UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of February, two thousand twenty-two.

PRESENT: Dennis Jacobs,
Guido Calabresi,
Steven J. Menashi,
Circuit Judges.

BRENDA JOYCE HAYNES,

Plaintiff-Appellant,

v. No. 21-1767

LESLIE G. FOSCHIO, JON O. NEWMAN, ROSEMARY S. POOLER, BARRINGTON D. PARKER, JR.,

Defendants-Appellees.

For Plaintiff-Appellant:	Brenda Joyce Haynes, pro se, Buffalo, NY.
For Defendants-Appellees:	Tiffany H. Lee, Assistant United States Attorney, *for* James P. Kennedy, Jr., United States Attorney for the Western District of New York, Buffalo, NY.

Appeal from a judgment of the United States District Court for the Western District of New York (Vilardo, J.).

Upon due consideration, it is hereby **ORDERED, ADJUDGED,** and **DECREED** that the judgment of the district court is **AFFIRMED.**

Plaintiff-Appellant Brenda Joyce Haynes, proceeding pro se, appeals from a judgment of the United States District Court for the Western District of New York dismissing her complaint pursuant to 28 U.S.C. § 1915(e)(2). We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal.

In December 2020, Haynes filed a *Bivens* action against four federal judges, alleging that those judges violated her constitutional rights by ruling against her in a prior civil case that she had filed. Haynes sought compensatory and punitive

damages as well as an injunction against "enforcing or relying upon" the judgments in the prior case.

The district court granted Haynes's motion to proceed *in forma pauperis* but dismissed her complaint under 28 U.S.C. § 1915(e)(2)(B), concluding that the defendants were entitled to judicial immunity from suit. For the same reason, the district court found that further amendment of the complaint would be futile. Haynes timely appealed.

We review de novo a district court's *sua sponte* dismissal under § 1915(e)(2). *See Hardaway v. Hartford Pub. Works Dep't*, 879 F.3d 486, 489 (2d Cir. 2018). Section 1915(e)(2) provides, in relevant part, that "the court shall dismiss the case at any time if the court determines that ... the action or appeal ... seeks monetary relief against a defendant who is immune from such relief." *Id.* § 1915(e)(2)(B)(iii); *see also Walker v. Thompson*, 288 F.3d 1005, 1010 (7th Cir. 2002) ("[A]lthough immunity is an affirmative defense, § 1915(e)(2)(B)(iii) directs the district court to dismiss a prisoner's pro se suit 'at any time' if the defendant is immune."). "[J]udges generally have absolute immunity from suits for money damages for their judicial actions." *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009). Judicial immunity applies if "the relevant action is judicial in nature" and the action was "not taken in the

complete absence of jurisdiction." *Huminski v. Corsones*, 396 F.3d 53, 75 (2d Cir. 2005).

The district court properly concluded that judicial immunity barred Haynes's claims against the defendants. The actions about which Haynes complains—rendering adverse decisions in a civil suit—are plainly judicial in nature. *See Bliven*, 579 F.3d at 210 ("[T]he Supreme Court has generally concluded that acts arising out of, or related to, individual cases before the judge are considered judicial in nature."). Haynes asserts that the defendants acted without jurisdiction, but the defendants acted while presiding over Haynes's case. Even if the defendants' decisions were, as Haynes argues, incorrect or inconsistent with a prior panel's mandate, the judicial defendants still would have immunity for those decisions. *See Stump v. Sparkman*, 435 U.S. 349, 356-57 (1978) ("A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority.").

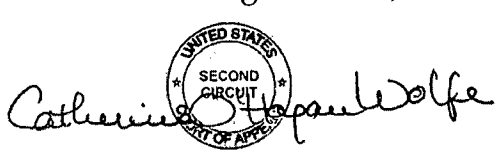
The district court did not separately address Haynes's request for injunctive relief. However, we may affirm on any ground with support in the record, "including grounds upon which the district court did not rely." *Leon v. Murphy*, 988 F.2d 303, 308 (2d Cir. 1993). Haynes's request for injunctive relief is "based on

an indisputably meritless legal theory" and therefore must be dismissed as frivolous, *Neitzke v. Williams*, 490 U.S. 319, 327 (1989), because such relief is not available in a *Bivens* action, *see Higazy v. Templeton*, 505 F.3d 161, 169 (2d Cir. 2007) ("The only remedy available in a *Bivens* action is an award for monetary damages from defendants in their individual capacities.").

We review de novo a denial of leave to amend when it is "based on an interpretation of law, such as futility." *Allen v. Credit Suisse Sec. (USA) LLC*, 895 F.3d 214, 227 (2d Cir. 2018) (internal quotation marks omitted). Because additional pleading could not overcome the defendants' immunity, the district court properly denied leave to amend as futile. *See Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) ("[A] futile request to replead should be denied.").

We have considered Haynes's remaining arguments, which we conclude are without merit. For the foregoing reasons, we **AFFIRM** the judgment of the district court.

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



Judgment in a Civil Case

United States District Court
WESTERN DISTRICT OF NEW YORK

BRENDA JOYCE HAYNES

v.

LESLIE G. FOSCHIO, ET AL

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 20-CV-1839

☐ **Jury Verdict**. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

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

IT IS ORDERED AND ADJUDGED that the Plaintiff's claims are dismissed with prejudice under 28 U.S.C. § 1915(e)(2).

Date: June 21, 2021

MARY C. LOEWENGUTH
CLERK OF COURT

By: s/ Colin
Deputy Clerk

15

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

BRENDA JOYCE HAYNES,

Plaintiff,

v.

20-CV-1839-LJV
ORDER

LESLIE G. FOSCHIO, JON O. NEWMAN, ROSEMARY S. POOLER, BARRINGTON D. PARKER,

Defendants.

The *pro se* plaintiff, Brenda Joyce Haynes, has filed a complaint asserting claims under 42 U.S.C. § 1983. Docket Item 1. She also has moved to proceed *in forma pauperis* (that is, as a person who should have the prepayment of the ordinary filing fee waived because she cannot afford it) and has filed the required affidavit. Docket Item 2.

Because Haynes meets the statutory requirements of 28 U.S.C. § 1915(a), *see* Docket Item 2, the Court grants her motion to proceed *in forma pauperis*. Therefore, under 28 U.S.C. § 1915(e)(2), the Court screens the complaint. For the reasons that follow, the complaint is dismissed under section 1915(e)(2).

DISCUSSION

Section 1915(e)(2) "provide[s] an efficient means by which a court can screen for and dismiss legally insufficient claims." *Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007) (citing *Shakur v. Selsky*, 391 F.3d 106, 112 (2d Cir. 2004)). The court shall dismiss a complaint in a civil action "at any time if the court determines that . . . the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may be

granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." *See* 28 U.S.C. § 1915(e)(2). Generally, the court will afford a *pro se* plaintiff an opportunity to amend or to be heard prior to dismissal "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim." *Abbas*, 480 F.3d at 639 (citation omitted); *see also Cuoco v. Moritsugu*, 222 F.3d 99, 112 (2d Cir. 2000) ("A *pro se* complaint is to be read liberally. Certainly the court should not dismiss without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated." (quoting *Gomez v. USAA Fed. Sav. Bank,* 171 F.3d 794, 795 (2d Cir. 1999))). But leave to amend pleadings may be denied when any amendment would be "futile." *Id.*

I. SCREENING THE COMPLAINT

In evaluating the complaint, the court accepts all factual allegations as true and draws all inferences in the plaintiff's favor. *See Larkin v. Savage*, 318 F.3d 138, 139 (2d Cir. 2003) (per curiam); *King v. Simpson*, 189 F.3d 284, 287 (2d Cir. 1999). "Specific facts are not necessary," and the plaintiff "need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (alteration in original) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)); *see also Boykin v. Keycorp*, 521 F.3d 202, 213 (2d Cir. 2008) ("[E]ven after *Twombly*, dismissal of a *pro se* claim as insufficiently pleaded is appropriate only in the most unsustainable of cases."). Although "a court is obliged to construe [*pro se*] pleadings liberally, particularly when they allege civil rights violations," *McEachin v. McGuinnis,* 357 F.3d 197, 200 (2d Cir. 2004), even pleadings submitted

pro se must meet the notice requirements of Rule 8 of the Federal Rules of Civil Procedure, *see Wynder v. McMahon*, 360 F.3d 73, 76 (2d Cir. 2004).

Haynes has sued four federal judges: Leslie G. Foschio, United States Magistrate Judge for the United States District Court, Western District of New York; and Jon O. Newman, Rosemary S. Pooler, and Barrington D. Parker, all United States Circuit or Senior Circuit Judges on the United States Court of Appeals for the Second Circuit. *See* Docket Item 1 at 1-3. Haynes claims that the judges violated her constitutional rights to due process and equal protection. *Id.* A liberal reading of the complaint tells the following story.

In 2016, Judge Foschio presided over a jury trial in a case in which Haynes alleged false arrest, malicious prosecution, and excessive force against a City of Buffalo police officer. *Id.* at 2. After trial, Judge Foschio dismissed Haynes's complaint. *Id.* Haynes appealed the judgment to the United States Court of Appeals for the Second Circuit, resulting in an order vacating the judgment and remanding the case to Judge Foschio. *Id.*

On remand, Judge Foschio did not grant Haynes a new jury trial or summary judgment. *Id.* at 3. Instead, he "unlawfully reinstate[d] the now void [j]udgment, order[,] and jury verdict previously VACATED and REMANDED by [the Second Circuit]." *Id.* Haynes again appealed. *Id.* This time, however, the Second Circuit—in a panel consisting of Judges Newman, Pooler, and Parker—unlawfully affirmed Judge Foschio's decision. *Id.*

II. JUDICIAL IMMUNITY

"It is well settled that judges generally have absolute immunity from suits for money damages for their judicial actions." *Bliven v. Hunt*, 579 F.3d 204, 209 (2d Cir. 2009) (collecting cases). Judicial immunity is not simply immunity from damages, however; it is immunity from suit altogether. *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (internal citations omitted). This is to ensure "that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." *Bradley v. Fisher*, 80 U.S. 335, 347 (1871). Judicial immunity therefore does not give way even to allegations of bad faith or malice. *Mireles*, 502 U.S. at 11.

Judicial "immunity is overcome in only two sets of circumstances." *Id.* "First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge's judicial capacity." *Id.* "Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Id.* at 12.

In determining whether a judge's actions are "judicial," the Second Circuit has taken a "functional approach." *Bliven*, 579 F.3d at 209. The relevant factors include the nature of the judge's action, whether the action is ordinarily performed by a judge, whether the parties expect the judge to take such action, and whether the parties dealt with the judge in his judicial capacity. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). "[A]cts arising out of, or related to, individual cases before the judge are considered judicial in nature." *Bliven*, 579 F.3d at 210.

"[T]he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge." *Stump*, 435 U.S. at 356. "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or

was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.'" *Id.* at 356-57 (quoting *Bradley*, 80 U.S. at 351).

Haynes asserts that Judges Foschio, Newman, Parker, and Pooler "acted without jurisdiction." Docket Item 1 at 3. But Judges Foschio, Newman, Parker, and Pooler presided over the cases to which Haynes's complaint refers. *See* Docket Item 1 at 2-3 (referencing a jury trial and an appeal from the judgment in the jury trial). In fact, the complaint seeks relief based precisely on the judges' decisions in cases over which they presided. *See id.* at 2-4 (seeking relief based on an "unlawful" judgement at the trial level and the "unlawful" Second Circuit decision affirming the judgment). Stated more simply, the complaint very plainly seeks relief based on decisions rendered by judges acting as judges. Just as plainly, those judges are immune from suit. *See, e.g.*, *Mireles*, 502 U.S. at 12-13 (holding that judicial immunity extends to functions normally performed by a judge even if performed in error).

Even if Haynes is correct in arguing that the judges acted "unlawfully," *id.* at 2-3, she still is not entitled to relief: as noted above, judicial immunity is not overcome simply because an action "was in error, was done maliciously, or was in excess of . . . authority." *See Stump*, 435 U.S. at 356 (quoting *Bradley*, 80 U.S. at 351). Judges Foschio, Newman, Parker, and Pooler are immune from suit in connection with their decisions in cases over which they preside. And no matter how Haynes characterizes her claims, that will always be the case.

Pro se litigants are entitled to leave to amend their complaints "when a liberal reading . . . gives any indication that a valid claim might be stated." *See Cuoco*, 222

F.3d at 112. Because Haynes's complaint raises claims explicitly based only on judges' duties and actions in a case over which they presided, however, any amendment of the complaint would be futile. Haynes's complaint therefore is dismissed with prejudice.

CONCLUSION

Because Haynes meets the statutory requirements of 28 U.S.C. § 1915(a), the Court grants her request to proceed *in forma pauperis*. But for the reasons stated above, her claims are dismissed with prejudice under 28 U.S.C. § 1915(e)(2). The Clerk of the Court shall close this case.

SO ORDERED.

Dated: June 21, 2021
Buffalo, New York

LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE