

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 25th day of February, two thousand twenty-two,

Present:

José A. Cabranes,
Raymond J. Lohier, Jr.,
William J. Nardini,
Circuit Judges.

Jaime Luevano,

ORDER

Docket No. 21-1293

Plaintiff - Appellant,

v.

Ivanka Trump, Donald Trump, Melinia Trump, Girls of Trump, Office of Inspector General, U.S. Texas Judges, President Obama, Doe(s),

Defendants - Appellees.

Appellant filed a motion for reconsideration and the panel that determined the motion has considered the request.

IT IS HEREBY ORDERED, that the motion is denied.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court


Catherine O'Hagan Wolfe



N.D.N.Y.
21-cv-265
Sharpe, J.
Dancks, M.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 27th day of December, two thousand twenty-one.

Present:

José A. Cabranes,
Raymond J. Lohier, Jr.,
William J. Nardini,
Circuit Judges.

Jaime Luevano,

Plaintiff-Appellant,

v.

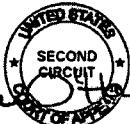
21-1293

Ivanka Trump, et al.,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis, appointment of counsel, appointment of experts, and other relief. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see* 28 U.S.C. § 1915(e).

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

Catherine O'Hagan Wolfe


**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
JAIME LUEVANO,**

Plaintiff,

**5:21-cv-265
(GLS/TWD)**

v.

IVANKA TRUMP et al.,

Defendants.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFF:

Jaime Luevano
Pro Se
1655791
HUGHES
Rt. 2 Box 4400
Gatesville, TX 76597

**Gary L. Sharpe
Senior District Judge**

ORDER

The above-captioned matter comes to this court following an Order and Report-Recommendation (R&R) by Magistrate Judge Thérèse Wiley Dancks, duly filed April 9, 2021. (Dkt. No. 7.) Following fourteen days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the R&R for clear error, it is hereby

ORDERED that the Order and Report-Recommendation (Dkt. No. 7) is **ADOPTED** in its entirety; and it is further

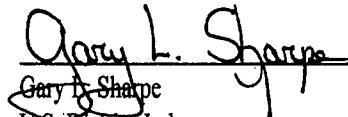
ORDERED that plaintiff's complaint (Dkt. No. 1) is **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND**; and it is further

ORDERED that the Clerk is directed to close this case; and it is further

ORDERED that the Clerk provide a copy of this Order to plaintiff in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

April 29, 2021
Albany, New York



Gary L. Sharpe
U.S. District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JAIME LUEVANO,

Plaintiff,

v.

5:21-CV-265
(GLS/TWD)

IVANKA TRUMP, *et al.*,

Defendants.

APPEARANCES:

JAIME LUEVANO
Plaintiff, *pro se*
Prisoner No. 1655791
Hughes Correctional Facility
Rt. 2 Box 4400
Gatesville, Texas 76597

THÉRÈSE WILEY DANCKS, United States Magistrate Judge

ORDER AND REPORT-RECOMMENDATION

Jamie Luevano (“Plaintiff”) filed an action against Ivanka Trump and several other individuals (collectively, “Defendants”). (Dkt. No. 1.) Currently before the Court is Plaintiff’s application to proceed *in forma pauperis* (“IFP Application”). (Dkt. No. 5.) A court may grant *in forma pauperis* status if a party “is unable to pay” the standard fee for commencing an action. 28 U.S.C. § 1915(a)(1). After reviewing Plaintiff’s IFP Application (Dkt. No. 5), the Court finds Plaintiff meets this standard.

However, a review of public records reveals that Plaintiff “has a long history of filing frivolous and abusive litigation.” *Yieson v. Akwitti*, Civ. A. No. 20-823, 2020 WL 6577504, at *1 (W.D. Tex. Oct. 30, 2020) (citing examples of Plaintiff’s prior frivolous filings in a case he

attempted to file in the name of another inmate to raise his own claims). Accordingly, federal judges, both inside and outside of Texas, have precluded him from proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(g), and have imposed sanctions and injunctions upon him when he continued to exhibit abusive filing behavior. *Luevano v. U.S. Texas Judges*, No. 20-CV-5840, 2020 WL 7181058, at *1 (E.D. Pa. Dec. 7, 2020); *Luevano v. Skyview Unit Psych Doctors*, N.D. Tex. Civ. A. No. 19-2186 (Sept. 17, 2019 Notice re: Application of Prior Sanction Order); *Luevano v. U.S. Circuit Judges of D.C.*, D.D.C. Civ. A. No. 18-1297 (June 14, 2018 Memorandum and Order); *Luevano v. Clinton*, Civ. A. No. 15-142, 2015 WL 3408123, at *1-*2 (W.D. Tex. May 27, 2015). In addition, this Court has previously found Plaintiff's complaint to be frivolous and dismissed it without prejudice on those grounds. *Luevano v. Clinton*, No. 5:10-CV-754 GTS/ATB, 2010 WL 3338704, at *1 (N.D.N.Y. July 1, 2010).

Furthermore, it is evident that Plaintiff has amassed more than three strikes and is therefore ineligible to file an action *in forma pauperis* unless he is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g). Plaintiff has a multitude of strikes, and several of his cases have been conditionally dismissed based on the three-strikes rule, and subsequently subject to final dismissal after plaintiff failed to pay the filing fee. *Luevano v. Clinton*, 2010 WL 3338704 at *4 (collecting cases). Because plaintiff has many strikes, his motion to proceed IFP would have to be denied, and plaintiff would be instructed to pay the filing fee or risk dismissal of the action. However, a review of the merits of Plaintiff's complaint shows that the court need not give Plaintiff this option because the action is clearly frivolous and would be dismissed outright even if he paid the filing fee.

In determining whether an action is frivolous, the court must consider whether the complaint lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325

(1989). Dismissal of frivolous actions is appropriate to prevent abuses of court process as well as to discourage the waste of judicial resources. *Id.* at 327; *Harkins v. Eldridge*, 505 F.2d 802, 804 (8th Cir. 1974). Although the court has a duty to show liberality toward *pro se* litigants, and must use extreme caution in ordering *sua sponte* dismissal of a *pro se* complaint before the adverse party has been served and has had an opportunity to respond, the court still has a responsibility to determine that a claim is not frivolous before permitting a plaintiff to proceed. *Fitzgerald v. First East Seventh St. Tenants Corp.*, 221 F.3d 362, 363 (2d Cir. 2000) (finding that a district court may dismiss a frivolous complaint *sua sponte* even when plaintiff has paid the filing fee).

Here, Plaintiff's complaint is almost incomprehensible, and he utterly fails to provide sufficient information for the Court to review or for Defendants to have notice of the claims against them. The haphazard collection of allegations in the complaint does not provide any indication of the causes of action Plaintiff intends to assert or whether this Court has jurisdiction over the action. Rather, his complaint is fanciful mélange of allegations that are unhinged with reality. As such, this Court recommends his complaint be dismissed with prejudice and without leave to amend.

ACCORDINGLY, it is

ORDERED that Plaintiff's IFP Application (Dkt. No. 5) is **GRANTED** solely for purposes of initial review; and it is further

RECOMMENDED that Plaintiff's complaint (Dkt. No. 1) be **DISMISSED WITH PREJUDICE AND WITHOUT LEAVE TO AMEND**, and it is further

ORDERED that the Clerk provide Plaintiff with a copy of this Order and Report-Recommendation along with a copy of the unpublished decisions cited herein in accordance with the Second Circuit's decision in *Lebron v. Sanders*, 557 F.3d 76 (2d Cir. 2009) (per curiam).

Pursuant to 28 U.S.C. § 636(b)(1), the parties have fourteen days within which to file written objections to the foregoing report.¹ Such objections shall be filed with the Clerk of the Court. **FAILURE TO OBJECT TO THIS REPORT WITHIN FOURTEEN DAYS WILL PRECLUDE APPELLATE REVIEW.** *Roldan v. Racette*, 984 F.2d 85 (2d Cir. 1993) (citing *Small v. Sec'y of Health and Human Servs.*, 892 F.2d 15 (2d Cir. 1989)); 28 U.S.C. § 636(b)(1) (Supp. 2013); Fed. R. Civ. P. 72, 6(a).

Dated: April 9, 2021
Syracuse, New York



Therese Wiley Dancks
United States Magistrate Judge

¹ If you are proceeding *pro se* and are served with this Order and Report-Recommendation by mail, three additional days will be added to the fourteen-day period, meaning that you have seventeen days from the date the Order and Report-Recommendation was mailed to you to serve and file objections. Fed. R. Civ. P. 6(d). If the last day of that prescribed period falls on a Saturday, Sunday, or legal holiday, then the deadline is extended until the end of the next day that is not a Saturday, Sunday, or legal holiday. Fed. R. Civ. 6(a)(1)(C).