

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7717
(5:21-ct-03071-FL)

LARRY BLAKNEY

Plaintiff - Appellant

v.

SLED; HARTSVILLE POLICE DEPARTMENT; UNITED STATES OF
AMERICA

Defendants - Appellees

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/ Patricia S. Connor, Clerk

FILED: April 18, 2022

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Defendants - Appellees

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7717

LARRY BLAKNEY,

Plaintiff - Appellant,

v.

SLED; HARTSVILLE POLICE DEPARTMENT; UNITED STATES OF AMERICA,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern District of North Carolina, at Raleigh. Louise W. Flanagan, District Judge. (5:21-ct-03071-FL)

Submitted: April 14, 2022

Decided: April 18, 2022

Before DIAZ and RUSHING, Circuit Judges, and KEENAN, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Larry Blakney, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Larry Blakney appeals the district court's order denying his motion to appoint counsel, denying his motion for injunctive relief, and dismissing his amended civil action under 28 U.S.C. § 1915(e)(2)(B). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Blakney v. SLED*, No. 5:21-ct-03071-FL (E.D.N.C. Nov. 29, 2021). We deny Blakney's motions to disqualify or recuse the district court judge and to certify class action and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:21-CT-3071-FL

LARRY BLAKNEY,)
)
 Plaintiff,)
)
 v.) ORDER
)
 SLED, HARTSVILLE POLICE)
 DEPARTMENT, and THE UNITED)
 STATES OF AMERICA,)
)
 Defendants.¹)

Plaintiff, a federal pretrial detainee proceeding pro se that has been civilly committed pursuant to 42 U.S.C. § 4246, commenced this action by filing complaint on March 9, 2021, asserting claims for violations of his civil rights pursuant to 42 U.S.C. § 1983 and Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). The matter is before the court for frivolity review of plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). This matter is also before the court on plaintiff's motions for injunctive relief (DE 4), to certify class (DE 11), to appoint interim class counsel (DE 12), for leave to file supplement (DE 13), to amend (DE 14, 15), for summary judgment (DE 17), and for judgement on the pleadings (DE 19).

A. Motion to Appoint Interim Counsel (DE 12)

The court begins with plaintiff's motion for interim counsel. Plaintiff filed his complaint and corrected complaint on behalf of himself and 20 other inmates housed at Butner Federal

¹ Plaintiff seeks to add the United States of America as a defendant in this matter in the second amended complaint (DE 15-1). Accordingly, the court will direct the clerk to add this defendant to the docket.

Medical Center (“FMC”). (See Compl. (DE 1) at 1; Attach. to Compl. (DE 1-1) at 3-4; Corrected Compl. (DE 5) at 5). There is no constitutional right to counsel in civil cases, and courts should exercise their discretion to appoint counsel for pro se civil litigants “only in exceptional cases.” Cook v. Bounds, 518 F.2d 779, 780 (4th Cir. 1975). The existence of exceptional circumstances justifying appointment of counsel depends upon “the type and complexity of the case, and the abilities of the individuals bringing it.” Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984), abrogated on other grounds by Mallard v. U.S. Dist. Court for the S. Dist. of Iowa, 490 U.S. 296 (1989) (quoting Branch v. Cole, 686 F.2d 264, 265 (5th Cir. 1982)); see also Gordon v. Leeke, 574 F.2d 1147, 1153 (4th Cir. 1978) (“If it is apparent . . . that a pro se litigant has a colorable claim but lacks capacity to present it, the district court should appoint counsel to assist him.”). Plaintiff has failed to demonstrate that exceptional circumstances justify appointment of counsel at this time. Accordingly, the motion to appoint counsel is denied.

B. Motions for Leave to Supplement (DE 13) and to Amend (DE 14, 15)

Plaintiff’s motions are not the model of clarity, but plaintiff seeks to supplement and amend the complaint. The claims in the supplement and amendments are substantially similar to those in the complaint (DE 1) and corrected complaint (DE 5) except the second amendment seeks to add the United States of America as defendant. (See Second Am. Compl. (DE 15-1) at 1). Because these are plaintiff’s first attempts to amend the complaint and defendants have not been served, they are granted as a matter of course. See Scinto v. Stansberry, 507 F. App’x 311, 312 (4th Cir. 2013) (“[T]he doctrine of futility only applies when the plaintiff seeks leave of court to amend and does not have a right to amend. The plaintiff’s right to amend once is absolute.”)

(quotation omitted); see also Fox v. Magna, No. 5:15-CT-3294-FL, 2016 WL 843280, at*1 (E.D.N.C. Mar. 1, 2016) (allowing plaintiff's motion to amend although it is futile).

C. Initial Review

The court now turns to its initial review of the claims. Section 1915 provides that courts shall review complaints filed by prisoners seeking leave to proceed in forma pauperis and dismiss such complaints when they are frivolous, malicious, or fail to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2)(B). A complaint may be found frivolous because of either legal or factual deficiencies. First, a complaint is frivolous where “it lacks an arguable basis . . . in law.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). Legally frivolous claims are based on an “indisputably meritless legal theory” and include “claims of infringement of a legal interest which clearly does not exist.” Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quoting Neitzke, 490 U.S. at 327). Under this standard, complaints may be dismissed for failure to state a claim cognizable in law, although frivolity is a more lenient standard than that for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Neitzke, 490 U.S. at 328. Second, a complaint may be frivolous where it “lacks an arguable basis . . . in fact.” Id. at 325. Section 1915 permits federal courts “to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.” See Denton v. Hernandez, 504 U.S. 25, 32 (1992) (citing Neitzke, 490 U.S. at 327).

To state a claim on which relief may be granted, the complaint must contain “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the

court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”

Id. In evaluating whether a claim is stated, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff,” but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009) (citations omitted).

Plaintiff’s brings allegations against defendants South Carolina Law Enforcement Division (“SLED”), Hartsville Police Department, and the United States of America. (Compl. (DE 1) at 1; Corrected Compl. (DE 5) at 1; Second Am. Compl. (DE 15-1) at 1).² As previously noted, plaintiff seeks to bring claims on behalf of himself and at least 20 other inmates. (See Compl. at 1; Attach. to Compl. (DE 1-1) at 3-4). Plaintiff alleges defendants have violated his Fourth and Fourteenth Amendment rights by illegally surveilling plaintiff during his commitment at Butner FMC. (Compl. (DE 1) at 1-2; Corrected Compl. (DE 5) at 5-6). He further alleges that defendants have given information to citizens in Hartsville, South Carolina. (Compl. (DE 1) at 1-2; Corrected Compl. (DE 5) at 5-6). Those citizens then published defamatory information regarding plaintiff, such as plaintiff being “fake,” a “crackhead,” and a murderer. (Compl. (DE 1) at 2; Corrected Compl. (DE 5) at 6; Second Am. Compl. (DE 15-1) at 4). Defendants used Hartsville citizens to send death threats to plaintiff in efforts convince him to remove his Facebook

² Plaintiff makes the same general allegations in each of the supplements and amendments to the complaint. (See Compl. (DE 1); Corrected Compl. (DE 5); Suppl. to Compl. (DE 13); First Am. Compl. (DE 14); Second Am. Compl. (DE 15-1)). Accordingly, the court limits its citations to plaintiff’s original complaint and corrected complaint unless a fact or allegation appears for the first time in a supplement or amendment. In which case, the supplement or amendment is also cited.

page. (Compl. (DE 1) at 1; Corrected Compl. (DE 5) at 5). Plaintiff also made general allegations that SLED engaged in blackmail, extortion, harassment, and threats against plaintiff. (Compl. (DE 1) at 1; Corrected Compl. (DE 5) at 5). As relief, plaintiff seeks a court order directing defendants to cease their surveillance of plaintiff as well as unspecified damages. (Compl. (DE 1) at 3; Corrected Compl. (DE 5) at 8).

Plaintiff's conclusory allegations are devoid of factual support. The court finds these allegations fanciful, delusional, and wholly conclusory, and therefore, dismissed them pursuant to § 1915(e)(2)(B)(i). See Denton, 504 U.S. at 32-33; Neitzke, 490 U.S. at 327-28.

D. Motion for Injunctive Relief (DE 4)

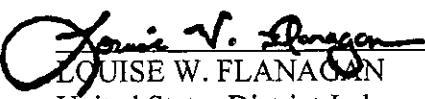
The court next turns to plaintiff's motion for injunctive relief. As noted above, plaintiff's filings are not the model of clarity, but it appears that plaintiff requests that SLED stop surveilling him while he is housed in Butner FMC and cease relaying information to citizens in Hartsville, South Carolina. To obtain a preliminary injunction, plaintiff must establish: 1) that he is likely to succeed on the merits; 2) that he is likely to suffer irreparable harm in the absence of preliminary relief; 3) that the balance of equities tips in his favor; and 4) that an injunction is in the public interest. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Plaintiff has not made the requisite showing. Plaintiff has not demonstrated a strong likelihood of success on the merits. See Florence v. Board of Chosen Freeholders of Cnty. of Burlington, 566 U.S. 318, 328 (2012). Accordingly, plaintiff's motion for injunctive relief is denied.

CONCLUSION

Based on the foregoing, plaintiff's action is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. Plaintiff's motions to appoint interim counsel (DE

12) and for injunctive relief (DE 4) are DENIED. Plaintiff's motions for leave to file supplement (DE 13) and to amend (DE 14, 15) are GRANTED. Plaintiff's motions to certify class (DE 11), for summary judgment (DE 17), and for judgment on the pleadings (DE 19) are DENIED AS MOOT. The clerk is DIRECTED to close this case and amend the caption as noted in footnote one.

SO ORDERED, this the 29th day of November, 2021.


LOUISE W. FLANAGAN
United States District Judge

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:21-cv-03071-FL

Blakney v. SLED et al
Assigned to: District Judge Louise Wood Flanagan
Case in other court: 4CCA, 21-07717
Cause: 28:1331 Federal Question: Bivens Act

Date Filed: 03/09/2021
Date Terminated: 11/29/2021
Jury Demand: None
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: U.S. Government Defendant

Plaintiff**Larry Blakney**

represented by **Larry Blakney**
34750-171
Butner - F.M.C.
P.O. Box 1600
Butner, NC 27509
PRO SE

V.

Defendant**SLED****Defendant****Hartsville Police Department****Defendant****United States of America**

Date Filed	#	Docket Text
03/09/2021	<u>1</u>	COMPLAINT (Class Action Litigation) against Hartsville Police Department and SLED filed by Larry Blakney. (Attachments: # <u>1</u> Documents in Support, # <u>2</u> Envelope) (Indig, A.) (Entered: 03/09/2021)
03/17/2021	<u>2</u>	Letter to plaintiff regarding filing of complaint and enclosing notice regarding privacy issues. (Castania, M) (Entered: 03/17/2021)
03/18/2021	<u>3</u>	ORDER directing plaintiff to correct deficiencies. Response to order due by 4/8/2021. Signed by Magistrate Judge Robert B. Jones, Jr. on 3/18/2021. Copy served via US Mail, along with forms: Larry Blakney 34750-171, Butner - F.M.C., P.O. Box 1600, Butner, NC 27509. (Castania, M) (Entered: 03/18/2021)
03/24/2021	<u>4</u>	MOTION for injunctive relief filed by Larry Blakney. (Attachments: # <u>1</u> Medication Summary, # <u>2</u> Envelope) (Castania, M) (Entered: 03/24/2021)
04/09/2021	<u>5</u>	CORRECTED COMPLAINT (on the form) against Hartsville Police Department and SLED filed by Larry Blakney. (Attachments: # <u>1</u> Documents in Support, # <u>2</u> Envelope) (Indig, A.) (Entered: 04/09/2021)

04/09/2021	<u>6</u>	MOTION to Proceed Without Prepayment of Fees filed by Larry Blakney. (Indig, A.) (Entered: 04/09/2021)
04/20/2021	<u>7</u>	Prisoner Trust Fund Account Statement by Larry Blakney. (Castania, M) (Entered: 04/28/2021)
04/28/2021		Motion Referred to US Magistrate Judge Robert B. Jones, Jr. regarding <u>6</u> MOTION to Proceed Without Prepayment of Fees. (Castania, M) (Entered: 04/28/2021)
04/29/2021	<u>8</u>	ORDER granting <u>6</u> Motion to Proceed Without Prepayment of Fees. Signed by Magistrate Judge Robert B. Jones, Jr. on 4/28/2021. Copy served via US Mail: Larry Blakney 34750-171, Butner - F.M.C., P.O. Box 1600, Butner, NC 27509. Copy to Butner trust fund officer. (Castania, M) (Entered: 04/29/2021)
04/29/2021		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>4</u> MOTION for injunctive relief. (Castania, M) (Entered: 04/29/2021)
04/29/2021		Case Submitted to District Judge Louise Wood Flanagan for frivolity review. As soon as the screening is concluded, an order will issue and the next appropriate step will be taken. (Docket sheet mailed to plaintiff.) (Castania, M) (Entered: 04/29/2021)
05/07/2021	<u>9</u>	Document regarding case filed by Larry Blakney. (Attachments: # <u>1</u> Envelope) (Castania, M) (Entered: 05/07/2021)
05/07/2021	<u>10</u>	Document: INCOMPLETE COMPLAINT filed by Larry Blakney. (Attachments: # <u>1</u> Supporting Documents, # <u>2</u> Envelope) (Castania, M) (Entered: 05/07/2021)
05/17/2021	<u>11</u>	MOTION to Certify Class filed by Larry Blakney. (Attachments: # <u>1</u> Envelope) (Castania, M) (Entered: 05/17/2021)
05/17/2021	<u>12</u>	MOTION to Appoint Interim Class Counsel filed by Larry Blakney. (Castania, M) (Entered: 05/17/2021)
05/17/2021		Motions Submitted to District Judge Louise Wood Flanagan regarding <u>12</u> MOTION to Appoint Counsel, <u>11</u> MOTION to Certify Class. (Castania, M) (Entered: 05/17/2021)
06/14/2021	<u>13</u>	MOTION for Leave to File Supplement filed by Larry Blakney. (Attachments: # <u>1</u> Document in Support, # <u>2</u> Medication Documents in Support, # <u>3</u> Envelope) (Indig, A.) (Entered: 06/14/2021)
06/14/2021	<u>14</u>	MOTION to Amend <u>1</u> Complaint filed by Larry Blakney. (Indig, A.) (Entered: 06/14/2021)
06/14/2021		Motions Submitted to District Judge Louise Wood Flanagan regarding <u>13</u> MOTION for Leave to File Supplement and <u>14</u> MOTION to Amend <u>1</u> Complaint. (Indig, A.) (Entered: 06/14/2021)
07/07/2021	<u>15</u>	MOTION to Amend Complaint filed by Larry Blakney. (Attachments: # <u>1</u> Proposed Amended Complaint, # <u>2</u> Original Pleading, # <u>3</u> Envelope) (Castania, M) (Entered: 07/07/2021)
07/07/2021		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>15</u> MOTION to Amend Complaint. (Castania, M) (Entered: 07/07/2021)
07/07/2021	<u>16</u>	INTERROGATORIES filed by plaintiff. (Castania, M) (Entered: 07/07/2021)
07/28/2021	<u>17</u>	MOTION for Summary Judgment filed by Larry Blakney. (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Affidavit in Support, # <u>3</u> Envelope) (Indig, A.) (Entered: 07/28/2021)
07/28/2021	<u>18</u>	Statement of Material Facts regarding <u>17</u> MOTION for Summary Judgment filed by Larry

		Blakney. (Attachments: # 1 Document in Support) (Indig, A.) (Entered: 07/28/2021)
07/28/2021	19	MOTION for Judgment on the Pleadings filed by Larry Blakney. (Indig, A.) (Entered: 07/28/2021)
07/28/2021		Motions Submitted to District Judge Louise Wood Flanagan regarding 17 MOTION for Summary Judgment, 19 MOTION for Judgment on the Pleadings. (Castania, M) (Entered: 07/28/2021)
11/29/2021	20	MOTION for Temporary Restraining Order filed by Larry Blakney. (Attachments: # 1 Cover Letter, # 2 Envelope) (Courtesy copy of docket sheet mailed to plaintiff.) (Castania, M) (Entered: 11/29/2021)
11/29/2021		Motion Submitted to District Judge Louise Wood Flanagan regarding 20 MOTION for Temporary Restraining Order. (Castania, M) (Entered: 11/29/2021)
11/29/2021	21	ORDER - Plaintiff's action is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. Plaintiff's motions to appoint interim counsel (DE 12) and for injunctive relief (DE 4) are DENIED. Plaintiff's motions for leave to file supplement (DE 13) and to amend (DE 14, 15) are GRANTED. Plaintiff's motions to certify class (DE 11), for summary judgment (DE 17), and for judgment on the pleadings (DE 19) are DENIED AS MOOT. The clerk is DIRECTED to close this case and amend the caption. Signed by District Judge Louise Wood Flanagan on 11/29/2021. Copy served via US Mail: Larry Blakney 34750-171, Butner - F.M.C., P.O. Box 1600, Butner, NC 27509. (Castania, M) (Entered: 11/29/2021)
11/29/2021	22	CLERK'S JUDGMENT - this action is dismissed. Signed by District Judge Louise Wood Flanagan on 11/29/2021. Copy of order, judgment, and appellate rights information mailed to plaintiff via U.S. Mail at address as noted in judgment. (Castania, M) (Entered: 11/29/2021)
12/10/2021	23	Notice of Appeal filed by Larry Blakney as to 21 Order on Motion for Miscellaneous Relief, Order on Motion to Certify Class, Order on Motion to Appoint Counsel, Order on Motion for Leave to File, Order on Motion to Amend, Order on Motion for Summary Judgment, Order on Motion for Judgment on the Pleadings. (Attachment: # 1 Envelope) (Indig, A.) (Entered: 12/10/2021)
12/10/2021	24	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals regarding 23 Notice of Appeal filed by Larry Blakney. Copy sent to plaintiff via US Mail. (Indig, A.) (Entered: 12/10/2021)
12/13/2021	25	US Court of Appeals Case Number 21-7717 (Cathi Bennett, Case Manager) as to 23 Notice of Appeal, filed by Larry Blakney. (Castania, M) (Entered: 12/13/2021)
12/13/2021		Assembled Electronic Record on Appeal transmitted to 4th Circuit Court of Appeals regarding 23 Notice of Appeal. (Castania, M) (Entered: 12/13/2021)

PACER Service Center			
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01/05/2022 15:09:43			
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Description:	Docket Report	Search Criteria:	5:21-ct-03071-FL
Billable Pages:	3	Cost:	0.30
Exempt flag:	Exempt	Exempt reason:	Always