No: 22-_____

IN THE

SUPREME COURT OF THE UNITED STATES

PALANI KARUPAIYAN; P.P.; R.P., Petitioners

v.

TOWNSHIP OF WOODBRIDGE; STATE OF NEW JERSEY; UNITED STATES OF AMERICA; UNION OF INDIA; OFFICER GANDHI, 5038, individually and in his official capacity as Parking enforcement officer of Woodbridge; WOODBRIDGE POLICE DEPARTMENT

Respondent(s)

APPENDIX FOR PETITION FOR A WRIT OF CERTIORARI

Palani Karupaiyan.
Pro se, Petitioner,
Email: palanikay@gmail.com
212-470-2048(m)

INDEX TO APPENDICES

Appendix-A

DLD-112 **NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

1a

No. 21-3339

PALANI KARUPAIYAN; P.P.; R.P.,
Appellants

v.

TOWNSHIP OF WOODBRIDGE; STATE OF NEW JERSEY;
UNITED STATES OF AMERICA; UNION OF INDIA;
OFFICER GANDHI, 5038, individually and in his official
capacity as Parking enforcement officer of Woodbridge;
WOODBRIDGE POLICE DEPARTMENT

On Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil Action No. 2-21-cv-19737)
District Judge: Honorable Esther Salas

Submitted for Possible Dismissal Due to a Jurisdictional Defect,
Possible Dismissal under 28 U.S.C. § 1915(e)(2), or Possible Summary
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 24, 2022
Before: KRAUSE, MATEY and PHIPPS, Circuit Judges

(Opinion filed: May 3, 2022)

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

2a

PER CURIAM

Palani Karupaiyan appeals[1] from the orders of the District Court dismissing his complaint and denying reconsideration. We will affirm.

I.

Karupaiyan is a frequent pro se litigant with a history of filing complaints raising conclusory and apparently unrelated claims. See, e.g., Karupaiyan v. Naganda, No. 21-2560, 2022 WL 327724, at *1-2 (3d Cir. Feb. 3, 2022). In this case, he filed suit against: (1) the Township of Woodbridge, New Jersey, along with related defendants; (2) the State of New Jersey; (3) the United States; and (4) the "Union of India." He asserted a litany of complaints against the Woodbridge defendants, including that they wrongfully ticketed and impounded a car in which he was living. He also faulted New Jersey, the United States and India for allowing an unidentified relative to relocate his children to India. In addition, he sought the appointment of more Justices to the United States Supreme Court because, he claimed, the Court lacked the resources to hear a case in which he complained of broken ribs.

[1] Karupaiyan also purports to appeal on behalf of his two children. After our Clerk notified him that he cannot litigate pro se on their behalf, see Osei-Afriyie by Osei-Afriyie v. Med. Coll. of Pa., 937 F.2d 876, 883 (3d Cir. 1991), he filed a motion for appointment of a guardian and counsel. We recently denied Karupaiyan's motion for such relief in C.A. No. 21-2560, and we deny this motion too because he has not raised anything suggesting that such relief might be warranted.

The District Court screened the complaint under 28 U.S.C. § 1915(e)(2)(B) and dismissed it for failure to state a claim. The court ruled that Karupaiyan's claims against New Jersey, the United States and India are barred by immunity doctrines. The court also ruled that Karupaiyan's allegations against the Woodbridge defendants were too conclusory to state a federal claim, and it declined to exercise supplemental jurisdiction over any state-law claims, but it gave him leave to amend as to these defendants. Karupaiyan obtained an extension of time to amend, but he ultimately declined to do so and filed this appeal instead. He also filed several post-judgment motions, which the District Court construed in part as motions for reconsideration and denied. Karupaiyan has amened his notice of appeal to challenge that ruling as well.

II.

We have jurisdiction under 28 U.S.C. § 1291.[2] We exercise plenary review over the dismissal of a complaint under § 1915(e)(2)(B)(ii) for failure to state a claim. See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). To avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Talley v. Wetzel, 15 F.4th 275, 286 n.7 (3d Cir. 2021) (quotation

[2] The District Court initially dismissed Karupaiyan's claims against the Woodbridge defendants with leave to amend, but the court later concluded that Karupaiyan stood on his complaint because he declined to amend and withdrew his request for an extension of time to do so. Karupaiyan also has expressly stated in this Court that he is standing on his complaint. Thus, the order of dismissal is a final decision under § 1291. See Hoffman v. Nordic Nats., Inc., 837 F.3d 272, 279 (3d Cir. 2016).

marks omitted). We review the denial of reconsideration for abuse of discretion. See Walker v. Coffey, 905 F.3d 138, 143 (3d Cir. 2018).

Having conducted our review, we will affirm substantially for the reasons explained by the District Court. We see no basis to disturb the court's rulings that Karupaiyan's federal claims against New Jersey, the United States, and India are barred by the principles of immunity that the court explained. We also see no basis to disturb the court's ruling that Karupaiyan did not state a federal claim against any of the Woodbridge defendants. Although Karupaiyan's complaint is replete with conclusory allegations that these defendants acted wrongfully, his conclusory allegations are just that and do not plausibly suggest that any of these defendants violated his federal rights.

Karupaiyan's only factual allegation that potentially suggests actionable wrongdoing is his allegation that a traffic enforcement officer named Gandhi called him a "black madrasi" after his car was towed. (ECF No. 1 at 7 ¶ 12, 18 ¶ 153.) Karupaiyan claims that this use of what he identifies as a racial slur constitutes discrimination. He relies on statutes governing employment, but those statutes do not apply because he does not allege that he has or had any employment relationship with any of the defendants. He also claims that Officer Gandhi's use of the slur violated his civil rights. But as courts have recognized, an officer's isolated use of a racial slur or epithet by itself—reprehensible though it is—does not violate the Constitution. See, e.g., Chavez v. Ill. State Police, 251 F.3d 612, 646 (7th Cir. 2001); Williams v. Bramer, 180 F.3d 699, 706

(5th Cir. 1999). Karupaiyan did not allege any other facts plausibly suggesting that any of the Woodbridge defendants violated any of his federal rights. Nor do any of his filings in the District Court or this Court suggest that the District Court erred in denying reconsideration or any of his other requests for relief.

III.

For these reasons, we will affirm the judgments of the District Court. Karuppiah's motions for relief in this Court are denied.

Appendix-B

6a

DLD-112

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-3339

PALANI KARUPAIYAN; P.P.; R.P.,
Appellants

v.

TOWNSHIP OF WOODBRIDGE; STATE OF NEW JERSEY;
UNITED STATES OF AMERICA; UNION OF INDIA;
OFFICER GANDHI, 5038, individually and in his official
capacity as Parking enforcement officer of Woodbridge;
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On Appeal from the United States District Court
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District Judge: Honorable Esther Salas

Submitted for Possible Dismissal Due to a Jurisdictional Defect,
Possible Dismissal under 28 U.S.C. § 1915(e)(2), or Possible Summary
Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
March 24, 2022
Before: KRAUSE, MATEY and PHIPPS, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the District of New Jersey and was submitted for possible dismissal due to a jurisdictional defect, possible dismissal under 28 U.S.C. § 1915(e)(2), or possible summary

action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on March 24, 2022. On consideration whereof, it is now hereby

ORDERED and **ADJUDGED** by this Court that the judgments of the District Court entered December 10, 2021, and January 13, 2022, be and the same hereby are **AFFIRMED**. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

DATED: May 3, 2022

Appendix-C

8a

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
ESTHER SALAS
UNITED STATES DISTRICT JUDGE

MARTIN LUTHER KING
COURTHOUSE
50 WALNUT ST.
ROOM 5076
NEWARK, NJ 07101
973-297-4887

December 9, 2021

LETTER ORDER

Re: ***Karupaiyan. v. Woodbridge Township of NJ, et al.***
Civil Case No. 21-19737 (ES) (JSA)

Dear party,

Pro se plaintiff Palani Karupaiyan ("Plaintiff") initiated the instant action against defendants Woodbridge Township of NJ, the State of New Jersey, the United States, the "Union of India," Officer Gandhi, and the Police Department of Woodbridge (collectively "Defendants"). (D.E. No. 1 ("Complaint" or "Compl.") at 1). Plaintiff also filed an application to proceed *in forma pauperis* ("IFP"). (D.E. No. 1-1).

"[W]hen a person proceeds *in forma pauperis*, the statute instructs the District Court to 'dismiss the case *at any time* if the court determines that . . . [the complaint] fails to state a claim on which relief may be granted.'" *Harris v. Bennett*, 746 F. App'x 91, 93 (3d Cir. 2018) (quoting 28 U.S.C. § 1915(e)(2)(B)(ii)). Courts have "the discretion to consider the merits of a case and evaluate an IFP application in either order or even simultaneously." *Brown v. Sage*, 941 F.3d 655, 660 (3d. Cir. 2019).

The Court opts to consider the merits of Plaintiff's claims first. "The legal standard for dismissing a complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) is the same as that for dismissing a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6)." *Schreane v. Seana*, 506 F. App'x 120, 122 (3d Cir. 2012). The 12(b)(6) standard is a familiar one: "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'"; but "unadorned, the-defendant-unlawfully-harmed-me accusation[s]" are insufficient. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). With a *pro se* plaintiff, courts are "required to interpret the *pro se* complaint liberally . . . ." *See Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018).

In addition, Rule 8(a)(2) requires that a complaint set forth "a short and plain statement of the claim[s] showing that the [plaintiff] is entitled to relief." Each allegation in the complaint "must be simple, concise, and direct." Fed. R. Civ. P. 8(d)(1). Rule 8 further requires that the complaint set forth the plaintiff's claims with enough specificity as to "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Twombly*, 550 U.S. at 555 (internal quotation marks omitted). Thus, the complaint must contain "sufficient facts to put the

proper defendants on notice so they can frame an answer" to the plaintiff's allegations. *See Dist. Council 47, Am. Fed'n of State, Cty. & Mun. Emps., AFL–CIO by Cronin v. Bradley*, 795 F.2d 310, 315 (3d Cir. 1986). "'Taken together,' Rules 8(a) and 8(d)(1) 'underscore the emphasis placed on clarity and brevity by the federal pleading rules.'" *Binsack v. Lackawanna Cty. Prison*, 438 F. App'x 158, 160 (3d Cir. 2011) (quoting *In re Westinghouse Sec. Litig.*, 90 F.3d 696, 702 (3d Cir. 1995)); *see also* 5 Wright & Miller, Fed. Prac. & Proc. Civ. § 1217 (3d ed.).

Here, Plaintiff uses the Complaint to air numerous unrelated grievances against unrelated defendants. Plaintiff's complaints against Woodbridge Township, Police Department of Woodbridge, and Officer Gandhi (the "Woodbridge Defendants") seem to constitute one category of allegations. With respect to the Woodbridge Defendants, Plaintiff alleges that he is homeless and lives in his car. (Compl. ¶¶ 5 & 49). And he believes that his car was unlawfully towed and that he was improperly "charged" with having an unregistered and uninsured motor vehicle, for failing to have an inspection, and for willfully abandoning a motor vehicle. (*Id.* ¶¶ 26–57). Related to this event, Plaintiff claims that Officer Gandhi called him a racial slur, and that the police unlawfully discriminated against him by charging him—an Indian male—but not charging a white woman whose car should have been towed. (*Id.* ¶¶ 42 & 60).

Another category of allegations seems to be those against the United States and India. Those allegations appear to stem from the fact that Plaintiff is separated from his children who either are or were at some point located in India, where they sustained injuries. (*Id.* ¶¶ 63–69 & 105–113). On this score, Plaintiff complains that the United States should have granted his request to deny passports for his children to go to India. (*Id.* ¶¶ 63–69). He seeks an injunction against the United States to have "parental rights" added to the United States Constitution. (*Id.* ¶ 72). And he seeks an injunction against India to have his children returned to the United States. (*Id.* ¶ 115).

A third group of allegations pertains to the State of New Jersey. While these allegations are not entirely clear, it seems that Plaintiff became frustrated with the New Jersey Motor Vehicle Commission and the New Jersey Attorney General's office when he tried to register his vehicle and report the illegal towing of his vehicle. (*Id.* ¶¶ 84–94). Plaintiff also loops in the State of New Jersey with respect to some allegations about his children's injuries in India. (*See e.g.*, *id.* at ¶¶ 163, 165 & 168). Finally, there appears to be another entirely unrelated category of allegations against the United States Supreme Court for not hearing a case about Plaintiff's broken ribcage. (*Id.* ¶¶ 73–76). He requests that more judges be added to the Court. (*Id.* ¶ 83).

Preliminarily, various immunity doctrines strip this Court of jurisdiction over Plaintiff's claims against certain defendants. First, the Foreign Sovereign Immunities Act ("FSIA") "provides the sole basis for obtaining jurisdiction over a foreign state in federal court." *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428, 439 (1989). Specifically, the FSIA provides that a "foreign state shall be immune from the jurisdiction" of both federal and state courts except as provided by 28 U.S.C. §§ 1605–07. *See* 28 U.S.C. § 1604. Based on the facts as pled, it does not appear that any of the exceptions apply to permit suit against India. *See M/S Najaat Welfare Found. Through Chishti v. Modi*, No. 19-4484, 2020 WL 1321525, at *1 (S.D. Tex. Mar. 4, 2020) ("Without an allegation triggering the application of an exception to the

FSIA, the Government of India is presumed immune from suit."), *report and recommendation adopted*, 2020 WL 1321819 (S.D. Tex. Mar. 20, 2020).

Second, "[t]he United States, as sovereign, is immune from suit save as it consents to be sued, and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Sherwood*, 312 U.S. 584, 586 (1941) (internal citations omitted). Here, it is somewhat difficult to discern what Plaintiff's claims against the United States are, but Plaintiff appears to allege various constitutional theories of liability against the United States. (Compl. ¶¶ 163, 165, 168 & 170). The United States is immune from suit for such claims. *McClain v. United States*, No. 21-4997, 2021 WL 2224270, at *2 (D.N.J. June 2, 2021) ("[T]he United States is not subject to suit for constitutional torts, including the civil rights claims Plaintiff seeks to raise, and is entitled to absolute sovereign immunity in this matter."); *Hill v. United States*, No. 21-3872, 2021 WL 3879101, at *2 (D.N.J. Aug. 30, 2021) (similar).

Likewise, the Eleventh Amendment bars all private suits against non-consenting states in federal court. U.S. Const. amend. XI; *Lombardo v. Pennsylvania, Dep't of Pub. Welfare*, 540 F.3d 190, 194 (3d Cir. 2008) ("The immunity of States from suit in the federal courts is a fundamental aspect of state sovereignty."). Although there are some exceptions to sovereign immunity, it does not appear that any apply in this case to permit suit against the state of New Jersey. *See Patel v. Crist*, No. 19-9232, 2020 WL 64618, at *3 (D.N.J. Jan. 7, 2020).

Immunity issues aside, the Complaint is "anything but 'simple, concise, and direct.'" *See Binsack*, 438 F. App'x at 160 (quoting Fed. R. Civ. P. 8(d)(1)). Plaintiff asserts twenty-one (21) causes of action sounding in both federal and state law. (*Id.* ¶¶ 151–83).[1] Plaintiff alleges various claims for relief that do not exist, such as "denial of justice" (Count 14), "unfair justice" (Count 17), and "excessive charging" (Count 18). Plaintiff does include some recognized legal theories for relief such as malicious prosecution (Count 1), unlawful discrimination (Count 2), violation of the Americans with Disabilities Act (Count 5), and violation of due process (Count 16). But even for those cognizable legal claims, rather than setting forth how he is entitled to relief, the Complaint is mostly riddled with "mere conclusory statements" and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]"—which are insufficient to state a claim. *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556); (*see e.g.*, Compl. ¶ 153 (alleging that by taking away Plaintiff's "living property," Woodbridge and its police violated the Americans with Disabilities Act)).

Thus, even after considering Plaintiff's status as a *pro se* litigant, Plaintiff fails to state a claim upon which relief can be granted. Notably, Plaintiff is no stranger to the legal system, and he has been made aware of the pleading standards required to state a claim in federal court. *See e.g.*, *Karupaiyan v. Atl. Realty Dev. Corp.*, 827 F. App'x 165, 167 (3d Cir. 2020) ("We agree with the District Court that Karupaiyan's difficult-to-follow complaint fails to suggest the existence of any plausible claim."); *Karupaiyan v. Naganda*, No. 20-12356, 2021 WL 3616724,

[1] The Court focuses its analysis on the federal claims, and because those claims fail for a variety of reasons, the Court does not exercise supplemental jurisdiction over Plaintiff's state law claims. However, the Court notes that the issues discussed herein permeate the state claims as well.

at *2 (D.N.J. Aug. 12, 2021) ("Plaintiff's First Amended Complaint is largely incoherent and partially illegible . . . ."); *Karupaiyan v. CVS Health Corp.*, No. 19-8814, 2021 WL 4341132, at *36 (S.D.N.Y. Sept. 23, 2021) (explaining that despite having an opportunity to amend, the benefit of multiple rounds of pre-motion letters from defendants, and despite the court's leeway in construing his claims liberally, "there remain fundamental deficiencies in most of Plaintiffs' claims"). Notwithstanding the foregoing, Plaintiff has once again filed a lawsuit that fails to adhere to the relevant pleading standards.

Finally, in addition to the immunity issues and pleading deficiencies, the Complaint does not comply with Federal Rule of Civil Procedure 20. Rule 20(a)(2) provides that Defendants "may be joined in one action as defendants if"

> (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
>
> (B) any question of law or fact common to all defendants will arise in the action.

Although the requirements of Rule 20(a) are to be liberally construed, Rule 20 is not "a license to join unrelated claims and defendants in one lawsuit." *Bragg v. Wilson*, No. 16-2868, 2017 WL 6513419, at *1 (D.N.J. Dec. 19, 2017). Here, construing both the Complaint and Rule 20(a) liberally, the Court struggles to understand how Plaintiff's claims against the United States and India are properly joined with the claims against the Woodbridge Defendants and certain claims against the State of New Jersey. *See Salley v. Sec'y Pennsylvania Dep't of Corr.*, 565 F. App'x 77, 82 (3d Cir. 2014) (affirming district court's determination that claims were not sufficiently related and must be filed separately).

For all of the foregoing reasons, the Court will dismiss the Complaint. Because there is no adjudication on the merits of Plaintiff's claims against the United States, India, and the State of New Jersey, those claims must be dismissed *without prejudice*. *Figueroa v. Buccaneer Hotel Inc.*, 188 F.3d 172, 182 (3d Cir. 1999). However, because the aforementioned immunity doctrines strip this Court of jurisdiction over those claims, any amendment would be futile. *See Karolski v. City of Aliquippa*, No. 15-1101, 2016 WL 7404551, at *4 (W.D. Pa. Dec. 22, 2016) (citing *Walker v. Zenk*, 323 F. App'x 144, 148 (3d Cir. 2009)). The remaining claims against the Woodbridge Defendants are also dismissed *without prejudice* for failure to state a claim. Plaintiff is granted leave to replead only his claims against the Woodbridge Defendants to cure the deficiencies identified herein within thirty days from the entry of this Order. Plaintiff is on notice that failure to file an amended complaint on time or to cure the deficiencies in the Complaint will result in a dismissal of his federal claims *with prejudice*. Upon the filing of an amended complaint, the Court will conduct an additional screening pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and, if appropriate, evaluate the IFP application.

SO ORDERED.

s/Esther Salas
Esther Salas, U.S.D.J.

Appendix-D

12a

Not for Publication

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

PALANI KARUPAIYAN, **Plaintiff,** **v.** **WOODBRIDGE TOWNSHIP OF NJ, *et al.*,** **Defendants.**	**Civil Action No. 21-19737 (ES) (JSA)** **ORDER**

SALAS, DISTRICT JUDGE

1. Before the Court are *pro se* plaintiff Palani Karupaiyan's motions (i) for leave to appeal *in forma pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a)(1) (D.E. No. 7), (ii) for declarative/injunctive orders and reconsideration (D.E. No. 11), (iii) to remove a traffic ticket docket from Woodbridge municipal court (D.E. No. 12), and (iv) to appoint a guardian *ad litem* to his children, or alternatively, to appoint pro bono counsel (D.E. No. 13); and it appearing that:

2. On November 4, 2021, *pro se* plaintiff Palani Karupaiyan[1] filed this action against defendants Woodbridge Township of NJ, Officer Gandhi, the Police Department of Woodbridge (together, the "Woodbridge Defendants"), the State of New Jersey, the United States, and the "Union of India" (all together, "Defendants"). (D.E. No. 1 ("Complaint") at 1). On the same day, Plaintiff filed an application to proceed IFP. (D.E. No. 1-1).

[1] Although the docket and the Complaint list PP and RP as two additional plaintiffs, the civil cover sheet lists only plaintiff Palani Karupaiyan. (*Compare* D.E. No. 1, *with* D.E. No. 1-4). Even if Plaintiff intended to bring this action individually and on behalf of his children, PP and RP (*see* D.E. No. 13), the Court notes that a parent cannot represent the interests of his or her minor children *pro se*. *See Jackson v. Bolandi*, No. 18-17484, 2020 WL 255974, at *4 (D.N.J. Jan. 17, 2020) (noting that "a non-attorney parent may not represent his or her child *pro se* in federal court") (citing *Osei-Afriyie v. Med. Coll. of Pa.*, 937 F.2d 876, 882-83 (3d Cir. 1991)).

3. In his IFP application, Plaintiff attested that he does not have any monthly income and that his total monthly expenses for a "family support order [are] $3900 monthly." (D.E. No. 1-1).

4. On December 9, 2021, utilizing its "discretion to consider the merits of a case and evaluate an IFP application in either order or even simultaneously," *see Brown v. Sage*, 941 F.3d 655, 660 (3d Cir. 2019), the Court dismissed Plaintiff's Complaint but permitted him to replead his claims against the Woodbridge Defendants. (D.E. No. 4 ("December 9, 2021 Letter Order") at 4). In doing so, the Court granted Plaintiff leave to amend within thirty days and warned that failure to amend said claims against the Woodbridge Defendants or to cure the noted deficiencies would result in dismissal of Plaintiff's federal claims *with prejudice*. (*Id.*). Accordingly, the Court made no determination as to whether Plaintiff's monthly income rendered him eligible for proceeding IFP.

5. Thereafter, on December 17, 2021, Plaintiff requested an additional twelve months to amend his Complaint. (D.E. No. 5). On the same day, Plaintiff filed a notice of appeal of the Court's December 9, 2021 Letter Order and a motion to appeal IFP. (D.E. Nos. 6–7 & 10).[2]

6. On December 23, 2021, one day after a case number was assigned to Plaintiff's appeal, he filed a motion "for [d]eclarative/injunctive orders – reconsideration." (*Compare* D.E. No. 10, *with* D.E. No. 11).

7. Four days later, on December 27, 2021, Plaintiff moved to (i) "[r]emove the traffic ticket docket from [W]oodbridge municipal court to District Court," and (ii) "to appoint [a]

[2] Although the Court granted Plaintiff a limited extension to amend his Complaint until January 24, 2022, Plaintiff withdrew his request by letter dated December 21, 2021. (D.E. Nos. 5, 8 & 9). As of the date of this Order, Plaintiff has not filed an amended complaint. Thus, "[b]y failing to file an amended complaint within the time allotted by [the Court] and filing a notice of appeal instead, [Plaintiff] 'elected to stand' on his [C]omplaint." *See Rodriguez v. Wawa Inc*, 833 F. App'x 933 n.2 (3d Cir. 2021) (first citing *Batoff v. State Farm Insurance Co.*, 977 F.2d 848, 851 n.5 (3d Cir. 1992); and then citing *Hoffman v. Nordic Naturals, Inc.*, 837 F.3d 272, 279 (3d Cir. 2016)).

guardian ad litem to children PP, [and] RP" or, alternatively, "to appoint [an] attorney to the Plaintiff(s)." (D.E. Nos. 12 & 13).

Motion to Appeal IFP

8. Because the Court did not previously decide Plaintiff's IFP status, Plaintiff must comply with the requirements set out by Federal Rule of Appellate Procedure 24(a)(1) in order to obtain IFP status on appeal. Specifically, "a party to a district-court action who desires to appeal in forma pauperis must file a motion in the district court," attaching an affidavit that "(A) shows in the detail prescribed by Form 4 of the Appendix of Forms the party's inability to pay or to give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to present on appeal." Fed. R. App. P. 24(a)(1). With respect to subsection (A), Form 4 requires the applicant to list, in detail, all sources of income, assets of the applicant and the spouse, and monthly expenses.

9. Here, Plaintiff's motion to appeal IFP consists of a two-page IFP application in which Plaintiff attests that his wife, son, and daughter are dependent on him for support, but that he is unemployed and homeless such that he does not have income apart from "some $$$ from India (home)." (D.E. No. 7 at 1–2). Plaintiff also attested that he has no cash in checking or saving accounts, that his monthly expenses in court-ordered family support alone are $3,900.00, and that he has over $70,000.00 in debt. (*Id.* at 2).

10. Even assuming he is unable to pay the filing fee, Plaintiff's motion fails to comply with subsection (B) because it does not contain any affidavit claiming his entitlement to redress. (*See* D.E. No. 7). While Plaintiff did submit a motion for declarative/injunctive relief that also includes the title "Affidavit/Affirmation" in which he purports to restate his initial arguments, it is not clear whether he intends to present only these grievances on appeal to comport with subsection

(C). (*See* D.E. No. 11). Moreover, for the reasons stated in its December 9, 2021 Letter Order, "this Court, on its own, fails to find any claim Plaintiff could raise in good faith." *See Abdulmalik v. Pittman*, No. 12-3340, 2012 WL 6021520, at *4 (D.N.J. Nov. 28, 2012); *see also* 28 U.S.C. § 1915(3) ("An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith."). In this context, good faith is judged by an objective standard. *Reyes v. Scism*, No. 10-1835, 2012 WL 727908, at *2 (M.D. Pa. Mar. 6, 2012) (citing *Coppedge v. United States*, 369 U.S. 438, 445 (1962)). And "a finding of frivolousness is viewed as a certification that the appeal is not taken in good faith." *Urrutia v. Harrisburg Cty. Police Dep't*, 91 F.3d 451, 455 n.6 (3d Cir. 1996) (quoting *Oatess v. Sobolevitch*, 914 F.2d 428, 430 n.4 (3d Cir. 1990)); *see also Muhammad El Ali v. Vitti*, 218 F. App'x 161, 163 (3d Cir. 2007) ("An appeal is frivolous where none of the legal points is arguable on the merits."); *Scott v. Wellington*, No. 02-1586, 2012 WL 13170049, at *1 (M.D. Pa. Nov. 5, 2012) ("[E]ven if Scott qualifies as indigent, her motion to proceed in forma pauperis would still be denied as wholly without merit and therefore frivolous" (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989))); *Dieffenbach v. Crago*, No. 09-967, 2011 WL 3320951, at *1 (M.D. Pa. Aug. 2, 2011).

11. Because the Court previously declined to rule on Plaintiff's IFP status for purposes of the present action and because the present application does not provide a valid basis to grant Plaintiff IFP status for purposes of appeal, the Court denies Plaintiff's motion.

Motion for Reconsideration

12. Generally, the filing of a notice of appeal divests the district court of jurisdiction to consider subsequently filed motions. *Venen v. Sweet*, 758 F.2d 117 (3d Cir.1985). However, "[t]he timely filing of a Rule 59(e) motion negates any previously filed notice of appeal, depriving the appeals court of jurisdiction over the case until after disposition of the Rule 59(e) motion."

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Livingston v. United States, No. 09-546, 2009 WL 3424181, at *1 (D.N.J. Oct. 20, 2009) (citing *United States v. Rogers Transp. Inc.*, 751 F.2d 635, 636–37 (3d Cir. 1985)); *Lakeside Resort Enters., LP v. Bd. of Supervisors of Palmyra Twp.*, 455 F.3d 154, 156 n.4 (3d Cir. 2006). Although Plaintiff filed a notice of appeal on December 17, 2021, the Court will broadly construe Plaintiff's filing dated December 23, 2021, as a motion for reconsideration under Rule 59(e).

13. "Whether brought pursuant to Federal Rule of Civil Procedure 59(e), or pursuant to Local Civil Rule 7.1(i), the scope of a motion for reconsideration is extremely limited, and such motions should only be granted sparingly." *Martinez v. Robinson*, No. 18-1493, 2019 WL 4918115, at *1 (D.N.J. Oct. 4, 2019) (citing *Blystone v. Horn*, 664 F.3d 397, 415 (3d Cir. 2011); *Delanoy v. Twp. of Ocean*, No. 13-1555, 2015 WL 2235103, at *2 (D.N.J. May 12, 2015)). In seeking reconsideration, a party must demonstrate either "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999). A motion for reconsideration is not a mechanism to "ask the Court to rethink what it ha[s] already thought through[.]" *Interfaith Cmty. Org. v. Honeywell Int'l, Inc.*, 215 F. Supp. 2d 482, 507 (D.N.J. 2002) (citation omitted). In other words, a court must "deny a motion that simply 'rehashes the claims already considered.'" *Eye Laser Care Center, LLC v. MDTV Med. News Now, Inc.*, No. 07-4788, 2010 WL 2342579, at *1 (D.N.J. June 7, 2010) (quoting *Russell v. Levi*, No. 06-2643, 2006 WL 2355476, at *2 (D.N.J. June 21, 2006)). Moreover, matters may not be introduced for the first time on a reconsideration motion, and absent unusual circumstances, a court should reject new evidence that was not presented when the court made the contested decision. *See Harris v. Brody*, No. 07-1146, 2007 WL 3071796, at *1 (D.N.J. Oct. 22, 2007) (citations omitted).

14. Here, Plaintiff's arguments are not appropriate for reconsideration because they do not truly concern "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court [issued its order]; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *See Max's Seafood Café*, 176 F.3d at 677. Rather, Plaintiff rehashes arguments presented in his Complaint against the United States, the State of New Jersey, and India. (D.E. No. 11). Plaintiff's mere disagreement with the Court's screening of his Complaint is not a ground for reconsideration. *See Assisted Living Assocs. of Moorestown, LLC v. Moorestown Twp.*, 996 F. Supp. 409, 442 (D.N.J. 1998) (citing *Bermingham v. Sony Corp. of Am., Inc.*, 820 F. Supp. 834, 859 n.8 (D.N.J. 1992)); *see also Drysdale v. Woerth*, 153 F. Supp. 2d 678, 682 (E.D. Pa. 2001) (holding that a motion for reconsideration may not be used to reargue matters already argued and disposed of by the court).

15. As stated in its December 9, 2021 Letter Order, there are no apparent exceptions to the Foreign Sovereign Immunities Act that would permit suit against India. (D.E. No. 4 at 2–3). And it appears that both the United States and the State of New Jersey are immune from suit with respect to Plaintiff's claims. (*Id.* at 3 (first citing *United States v. Sherwood*, 312 U.S. 584, 586 (1941); and then citing *Lombardo v. Pennsylvania, Dep't of Pub. Welfare*, 540 F.3d 190, 194 (3d Cir. 2008))). Indeed, even for those cognizable legal claims, rather than setting forth how he is entitled to relief, both the Complaint and request to reconsider are mostly riddled with "mere conclusory statements" and "unadorned, the-defendant-unlawfully-harmed-me accusation[s]"—which are insufficient to overcome the pleading standard. (*Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009))); *D'Agostino v. CECOMRDEC*, No. 10-4558, 2010 WL 3719623, at *1 (D.N.J. Sept. 10, 2010) ("The Court need not, however, credit a pro se plaintiff's 'bald assertions' or 'legal conclusions.'"). Because Plaintiff's motion reiterates the same claims this Court already

considered and rejected, his motion to reconsider must be denied.

Remaining Motions

16. Finally, because Plaintiff's remaining motions were filed after he expressed an intention to stand on his complaint (*see* D.E. No. 9 (withdrawing request for an additional twelve months to amend)), and because Plaintiff has not filed an amendment in the allotted time, the Court lacks jurisdiction over Plaintiff's subsequently filed motions. *See Weber v. McGrogan*, 939 F.3d 232, 238 (3d Cir. 2019) (noting that "[o]nly if the plaintiff cannot amend or declares his intention to *stand on his complaint* does the order become final and appealable" (quoting *Borelli v. City of Reading*, 532 F.2d 950, 952 (3d Cir. 1976) (emphasis added))); *see also Abulkhair v. Bush*, No. 11-6616, 2012 WL 12895700, at *1 (D.N.J. July 11, 2012), *aff'd*, No. 12-3358 (3d Cir. Jan. 7, 2013); (D.E. No. 11 (motion for "declarative/injunctive orders"); D.E. No. 12 (motion to remove a traffic ticket docket from Woodbridge municipal court); D.E. No. 13 (motion for a guardian *ad litem* or pro bono counsel)).

Accordingly, IT IS on this 13th day of January 2022,

ORDERED that Plaintiff's motion for leave to appeal *in forma pauperis* (D.E. No. 7) is DENIED;[3] and it is further

ORDERED that Plaintiff's motion for reconsideration of the Court's December 9, 2021 Letter Order is DENIED; and it is further

ORDERED that Plaintiff's motions for declarative/injunctive orders, to remove the traffic ticket docket from Woodbridge municipal court, and to appoint a guardian *ad litem* for his minor children, or alternatively, to appoint pro bono counsel are DENIED *without prejudice* for lack of jurisdiction (D.E. Nos. 11, 12 & 13); and it is further

[3] This denial is *without prejudice* to Plaintiff's right to seek IFP status from the United States Court of Appeals for the Third Circuit.

ORDERED that the Clerk of Court shall TERMINATE docket entry numbers 7, 11, 12 and 13; and it is further

ORDERED that the Clerk of Court mark this matter CLOSED; and it is further

ORDERED that the Clerk of Court serve Plaintiff with a copy of this Order by regular mail and certified mail return receipt.

s/*Esther Salas*
Esther Salas, U.S.D.J.

Additional material from this filing is available in the Clerk's Office.