlotte Davidson and 3) NYC Department of Consumer Affairs Attorney Sanford Cohen are immune from appellant's claims.

In none of his subsequent orders entered on November 9, 2020, January 8, 2021 and February 5, 2021, Justice Louis L. Stanton reversed his decision on these defendants' immunities.

Since Justice Louis L. Stanton has decided that 1) NYS Department of Motor Vehicles Department defendants, 2) NYS Midtown Community Court Justice Charlotte Davidson and 3) NYC Department of Consumer Affairs Attorney Sanford Cohen are immune from appellant's claims, the Second Circuit now has jurisdiction in this case as the immunity dismissals are considered collateral orders and appealable final decisions. See Joseph V. Savino v. the City of New York, 331 F.3d 63 (2nd Circuit 2003); see also Rein v. Socialist People's Libyan Arab Jamahiriya, 162 F.3d 748 (2nd Circuit 1998); see also Locurto v. Safir, 331 F.3d 63 (2nd Circuit 2003); see also Mitchell v. Forsyth, 472 U.S. 511 (U.S. Supreme Court 1985)

Justice Louis L. Stanton subjected appellant to bias and prejudice by not reading appellant's complaint; the dismissals do not contain facts or law from appellant's complaint. Since Justice Louis L. Stanton decided the dismissals on the law without reading appellant's complaint and without appellant's facts, the Second Circuit now has jurisdiction in this case. See O'Bert Ex Rel. Estate of O'Bert v. Vargo, 331 F.3d 29 (2nd Circuit 2003); see also Behrens v. Pelletier, 516 U.S. 299 (U.S. Supreme Court 1996)

Justice Louis L. Stanton's October 6, 2020 dated order limiting appellant's amended complaint to 20 pages and amended notice of removal to 10 pages is a collateral trial court order affecting appellant's due process rights that will be irretrievably lost in the absence of an immediate appeal.

Justice Louis L. Stanton's October 6, 2020 dated order limiting appellant's amended complaint to 20 pages and amended notice of removal to 10 pages 1) conclusively determines a disputed question, 2) resolves an important issue completely separate from the merits of the action, and 3) is effectively unreviewable on appeal from a final judgment. See Whiting v. Lacara, 187 F.3d 317 (2nd Circuit 1999); see also Coopers & Lybrand v. Livesay, 437 U.S. 463 (U.S. Supreme Court 1978)

On November 9, 2020, with his second order, Justice Louis L. Stanton conclusively decided that appellant has to limit his amended complaint to 20 pages and amended notice of removal to 10 pages.

Justice Louis L. Stanton's October 6, 2020 dated order limiting appellant's amended complaint to 20 pages and amended notice of removal to 10 pages is an issue completely separate from the merits of the action.

If appellant complies with Justice Louis L. Stanton's illegal, biased and prejudiced order (issued in the absence of all jurisdiction and in violation of Equal Protection Clause of the 14th Amendment) limiting appellant's amended complaint to 20 pages and amended notice of removal to 10 pages, it will mean that appellant's giving up his due process rights and the outcome will be effectively unreviewable on appeal from a final judgment.

POINT II
THE LANGUAGE OF 28 U.S.C. § 1915 (E) (2) DOES NOT IMPOSE A DUTY TO DISMISS NON-PRISONER COMPLAINTS FOR FAILURE TO STATE A CLAIM BEFORE SERVICE AND DEFENDANTS' ANSWER

This Court allows dismissals of non-prisoner forma pauperis complaints for failure to state a claim before service of summons. See Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021), see also Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002)

It is appellant's interpretation of the 28 U.S.C. § 1915 that the District Court can not dismiss non-prisoner forma pauperis claims for 1) failure to state a claim under 28 U.S.C. § 1915 (e) (2) (b) (ii) and 2) seeking monetary relief against a defendant who is immune from such relief under 28 U.S.C. § 1915 (e) (2) (b) (iii) before service and defendants' answer.

It is appellant's interpretation of the 28 U.S.C. § 1915 that the District Court can dismiss non-prisoner forma pauperis claims that are frivolous and malicious under 28 U.S.C. § 1915 (e) (2) (b) (i) before service and defendants' answer based on the inherent powers of the Federal Court.

In his October 6, 2020 dated order, Justice Louis L. Stanton cited to 28 U.S.C. § 1915A. Since appellant was not incarcerated or detained in any facility when 1) he

filed his complaint on June 19, 2020, 2) Justice Louis L. Stanton issued his first order on October 6, 2020 and he is not incarcerated or detained in any facility at the moment, 28 U.S.C. § 1915A is not relevant to appellant's case. See Dario Olivas v. State of Nevada Ex Rel. Department of Corrections, 856 F.3d 1281 (9th Circuit 2017)

Since 1) appellant's complaints and claims were repeatedly subjected to screenings and dismissals before service and answer from the defendants 2) appellant's amended complaint will be subjected to screening and dismissal before service and answer from the defendants again, 3) appellant claims that the 2nd Circuit's interpretation of 28 U.S.C. § 1915 (e) (2) allowing screening of non-prisoner complaints before service and answer is wrong and 4) U.S. Supreme Court has never stated that non-prisoner complaints can be subjected to screening before service and answer, appellant claims the dispute is now a legal controversy that is capable of repetition, yet evading review. See Turner v. Rogers, 131 S.Ct. 2507 (U.S. Supreme Court 2011)

Since the District Court will subject appellant's amended complaint to screening again before service and answer, the legal question of how 28 U.S.C. § 1915 (e) (2) allows dismissals before service and answer by defendants has to be answered by the Second Circuit before appellant amends his complaint. See Turner v. Rogers, 131 S.Ct. 2507 (U.S. Supreme Court 2011)

The Prison Litigation Reform Act (PLRA) was enacted in April 1996 to address the large number of prisoner complaints filed in federal courts, not to block non-prisoner pauper plaintiffs' meaningful access to courts.

The purpose of the PLRA, as reflected by its title, is to curtail prisoner litigation. See H.R. Rep. No. 104-378, at 166 (1995) (the prison litigation reforms are intended to "discourage frivolous and abusive prison lawsuits").

Appellant has read through Congressional records and there is no evidence that Congress intended that non-prisoner forma pauperis complaints and claims can be screened before service and defendants' answer.

The word "screening" is used only in 28 U.S.C. § 1915A, not 28 U.S.C. § 1915. 28 U.S.C. § 1915A (a) compels federal courts to screen prisoner complaints before service.

28 U.S.C. § 1915A (a) commands the federal court to screen only prisoner complaints "before docketing, if feasible or, in any event, as soon as practicable after docketing"

28 U.S.C. § 1915 (e) (2) does not obligate screening of non-prisoner complaints before 28 U.S.C. § 1915 (d) service and answer from defendants.

The word "at any time" should not be interpreted as "at any time before service" because 1) Congress did not write the statue as "any time before service" 2) with 28 U.S.C. § 1915, Congress also commanded that Federal Courts help the non-prisoner pauper plaintiffs with service on the defendants. See 28 U.S.C. § 1915 (d)

The language of 28 U.S.C. § 1915 (e) (2) does not impose a duty to screen or review before service of summons. Instead, it requires a court to dismiss a case filed by an IFP litigant at any time the court determines that the action or appeal is frivolous or fails to state a claim on which relief may be granted. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Congress' intent that only prisoner complaints should be screened before 28 U.S.C. § 1915 (d) service can be inferred from the fact that both 28 U.S.C. § 1915A (c) and 28 U.S.C. § 1915 (h) define "prisoner" with the same exact words but the word "screening" was only used in 28 U.S.C. § 1915A (a).

28 U.S.C. § 1915 should be interpreted as a whole, not in a piecemeal manner.

Prompt screening may be a good thing and conserve the resources of defendants forced to respond to baseless lawsuits but the language of the present rule also provides needed flexibility, even if it sometimes requires defendants to respond to complaints that may soon be dismissed as without merit. The language simply does not require district courts to screen the merits of every claim that comes before them in an IFP case, and reading in such an extensive duty absent statutory language to that effect should be declined. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

There is no doubt that frivolous complaints and claims are subject to dismissal pursuant to the inherent authority of the court even when the filing fee has been paid. See Mallard v. District Court, 490 U.S. 296 (1989); see also Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362 (2nd Circuit 2000)

Therefore, sua suponte dismissal of complaints and claims that are frivolous as defined in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) and Denton v. Hernandez, 504 U.S. 25 (U.S. Supreme Court 1992) before service of process is permitted.

A non-prisoner forma pauperis complaint may not be dismissed prior to service for failure to state a claim. See In Re Burrell, No. 16-3215 (3rd Circuit 2016)

A non-prisoner pauper's case can be dismissed only when a paying litigant's appeal can be dismissed. A non-prisoner pauper litigant deserves the basic minimal procedures which any paying litigant gets in federal court.

Minimal procedures such as service of process upon the defendants and an adversary presentation on the sufficiency of the complaint will 1) protect the rights of non-prisoner pauper litigants and 2) lead to the efficient administration of justice.

It is better to have the adversary procedures in the district court before the case gets to the court of appeals.

The instant case illustrates exactly how these hasty procedures directed by this Court translates into wasteful procedures overall in the federal judicial system.

In his October 6, 2020 dated decision, Justice Louis L. Stanton did not read appellant's facts and law and falsely stated that appellant was seeking monetary relief from NYS Department of Motor Vehicle defendants and NYS Midtown Community Court Justice Charlotte Davidson.

In his October 6, 2020 dated decision, Justice Louis L. Stanton did not read appellant's facts and law and falsely declared appellant's claims against NYS Midtown Community Court Justice Charlotte Davidson frivolous by disregarding the definition of frivolous as defined by the U.S. Supreme Court in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) and Denton v. Hernandez, 504 U.S. 25 (U.S. Supreme Court 1992)

In his October 6, 2020 dated decision, Justice Louis L. Stanton did not read appellant's facts and law and decided that appellant can not seek monetary relief from NYC Department of Consumer Affairs Attorney Sanford Cohen because he has absolute immunity despite the fact that Sanford Cohen's targeting (through

license revocation) of appellant for appellant's speech over an email had no connection to Cohen's job as a government attorney.

The claims against the dismissed defendants can not happen before service and defendants' answer as the dismissals also decided the merits of the claims without appellant's facts and law.

By pursuing dismissals before service and defendant's answer, the district court is cast in the role of a proponent for the defense, rather than an independent entity.

Fifth Circuit allows dismissals of non-prisoner claims for failure to state a claim before service under 28 U.S.C. § 1915 (e) (2). See Lowe v. Wellcare Health Plans INC., No. 09-11062 (5th Circuit 2010)

Sixth Circuit allows dismissals of non-prisoner claims for failure to state a claim before service under 28 U.S.C. § 1915 (e) (2) See In re Prison Litigation Reform Act, 105 F.3d 1131 (6th Circuit 1997)

Ninth Circuit allows dismissals of non-prisoner claims for failure to state a claim before service under 28 U.S.C. § 1915 (e) (2) See Calhoun v. Stahl, 254 F.3d 845 (9th Circuit 2001); see also Barren v. Harrington, 152 F.3d 1193 (9th Circuit 1998)

Eleventh Circuit allows dismissals of non-prisoner claims for failure to state a claim before service under 28 U.S.C. § 1915 (e) (2). See Mehmood v. Guerra, No. 18-14212 (11th Circuit 2019)

Conflating the standards of frivolousness and failure to state a claim deny indigent non-prisoner plaintiffs the practical protections against unwarranted dismissals generally accorded to paying plaintiffs under the Federal Rules. A complaint whose only defect was its failure to state a claim gets dismissed sua sponte, whereas an identical complaint filed by a paying appellant receives the considerable benefits of the adversary proceedings contemplated by the Federal Rules. Given Congress' goal of putting indigent appellants on a similar footing with paying plaintiffs, this Circuit's interpretation cannot reasonably be sustained. According opportunities for responsive pleadings to indigent non-prisoner litigants commensurate to the opportunities accorded similarly situated paying plaintiffs is all the more important because indigent plaintiffs so often proceed pro se. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) quoting Haines v. Kerner, 404 U.S. 519 (U.S. Supreme Court 1972)

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

STATEMENT PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 8 (A) (2) (A) (I)

It is impracticable to present an application for stay to the district court because Justice Louis L. Stanton prejudged appellant's claims without reading appellant's complaint and repeatedly subjected appellant to bias, prejudice and bad faith.

Justice Louis L. Stanton completely ignored appellant's complaint and appellant's October 23, 2020 dated Motion Requesting Modification of Order to Amend. Justice Louis L. Stanton's latest order and judgment further demonstrate that Justice Louis L. Stanton is committed to his decisions and orders and when the district court's orders demonstrate commitment to particular decisions and orders, application for a stay from that same district court may be futile and hence impracticable. See McClendon v. City of Albuquerque, 79 F.3d 1014 (10th Circuit 1996).

Furthermore, based on the facts of this case and appellant's legal arguments, it will be a waste of judicial resources and appellant's time to file this application for a stay from the District Court because the District Court is bound by the interpretations of this Court and appellant disagrees with this Court's interpretation of 28 U.S.C. § 1915 (e) (2) for non-prisoner pauper complaints and claims and there are conflicts among the Circuit Courts.

Appellant will file his third petition with the United States Supreme Court unless this Court reverses its position on its interpretation of 28 U.S.C. § 1915 (e) (2) for non-prisoner pauper complaints and claims.

STATEMENT RELEVANT TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 8 (A) (2) (C)

Appellant will not give notice to NYC Corporation Counsel and NYS Attorney General or serve this motion on NYC Corporation Counsel and NYS Attorney General because both NYC Corporation Counsel and NYS Attorney General already declared that they will not appear in this appeal and this Court terminated NYC Corporation Counsel and NYS Attorney General as representatives of the parties to this appeal.

APPENDIX L

Petitioner's Motion Requesting Stay of District Court Jugment and Order (March 4, 2021)

STATEMENT RELEVANT TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 8 (A) (2) (D)

Appellant requests that this motion is decided by a panel of the court because there is no emergency and this stay request is not an exceptional case in which time requirements make that procedure impracticable.

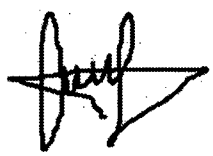
REQUESTED RELIEF

WHEREFORE, for the facts and the legal arguments stated in this motion, appellant respectfully requests this court to stay the order and the judgment of the District Court entered on February 5, 2021 pending the determination of appellant's appeal.

March 4, 2021
Tampa, Florida

Respectfully submitted,

IBRAHIM DONMEZ
Pro Se, Appellant
6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com



By: _____
IBRAHIM DONMEZ

APPENDIX M

Petitioner's Motion for Reconsideration/Reconsideration En Banc (July 23, 2021)

MOTION INFORMATION STATEMENT

Docket Number(s): 20-3830 & 21-91

Caption [use short title]

Motion for:

Reconsideration / Reconsideration En Banc

Ibrahim Donmez

Plaintiff,

NYC Department of Consumer Affairs, et al.,

Defendants.

Set forth below precise, complete statement of relief sought:

1. Assign the case to a different judge
2. Declare that amended complaint and notice of removal page numbers can not be restricted
3. Declare that non-frivolous non-prisoner forma pauperis claims and complaints can not be dismissed before service and defendants' answer

MOVING PARTY: Ibrahim Donmez

☑ Plaintiff ☐ Defendant

☐ Appellant/Petitioner ☐ Appellee/Respondent

OPPOSING PARTY: Unknown

MOVING ATTORNEY: Ibrahim Donmez

OPPOSING ATTORNEY: Unknown

[name of attorney, with firm, address, phone number and e-mail]

Ibrahim Donmez

6936 Greenhill Place Tampa, Florida 33617

(212) 961-7435

ibrahimdonmez1983@gmail.com

Court-Judge/Agency appealed from: United States District Court, Southern District of New York, Justice Louis L. Stanton

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☐ Yes ☑ No (explain): Both NYC Corporation Counsel & NYS Attorney General declared they will not appear in this appeal and the Court terminated all defendants.

Opposing counsel's position on motion:

☐ Unopposed ☐ Opposed ☑ Don't Know

Does opposing counsel intend to file a response:

☐ Yes ☐ No ☑ Don't Know

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has request for relief been made below? ☐ Yes ☐ No

Has this relief been previously sought in this Court? ☐ Yes ☐ No

Requested return date and explanation of emergency:

Is oral argument on motion requested? ☑ Yes ☐ No (requests for oral argument will not necessarily be granted)

Has argument date of appeal been set? ☐ Yes ☑ No If yes, enter date:

Signature of Moving Attorney:

Ibrahim Donmez

Date: 07 / 23 / 2021

Service by: ☐ CM/ECF ☐ Other [Attach proof of service]

Appellant will not serve any documents as the Court terminated all defendants.

APPENDIX M

Petitioner's Motion for Reconsideration/Reconsideration En Banc (July 23, 2021)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Ibrahim Donmez

Plaintiff, NO. 20-38 & 21-91

NYC Department of Consumer Affairs, et al.

Defendants.

Appellant, Ibrahim Donmez, moves this Court pursuant to FRAP Rule 40 for panel reconsideration and Rule 35 for reconsideration en banc.

JURISDICTION

This court's jurisdiction arises under 28 U.S.C. § 1291.

POINT I
SUA SPONTE DISMISSAL WAS UNLAWFUL

Appellant concedes that the immunity defenses can not be adjudicated without a more fully developed record, pretrial proceedings and a trial pursuant to In re World Trade Center Disaster Site, 503 F.3d 167 (2d Circuit 2007).

However, the panel erred in dismissing appellant's appeal sua sponte by not giving appellant a notice and an opportunity to be heard with a brief. See Snider v. Melindez, 199 F.3d 108 (2nd Circuit 1999); see also See Square D. Company v. Niagara Frontier Tariff Bureau, 760 F.2d 1347 (2nd Circuit 1985); see also Square D. Company v. Niagara Frontier Tariff Bureau, 760 F.2d 1347 (2nd Circuit 1985); see also Square D. Company v. Niagara Frontier Tariff Bureau, 760 F.2d 1347 (2nd Circuit 1985)

By dismissing the appeal pursuant to In re World Trade Center Disaster Site, 503 F.3d 167 (2d Circuit 2007) which discusses Mitchell v. Forsyth, 472 U.S. 511 (U.S. Supreme Court 1985), the panel affirmed that appellant's appeal was not completely meritless so the panel dismissed the appeal for failure to state a claim as the appeal raised an "arguable question of law" which this Court ultimately

correctly resolved against the appellant. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

By affirming United States v. John Frank Rodgers, 101 F.3d 247 (2nd Circuit 1996) was not relevant to the case, the panel affirmed that Justice Louis L. Stanton's arguments were frivolous as United States v. John Frank Rodgers, 101 F.3d 247 (2nd Circuit 1996) lacked any arguable basis either in law or in fact. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

POINT II
THE PANEL OVERLOOKED THE BIAS OF JUSTICE LOUIS L. STANTON

Justice Louis L. Stanton subjected appellant to a pattern of bias that rose to the level of harassment.

Justice Louis L. Stanton issued all of his orders and dismissals without reading appellant's complaint.

Justice Louis L. Stanton issued all of his orders and dismissals by 1) making up facts that did not exist, 2) making up facts that are not relevant 3) by making false statements about the facts, 4) omitting facts, 5) ignoring facts and 6) citing to frivolous law.

Appellant filed his November 9, 2020 notice of appeal for the dismissed defendants only after Justice Louis L. Stanton denied appellant's motion to include the dismissed defendants in his amended complaint and that denial was a single sentence without review.

On November 9, 2020, Justice Louis L. Stanton denied appellant's reasonable request of 60 days to amend his complaint. Then appellant noticed that Justice Louis L. Stanton routinely allows other plaintiffs to amend their complaints in 60 days.

On January 8, 2021, Justice Louis L. Stanton frivolously labeled appellant's motions frivolous.

On February 5, 2021, Justice Louis L. Stanton persistently cited to United States v. John Frank Rodgers, 101 F.3d 247 (2nd Circuit 1996) in a frivolous manner.

Justice Louis L. Stanton's orders did not show any consideration to appellant's right to access the courts.

Appellant did not file a recusal motion pursuant to 28 U.S.C. § 144 because of the fact that Justice Louis L. Stanton has shown a pattern of bias that pushed appellant to this Court. It would be futile to file any other motion with Justice Louis L. Stanton.

Appellant filed his complaint on June 19, 2020. Justice Louis L. Stanton not only wasted appellant's time but also this Court's time and resources with his bias, prejudice, bad faith, recklessness and carelessness.

Appellant is not complaining about a disagreement on the law. Appellant is complaining about a pattern of bias that rose to the level of harassment.

Appellant requests this Court to assign this case to a different judge pursuant to 28 U.S.C. § 2106 as this Court has the statutory power "require such further proceedings to be had as may be just under the circumstances," See Liteky v. United States, 510 U.S. 540 (U.S. Supreme Court 1994)

An assignment to a different judge is warranted especially considering the fact that Justice Louis L. Stanton has not even read appellant's complaint yet. See United States v. Simon, 393 F.2d 90 (2nd Circuit 1968); see also United States v. Brown, 470 F.2d 285 (2nd Circuit 1972); see also United States v. Robin, 553 F.2d 8 (2nd Circuit 1977); see also Huang v. Gonzales, 453 F.3d 142 (2nd Circuit 2006); see also United States v. Cossey, 632 F.3d 82 (2nd Circuit 2011)

POINT II
THE PANEL OVERLOOKED JUSTICE LOUIS L. STANTON'S UNLAWFUL COLLATERAL ORDER OF LIMITING APPELLANT'S AMENDED COMPLAINT TO 20 PAGES AND AMENDED NOTICE OF REMOVAL TO 10 PAGES

On October 6, 2021, Justice Louis L. Stanton ordered appellant's amended complaint to be limited to 20 pages and notice of removal to 10 pages.

With his November 9, 2021 dated second order, Justice Louis L. Stanton persisted that appellant's amended complaint has to be limited to 20 pages and notice of removal has to be limited to 10 pages.

In none of his subsequent orders entered on January 8, 2021 and February 5, 2021, Justice Louis L. Stanton reversed his decision on these page limitations.

Justice Louis L. Stanton issued the order of page limitations 1) in the absence of jurisdiction, 2) in violation of 1st Amendment of the United States Constitution and 3) in violation of the 14th Amendment of the United States Constitution.

The first time Justice Louis L. Stanton used the word "without prejudice" was his February 5, 2021 dated order. Even in that order, he did not state whether appellant is subject to page limitations or not. This Court may consider collateral issues even after an action is no longer pending. See Willy v. Coastal Corp., 503 U.S. 131 (U.S. Supreme Court 1992)

An order of page limitations creates constitutional concerns where subject matter jurisdiction exists. See Hernandez v. Conriv Realty Associates, 182 F.3d 121 (2nd Circuit 1999)

Justice Louis L. Stanton issued the order of page limitations in the absence of legislative authority. Judges can not place orders in the absence of jurisdiction. See Mireles v. Waco, 502 U.S. 9 (1991)

With page limitations, Justice Louis L. Stanton blocked appellant's access to courts in violation of the 1st Amendment of the United States Constitution as it is impossible for appellant to present the facts of his complaint with only 20 pages or 10 pages.

Page limitation was just another segment of Justice Louis L. Stanton's pattern of bias, prejudice, bad faith, recklessness and carelessness. Appellant has been looking for case law that would support Justice Louis L. Stanton's unlawful limitation for months and just like this Court, he has not been able to find a single case from any district court, or a circuit court or the U.S. Supreme Court that would support Justice Louis L. Stanton's unlawful orders. Appellant has also been reading the other decisions and orders of Justice Louis L. Stanton and has observed that Justice Louis L. Stanton did not impose such arbitrary limitation on any other plaintiff in the past year. The page limitations orders were nothing but bias in violation of 14th Amendment of the United States Constitution.

Appellant is seeking a determination of a collateral issue as Justice Louis L. Stanton abused the judicial process. See Willy v. Coastal Corp., 503 U.S. 131 (U.S. Supreme Court 1992)

POINT IV

STATEMENT PURSUANT TO FRAP RULE 35 (B) (1) (A)

The panel's decision in this case, Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021) and Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002) are in conflict with Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989).

STATEMENT PURSUANT TO FRAP RULE 35 (B) (1) (B)

The panel's decision in this case, Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021) and Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002) are in conflict with Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012) and In Re Burrell, No. 16-3215 (3rd Circuit 2016) and Dario Olivas v. State of Nevada Ex Rel. Department of Corrections, 856 F.3d 1281 (9th Circuit 2017)

QUESTION PRESENTED FOR THE EN BANC PANEL

Does the language of 28 U.S.C. § 1915 allow screening and dismissal of non-frivolous non-prisoner complaints and claims for failure to state a claim under 28 U.S.C. § 1915 (e) (2) (b) (ii) and seeking monetary relief against a defendant who is immune from such relief pursuant to 28 U.S.C. § 1915 (e) (2) (b) (iii) before service of process and defendants' answer?

JURISDICTION

Since 1) appellant's non-frivolous complaints and claims were repeatedly subjected to screenings and dismissals before service and answer from the defendants 2) appellant's non-frivolous amended complaint and claims will be subjected to screening and dismissal before service and answer from the defendants again, 3) appellant claims this Court's interpretation of 28 U.S.C. § 1915 allowing screening and dismissal of non-prisoners' non-frivolous complaints and claims before service and defendants' answer is wrong and 4) U.S. Supreme Court has never stated that non-prisoners' non-frivolous complaints and claims can be subjected to screening and dismissal before service and answer, appellant claims the dispute is now a legal controversy that is capable of repetition, yet evading review. See Turner v. Rogers, 131 S.Ct. 2507 (U.S. Supreme Court 2011); see also Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Since 1) this question is a serious and unsettled legal question and 2) United States Supreme Court has never stated that non-prisoners' non-frivolous forma pauperis complaints and claims can be screened and dismissed before service and defendants' answer, the review is warranted under the collateral order doctrine stated in Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (U.S. Supreme Court 1949). See Nixon v. Fitzgerald, 457 U.S. 731 (U.S. Supreme Court 1982)

ARGUMENT

On February 27, 2021, Professor George Rutherglen, who argued the case for Harry Williams, Sr. in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) stated to the appellant over an email that Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) "was not directly overruled by the amendments to section 1915".

The question presented to the en banc panel is a question of law and the review needs to be de novo. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

This Court allows screening and dismissal of non-prisoners' non-frivolous forma pauperis complaints and claims for failure to state a claim before service of summons and defendants' answer. See Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021), see also Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002)

The panel was bound by the decisions of prior panels and only En Banc panel of this Court or the U.S. Supreme Court can overrule this Court's prior precedents. See In re Shayna H. Zarnel, 619 F.3d 156 (2nd Circuit 2010)

It is appellant's interpretation of the 28 U.S.C. § 1915 that the District Court can not dismiss non-frivolous non-prisoner forma pauperis complaints and claims for 1) failure to state a claim under 28 U.S.C. § 1915 (e) (2) (b) (ii) and 2) seeking monetary relief against a defendant who is immune from such relief under 28 U.S.C. § 1915 (e) (2) (b) (iii) before service and defendants' answer.

It is appellant's interpretation of the 28 U.S.C. § 1915 that the District Court can dismiss non-prisoner forma pauperis complaints and claims that are frivolous and malicious under 28 U.S.C. § 1915 (e) (2) (b) (i) before service and defendants' answer based on the inherent powers of the Federal Courts.

APPENDIX M

Petitioner's Motion for Reconsideration/Reconsideration En Banc (July 23, 2021)

The Prison Litigation Reform Act (PLRA) was enacted in April 1996 to address the large number of prisoner complaints filed in federal courts, not to block non-prisoner pauper plaintiffs' meaningful access to courts.

The purpose of the PLRA, as reflected by its title, is to curtail prisoner litigation. See H.R. Rep. No. 104-378, at 166 (1995) (the prison litigation reforms are intended to "discourage frivolous and abusive prison lawsuits").

PLRA intended to "reduce the quantity and improve the quality of prisoner suits" See Jones v. Bock, 127 S.Ct. 910 (U.S. Supreme Court 2007) quoting Porter v. Nussle, 534 U.S. 516 (U.S. Supreme Court 2002)

Appellant has read through Congressional records and there is no evidence that Congress intended that non-frivolous non-prisoner forma pauperis complaints and claims can be screened or dismissed before service and defendants' answer.

Congress has not overruled Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for non-prisoner cases.

Congress has overruled Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) with PLRA for only prisoner cases with the screening requirements stated only in 28 U.S.C. § 1915A.

The word "screening" is used only in 28 U.S.C. § 1915A, not 28 U.S.C. § 1915. 28 U.S.C. § 1915A (a) compels federal courts to screen only prisoner complaints before service and defendants' answer.

28 U.S.C. § 1915A (a) commands the federal court to screen only prisoner complaints "before docketing, if feasible or, in any event, as soon as practicable after docketing"

28 U.S.C. § 1915 (e) (2) does not obligate screening of non-prisoner complaints before 28 U.S.C. § 1915 (d) service and answer from defendants.

The word "at any time" in 28 U.S.C. § 1915 should not be interpreted as "at any time before service" because 1) Congress did not write the statue as "any time before service" 2) with 28 U.S.C. § 1915, Congress also commanded that Federal Courts help the non-prisoner pauper plaintiffs with service on the defendants which lead to adversary procedures. See 28 U.S.C. § 1915 (d)

The language of 28 U.S.C. § 1915 (e) (2) does not impose a duty to screen or review before service of summons. Instead, it requires a court to dismiss a case filed by an IFP litigant at any time the court determines that the action or appeal is frivolous or fails to state a claim on which relief may be granted. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

Congress' intent that only prisoner complaints can be screened and dismissed for failure to state a claim before 28 U.S.C. § 1915 (d) service can be inferred from the fact that both 28 U.S.C. § 1915A (c) and 28 U.S.C. § 1915 (h) define "prisoner" with the same exact words but the word "screening" was only used in 28 U.S.C. § 1915A (a).

The en banc panel's role in appraising appellant's reading of § 1915 is not to make policy, but to interpret a statute. Taking this approach, it is evident that the failure-to-state-a-claim standard of 28 U.S.C. § 1915 (e) (2) (b) (ii) and the frivolousness standard of 28 U.S.C. § 1915 (e) (2) (b) (i) were devised to serve distinctive goals. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Prompt screening may be a good thing and conserve the resources of defendants forced to respond to baseless lawsuits but the language of the present rule also provides needed flexibility, even if it sometimes requires defendants to respond to complaints that may soon be dismissed as without merit. The language simply does not require district courts to screen the merits of every claim that comes before them in an IFP case, and reading in such an extensive duty absent statutory language to that effect should be declined. See Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012)

There is no doubt that frivolous complaints and claims are subject to dismissal pursuant to the inherent authority of the court even when the filing fee has been paid. See Mallard v. District Court, 490 U.S. 296 (1989); see also Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362 (2nd Circuit 2000)

Therefore, sua suponte dismissal of complaints and claims that are frivolous as defined in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) and Denton v. Hernandez, 504 U.S. 25 (U.S. Supreme Court 1992) before service of process is permitted.

A non-prisoner forma pauperis "complaint may not be dismissed prior to service for failure to state a claim." See In Re Burrell, No. 16-3215 (3rd Circuit 2016)

A non-prisoner pauper's complaint and claims can be dismissed only when a paying litigant's complaint and claims can be dismissed. A non-prisoner pauper litigant deserves the basic minimal procedures which any paying non-prisoner litigant gets in federal court. See Coppedge v. United States, 369 U.S. 438 (U.S. Supreme Court 1962)

Bell v. Hood, 327 U.S. 678 (U.S. Supreme Court 1946) is still a good model.

There were no adversary procedures whatsoever in both complaints filed by the appellant in the district court. It is better to have the adversary procedures in the district court before the case gets to the Court of Appeals. The "adversarial process crystallizes the pertinent issues and facilitates appellate review of a trial court dismissal by creating a more complete record of the case." See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

By pursuing dismissals before service and defendant's answer, "the district court is cast in the role of a proponent for the defense, rather than an independent entity." See Porter v. Fox, 99 F.3d 271 (8th Circuit 1996)

District Courts can not conduct an initial review of non-prisoner pro se fee-paid complaints under Rule 12 (b) (6) before service of process and responsive pleadings. See Porter v. Fox, 99 F.3d 271 (8th Circuit 1996)

A district court may dismiss a non-prisoner pro se complaint under Rule 12 (b) (6) sua sponte but only after service of process but forma pauperis non-prisoner pro se complaints may be dismissed under 28 U.S.C. § 1915 (e) (2) (b) (ii) before service of process. See Wilson v. Alma City Court, 371 F. App'x 708 (8th Circuit 2010)

Eight Circuit's cases conflict with Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) as District Courts can not put indigent non-prisoner pro se plaintiffs on a different footing with paying non-prisoner pro se plaintiffs. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

The purpose of service of process stated in 28 U.S.C. § 1915 (d) is that the parties, not the court, would litigate the issues, and that these cases would proceed in the ordinary manner. The Federal Rules of Civil Procedure contemplates a litigant-directed process at the initial stages, but the procedures that appellant repeatedly gets subjected to (with the incorrect interpretation of 28 U.S.C. § 1915) interject review by judicial officers into the process. This judicial intervention places the judicial officers in the role of defense counsels, plaintiff's counsels, and judges, and

deprives appellant of the "considerable benefits of the adversary proceedings contemplated by the Federal Rules." See Hake v. Clarke, 91 F.3d 1129 (8th Circuit 1996) quoting Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

Justice Richard G. Kopf's very detailed interpretation (with legislative history) of § 1915 and § 1915A in Michael Kane v. Lancaster County Department of Corrections, 960 F.Supp. 219 (District of Nebraska 1997) is also in line with Buchheit v. Green, 705 F.3d 1157 (10th Circuit 2012) and In Re Burrell, No. 16-3215 (3rd Circuit 2016) and appellant's interpretations.

"Where a colorable claim is made out, sua sponte dismissal is improper prior to service of process and the defendants' answer." See Livingston v. Adirondack Beverage Co., 141 F.3d 434 (2nd Circuit 1998); see also Benitez v. Wolff, 907 F.2d 1293 (2nd Circuit 1990)

Pre-service dismissal is a draconian measure which is warranted only when the complaint lacks an arguable basis either in law or fact (frivolous) See McFadden v. Noeth, No. 19-585-pr. (2nd Circuit 2020)

It is the well-established law of this Circuit that sua sponte dismissal of a pro se complaint prior to service of process on defendant is strongly disfavored since such untimely dismissal deprives this Circuit of the benefit of defendant's answering papers. See McFadden v. Noeth, No. 19-585-pr. (2nd Circuit 2020)

Only prisoner complaints and claims can be screened. See Dario Olivas v. State of Nevada Ex Rel. Department of Corrections, 856 F.3d 1281 (9th Circuit 2017)

"Judicial haste" "in the long run makes waste". See Dioguardi v. Durning, 139 F.2d 774 (2nd Circuit 1944)

The facts of the instant case and appellant's 2016 complaint illustrate exactly how the District Court uses this Circuit's incorrect interpretation of 28 U.S.C. § 1915 as a tool 1) to apply bias, 2) to block appellant's right to meaningful access to courts as stated in Adkins v. EI DuPont de Nemours & Co., 335 U.S. 331 (U.S. Supreme Court 1948), 3) to block appellant's right to adversarial representation for non-frivolous claims as stated in Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989), and 4) to deny the liberal pleading standard afforded to pro se plaintiffs as stated in Haines v. Kerner, 404 U.S. 519 (U.S. Supreme Court 1972).

Standards of frivolousness and failure to state a claim should not be conflated. See Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989) quoting Haines v. Kerner, 404 U.S. 519 (U.S. Supreme Court 1972)

28 U.S.C. § 1915 should be interpreted as a whole, not in a piecemeal manner. Statutes should be construed in a manner which will not work a hardship or injustice (see McKinney's Cons Laws of NY, Book 1, Statutes § 146). Meaning and effect must be given to all of the statute's language, and words are not to be rejected as superfluous when it is practicable to give each a distinct and separate meaning (see McKinney's Cons Laws of NY, Book 1, Statutes § 231). Language is construed according to its natural and most obvious sense (id. § 94). This court's interpretation, which conflates screening and dismissal; renders superfluous and it creates serious conflict with 1) Federal Rules of Civil Procedures, 2) the legislative intent and 3) Neitzke v. Williams, 490 U.S. 319 (U.S. Supreme Court 1989)

REQUESTED RELIEF

WHEREFORE, for the facts and the legal arguments stated in this petition, appellant respectfully requests that the Court

1) assign the case to a different judge,
2) declare that appellant's amended complaint and notice of removal can not be subjected to page limitations.

WHEREFORE, for the facts and the legal arguments stated in the Motion for Reconsideration En Banc, appellant respectfully requests the En Banc Court to reverse the panel's decision, Whitnum v. Office of the Chief State's Attorney, No. 20-947-cv (2nd Circuit 2021) and Cieszkowska v. Gray Line New York, 295 F.3d 204 (2nd Circuit 2002) and declare that non-prisoners' non-frivolous forma pauperis complaints and claims can not be screened and dismissed under 28 U.S.C. § 1915 (e) (2) (b) (ii) and 28 U.S.C. § 1915 (e) (2) (b) (iii) prior to service and defendants' answer.

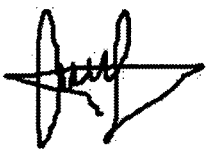
APPENDIX M

Petitioner's Motion for Reconsideration/Reconsideration En Banc (July 23, 2021)

July 23, 2021
Tampa, Florida

Respectfully submitted,

IBRAHIM DONMEZ
Pro Se, Appellant
6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com



By: _____
IBRAHIM DONMEZ

MANDATE

S.D.N.Y.–N.Y.C.
20-cv-5586
Stanton, 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 14th day of July, two thousand twenty-one.

Present:

Rosemary S. Pooler,
Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Circuit Judges.

Ibrahim Donmez,

Plaintiff-Appellant,

v.

20-3830 (L),
21-91 (Con)

New York City Department
of Consumer Affairs, et al.,

Defendants-Appellants.

Appellant moves for a stay pending his appeals of the district court's initial review order dismissing his complaint with leave to amend and subsequent denials of various motions. Upon due consideration, it is hereby ORDERED that the motion is DENIED. *See In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007).

It is further ORDERED that the appeals are DISMISSED because they "lack[] an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

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

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

MANDATE ISSUED ON 10/21/2021

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Ibrahim Donmez - Petitioner

v.

NYC Department of Consumer Affairs, et al. - Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Second Circuit

MOTION REQUESTING ATTORNEY PURSUANT TO 28 U.S.C. 1915 (E) (1)

Ibrahim Donmez
6936 Greenhill Place
Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com

MOTION REQUESTING ATTORNEY
PURSUANT TO 28 U.S.C. 1915 (E) (1)

Petitioner respectfully asks this Court to assign an attorney pursuant to 28 U.S.C. 1915 (e) (1).

January 6, 2022
Tampa, Florida

Respectfully submitted,

IBRAHIM DONMEZ
6936 Greenhill Place Tampa, Florida 33617
(212) 961-7435
ibrahimdonmez1983@gmail.com

By: _____
IBRAHIM DONMEZ