No. _____

IN THE SUPREME COURT OF THE UNITED STATES

William F. Kaetz — *Petitioner*

vs.

United States of America et. al. — *Respondent*

On Petition for A Writ of Certiorari To
To the United States Court of Appeals
for the Third Circuit
Consolidated Cases No. 22-1456 and Case No. 22-1476

APPENDIX OF PETITION FOR WRIT OF CERTIORARI

William F. Kaetz
437 Abbott Road
Paramus, NJ., 07652
201-753-1063

Pro se Petitioner

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1456

WILLIAM F. KAETZ,
Appellant

v.

FREDA L. WOLFSON, J.;
ALL 3RD U.S. DIST. JUDGES, enforcing Speedy Trial Act Continuances;
ALL 3RD U.S. DIST. ATTORNEYS, enforcing pandemic Speedy Trial Act Continuances; UNITED STATES OF AMERICA

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2:21-cv-00289)
District Judge: Honorable J. Nicholas Ranjan

Submitted on Appellees' Motion for Summary Action
Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6

No. 22-1476

WILLIAM F. KAETZ,
Appellant

v.

UNKNOWN US MARSHALS; UNITED STATES OF AMERICA;
MATTHEW A. HOHMAN; PAUL SAFIER; SOO C. SONG;
CLAIRE C. CECCHI, defendants are being sued in both their official and personal capacity; UNITED STATES MARSHALS SERV.; U.S. DIST. COURT, DISTRICT OF NJ; UNITED STATES DEPARTMENT OF JUSTICE

On Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 2:21-cv-00062)
District Judge: Honorable J. Nicholas Ranjan

Submitted on Appellees' Motion for Summary Action
Pursuant to Third Circuit L.A.R. 27.4 and I.O.P. 10.6
August 25, 2022

Before: CHAGARES, Chief Judge, KRAUSE, and MATEY, Circuit Judges

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JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted on Appellees' motion for summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on August 25, 2022. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered February 7, 2022, be and the same hereby is affirmed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/Patricia S. Dodszuweit
Clerk

DATED: September 9, 2022

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1456

WILLIAM F. KAETZ,
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August 25, 2022

Before: CHAGARES, Chief Judge, KRAUSE, and MATEY, Circuit Judges

(Opinion filed September 9, 2022)

OPINION*

PER CURIAM

William Kaetz, proceeding pro se, appeals the District Court's orders dismissing his amended complaints in these two cases. The Government has filed a motion for summary affirmance in each case. For the reasons discussed below, we grant the Government's motions and will summarily affirm the District Court's orders. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

In early 2021, Kaetz initiated two civil rights actions in the District Court against different groups of defendants, comprised of the United States and various federal actors,

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

including judges, and federal agencies. He brought similar and overlapping allegations arising from federal criminal proceedings against him in the District of New Jersey.

In the case that gave rise to C.A. No. 22-1456, Kaetz filed an amended complaint, which became the operative pleading. In the case that gave rise to C.A. No. 22-1476, he amended his complaint twice, rendering his second amended complaint as the operative pleading. The primary claims in No. 22-1456 were based on the granting of continuances to the speedy trial clock in his criminal proceedings on account of the COVID-19 pandemic. The primary claims in No. 22-1476 were based on his allegations that his criminal prosecution was retaliation for engaging in political speech. When he filed these actions, his criminal proceedings were ongoing.

In each case, the Magistrate Judge issued a Report and Recommendation ("R&R"), recommending that the case be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim. After the R&Rs were issued, Kaetz pleaded guilty in the criminal proceedings to publicly releasing restricted personal information about a federal judge, and was sentenced to 16 months in prison. In each civil case, the District Court adopted the R&R, over Kaetz's objections, and dismissed the case with prejudice.

Kaetz timely appealed in both cases. In this Court, in each case, Kaetz filed an opening brief, Appellees filed a motion for summary affirmance,[1] and Kaetz filed a response to the motion.[2]

We have jurisdiction under 28 U.S.C. § 1291, and we may summarily affirm if the appeal fails to present a substantial question. See Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam); 3d Cir. L.A.R. 27.4; I.O.P. 10.6. Our review of a § 1915(e)(2)(B)(ii) dismissal for failure to state a claim is guided by the same de novo standard used to evaluate motions to dismiss under Fed. R. Civ. P. 12(b)(6). Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000).

The District Court did not err in holding that Kaetz failed to state a claim in either action. First, many of the named defendants were immune from suit as judges and federal agencies that have not waived their sovereign immunity. See Mireles v. Waco, 502 U.S. 9, 11-12 (1991) (per curiam) (explaining that the doctrine of judicial immunity applies unless (1) the challenged action is non-judicial in nature, or (2) the challenged

[1] When filing a motion for summary affirmance *after* an appellant's brief is filed, as Appellees did here, parties should explain the circumstances under which the motion is proper under Local Appellate Rule 27.4(b). They should not assume that the Court is aware of those circumstances or that the Court will agree that those circumstances warrant filing such a motion at that time. Here, we directed Appellees' counsel to explain the timing of the summary-affirmance motion; having considered the parties' responses, we are satisfied with counsel's explanation.

[2] In his responses, Kaetz requests that we strike from Appellees' summary affirmance motions references to his criminal proceedings. We deny these requests. See Stabilisierungsfonds Fur Wein v. Kaiser Stuhl Wine Distributors Proprietary Ltd., 647 F.2d 200, 201 (D.C. Cir. 1981) (per curiam) ("[M]otions to strike, as a general rule, are disfavored.").

action was "taken in the complete absence of all jurisdiction"); Azubuko v. Royal, 443 F.3d 302, 303 (3d Cir. 2006) (per curiam) ("A judicial officer in the performance of his duty has absolute immunity from suit and will not be liable for his judicial acts."); see also Beneficial Consumer Disc. Co. v. Poltonowicz, 47 F.3d 91, 94 (3d Cir. 1995).

Furthermore, to the extent that Kaetz brought claims under 42 U.S.C. § 1983, the claims were not cognizable against the United States or the various federal actors and agencies he named as defendants. See Accardi v. United States, 435 F.2d 1239, 1241 (3d Cir. 1970); Polsky v. United States, 844 F.3d 170, 173 (3d Cir. 2016). Additionally, his First Amendment retaliation claim for damages under Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), is not cognizable. See Egbert v. Boule, 142 S. Ct. 1793, 1807 (2022). Finally, to the extent that any other claim was asserted against a defendant who was not immune to suit, and was properly brought under Bivens, Kaetz failed to state a claim by repeatedly relying only on conclusory assertions devoid of specific factual allegations. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

Based on the foregoing, Kaetz's challenges to the District Court's orders do not present a substantial question. We therefore grant the Government's motions and we will summarily affirm the District Court's orders. See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 22-1456

WILLIAM F. KAETZ,
Appellant

v.

FREDA L. WOLFSON, J.;
ALL 3RD U.S. DIST. JUDGES, enforcing Speedy Trial Act Continuances;
ALL 3RD U.S. DIST. ATTORNEYS, enforcing pandemic Speedy Trial Act Continuances; UNITED STATES OF AMERICA

(W.D. Pa. No. 2:21-cv-00289)

No. 22-1476

WILLIAM F. KAETZ,
Appellant

v.

UNKNOWN US MARSHALS; UNITED STATES OF AMERICA;
MATTHEW A. HOHMAN; PAUL SAFIER; SOO C. SONG;
CLAIRE C. CECCHI, defendants are being sued in both their official and personal capacity; UNITED STATES MARSHALS SERV.; U.S. DIST. COURT, DISTRICT OF NJ; UNITED STATES DEPARTMENT OF JUSTICE

(W.D. Pa. No. 2:21-cv-00062)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, McKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellant William Kaetz in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ Cheryl Ann Krause
Circuit Judge

Dated: September 30, 2022
Sb/cc: William F. Kaetz
Laura S. Irwin, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 21-289
	)	
FREDA L. WOLFSON, et al.,	)	Magistrate Judge Dodge
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

II. Report

A. Relevant Background

Plaintiff William F. Kaetz brings this pro se civil rights action pursuant to 42 U.S.C. §§ 1983 and 1985 arising out of events that have occurred during his pending criminal prosecution. He is a federal pretrial detainee in custody at the Essex County Jail in Newark, New Jersey. He was arrested on October 19, 2020 on a criminal complaint and charged with threats to assault and murder a United States District Judge, interstate communications containing threats to injure, making restricted information publicly available and being a felon in possession of a firearm and ammunition. An indictment was returned on January 21, 2021. See 2:21-cr-71 (D.N.J.).[1]

[1] Until recently, the criminal case was pending in the District of New Jersey before District Judge J. Nicholas Ranjan of this district, who was temporarily assigned to handle the matter on December 22, 2020 pursuant to 28 U.S.C. § 292(b). On April 21, 2021, Plaintiff moved to transfer venue of the criminal case to this district. See 21-cr-71, ECF No. 67. On April 27, 2021, Judge Ranjan granted this request. See *id.*, ECF No. 69.

On March 3, 2021, Plaintiff submitted a civil rights complaint to this district along with a motion for leave to proceed in forma pauperis ("IFP"). His motion was granted and the complaint was docketed on April 7, 2021 (ECF No. 6).

Plaintiff alleges that he has been denied his constitutional rights under the Sixth Amendment,[2] the Speedy Trial Act,[3] and the Fifth Amendment's equal protection and due process clauses because of "Standing Orders" and "Emergency Orders" that have delayed his criminal trial. Specifically, he contends that various court orders entered in response to the coronavirus pandemic have denied him the right to an indictment within sixty days of his arrest and a trial within 100 days of his arrest.

Plaintiff alleges in Count I of the Complaint that in violation of 42 U.S.C § 1983, the delays in his criminal proceedings have deprived him of his constitutional rights under the Sixth Amendment and the Speedy Trial Act. In Count II, he alleges the existence of a conspiracy to deprive him of his rights in violation of 42 U.S.C. § 1985. Plaintiff names as defendants Freda L. Wolfson, the Chief Judge of the District Court for the District of New Jersey, plus "all 3rd U.S. Dist. judges enforcing pandemic Speedy Trial Act continuances," "all 3rd Dist. Attorneys enforcing pandemic Speedy Trial Act continuances," and the United States. He seeks from each defendant damages of $1,000 for each day he is incarcerated, $100,000 from each defendant for the "psychological stigma" he is alleged to have sustained and "quo warranto relief, ouster [of] defendants from office for misconduct. Cases that are violated to be dismissed." (Compl. at 13-15.)

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[2] In relevant part, the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed...." U.S. Const. amend. VI.

[3] 18 U.S.C. § 3161(b), (c).

In a supplement submitted on April 2, 2021, Plaintiff revised his damage claims to $2,000 each day he has been incarcerated and $500 each day for the psychological stigma. (ECF No. 3-2 at 12.) He also indicated that he is raising a constitutional challenge to the Speedy Trial Act pursuant to Federal Rule of Civil Procedure 5.1 and invokes 28 U.S.C. § 2403, which states that:

> In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. § 2403(a). However, as noted above, the United States is named as a defendant in this action. *See* ECF No. 3-4. Finally, in a document entitled "Emergency Mandamus Action," he invokes 28 U.S.C. § 1361, which provides that: "The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." He requests an order directing Defendants to discontinue the use of standing orders in response to the COVID-19 pandemic "because it is unconstitutional and with total disreguard [sic] to Plaintiff's rights and many others." (ECF No. 3-5.)

B. Standard of Review

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), courts are required to screen complaints at any time where, as is the case here, the plaintiff has been granted leave to proceed IFP. 28 U.S.C. § 1915(e)(2). The PLRA provides in relevant part that:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> i. is frivolous or malicious;
> ii. fails to state a claim upon which relief may be granted; or
> iii. seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). Thus, the Court must initially screen Plaintiff's Complaint in order to determine if it must be dismissed at this time.

C. Analysis

1. Plaintiff's challenges relate to his criminal prosecution

Plaintiff's claims arise out of the criminal charges pending against him in the United States District Court for the District of New Jersey. All of the claims asserted in his Complaint are based on his allegation that his criminal trial proceedings have been delayed by virtue of standing orders and emergency orders entered in response to the coronavirus pandemic. He also incorporates his criminal case, No. 2:20-cr-01090-01 (D.N.J.),[4] and his previously-filed civil rights case in this district (No. 21-cv-62), in which he alleges that criminal charges were filed against him in retaliation for his exercise of his First Amendment right to free speech when he contacted the United States Marshals and demanded that they "question" a federal district judge in New Jersey who he alleges is biased against him.[5]

It is well settled that a federal pretrial detainee cannot challenge the proceedings in his

[4] This was the docket number applied to his appeal from Judge Eddy's detention order. That case was closed on January 4, 2021 when Judge Ranjan affirmed the order of detention. Plaintiff's current criminal case was opened on January 21, 2021 when the grand jury issued an indictment against him and is docketed at No. 21-cr-71 (D.N.J.).

[5] On April 21, 2021, a Report and Recommendation was filed in his civil rights case that recommends that Plaintiff's Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

pending federal criminal case by filing a civil lawsuit. Rather, a defendant who seeks to challenge some aspect of his criminal prosecution must assert such claims in the criminal case itself. "Where a defendant is awaiting trial, the appropriate vehicle for his constitutional rights, including the Sixth Amendment right to a speedy trial, are pretrial motions or the expedited appeal procedure provided by the Bail Reform Act, 18 U.S.C. § 3145(b), (c)." *Whitmer v. Levi*, 276 F. App'x 217, 219 (3d Cir. 2008). *See also Reese v. Warden Philadelphia FDC*, 904 F.3d 244, 246 (3d Cir. 2018) ("Courts have consistently refused to exercise their habeas authority in cases where federal prisoners have sought relief before standing trial. Instead, Courts have long stressed that defendants should pursue the remedies available within the criminal action.")

Plaintiff, through his counsel, has filed two motions to dismiss the counts against him in the pending criminal case, one of which raised precisely the same issues that are the basis for his claims in this case. *See* 21-cr-71 (D.N.J.), ECF Nos. 43, 44. On April 5, 2021, Judge Ranjan denied both motions. *See* ECF Nos. 60, 61.

Specifically, as relevant here, Judge Ranjan denied Plaintiff's motion to dismiss three of the four counts against him. In doing so, he held that Plaintiff's statutory rights under the Speedy Trial Act were not violated when an indictment was returned more than thirty days after his arrest because the time period was effectively tolled by the standing orders entered by Chief Judge Wolfson in response to the COVID-19 pandemic, orders which were "well supported" and "predicated on findings pertaining to 'real time' public health risks." In addition, the Court found that Plaintiff failed to demonstrate that his due process rights under the Fifth Amendment were violated because he did not show that the delay between the alleged crimes and the federal indictment prejudiced his defense or that the government deliberately delayed bringing the indictment in order to obtain an improper tactical advantage or to harass him. Finally, Judge Ranjan

held that Plaintiff failed to show that his speedy trial rights under the Sixth Amendment were violated because he failed to demonstrate that his defense would be impaired by the delay. ECF No. 60 at 2-9. Thus, his Fifth Amendment, Sixth Amendment and Speedy Trial Act challenges to his criminal prosecution have all been addressed in his criminal case. These are the same claims that Plaintiff attempts to assert here.

Finally, with respect to the prosecutors involved in Plaintiff's criminal proceedings, they have no role in "enforcing" the Court's standing or emergency orders related to the pandemic. Courts, not federal prosecutors, enforce their standing orders and rule on speedy trial matters.

Thus, not only is Plaintiff precluded from commencing a civil lawsuit to challenge his pending criminal prosecution, but the constitutional and statutory challenges related to his prosecution that he raises in this action have been resolved by Judge Ranjan.

2. Lack of Standing

Plaintiff asserts claims not only against Chief Judge Wolfson, who entered the standing orders, but also against "all 3rd U.S. district judges" and "all 3rd U.S. Dist. Attys." who are "enforcing pandemic speedy trial act continuances," as well as the United States. He lacks standing to assert claims against all Third Circuit judges and prosecutors or the United States, however. Standing is a jurisdictional requirement, *see Storino v. Borough of Point Pleasant Beach*, 322 F.3d 293, 296 (3d Cir. 2003), which the Court has an obligation to raise sua sponte, *see Desi's Pizza, Inc., v. City of Wilkes-Barre*, 321 F.3d 411, 420 (3d Cir. 2003). The Supreme Court has held that: "A litigant raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, 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." *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013) (citation

omitted).

As a review of the Complaint reveals, no judges other than Chief Judge Wolfson, Judge Ranjan and Chief Magistrate Judge Eddy have issued any orders, taken any action or have been otherwise involved in any criminal proceeding related to the Plaintiff. Similarly, neither "all" Third Circuit prosecutors nor the United States generally are involved in his criminal proceedings. As such, Plaintiff lacks standing to raise claims regarding unrelated criminal prosecutions, including those related to standing orders entered because of the pandemic. Simply put, as to these defendants, Plaintiff does not present an Article III case or controversy for the Court's review.

2. Immunity

Even if Plaintiff could survive these challenges, all of the defendants he has named are immune from suit in this matter. Plaintiff's claims against all of the Third Circuit district judges must be dismissed because "judges are immune from suit under section 1983 for monetary damages arising from their judicial acts." *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 768 (3d Cir. 2000) (citations omitted). While judges are not immune for any actions taken in a non-judicial capacity, or "in the complete absence of all jurisdiction," *id.* at 768-69, Plaintiff's claims do not relate to such acts despite his allegations that district judges "acted in all absence of jurisdiction," and that standing orders are "administrative" in nature. Clearly, Chief Judge Wolfson, who entered the standing order, was acting in her judicial capacity, as was Judge Ranjan, who is presiding over Plaintiff's criminal prosecution and Chief Magistrate Judge Eddy, who presided over his initial criminal proceedings. Regardless of Plaintiff's views about the Courts' orders, decisions or alleged bias towards him, the decisions rendered clearly were made in a judicial capacity in matters in which they had jurisdiction. *See Kaplan v. Miller*, 653 F. App'x 87, 89-90 & n.3 (3d Cir. 2016) (judge had immunity when the plaintiff alleged that "Judge Miller has

certainly shown his bias when he consistently Denies all my Motions, which state the truth to all my allegations pertaining to all defendants.")[6]

Plaintiff has also named all federal prosecutors who "enforce" standing orders related to the pandemic. However, as noted above, courts, not federal prosecutors, enforce their standing orders and also rule upon speedy trial matters. Moreover, any claims against prosecutors that could be even arguably implicated by the allegations in the Complaint relate to their conduct "in initiating a prosecution and in presenting the State's case," and thus, are barred by absolute immunity. *See Johnson v. Koehler*, 733 F. App'x 583, 585 (3d Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976)).

Finally, the United States is also immune from suit. "It is a fundamental principle of sovereign immunity that federal courts do not have jurisdiction over suits against the United States unless Congress, via a statute, expressly and unequivocally waives the United States' immunity to suit." *United States v. Bein*, 214 F.3d 408, 412 (3d Cir. 2000) (citing *United States v. Mitchell*, 463 U.S. 206, 212 (1983)). Neither the Constitution nor 28 U.S.C. § 1331 (which provides subject matter jurisdiction for federal question case, including civil rights actions)[7] contains such a waiver. *See Clinton County Comm'rs v. U.S. E.P.A.*, 116 F.3d 1018, 1021 (3d Cir. 1997); *Jaffee v. United States*, 592 F.2d 712 (3d Cir. 1979). "Neither the United States nor its agencies have waived sovereign immunity for constitutional claims." *Mierzwa v. United States*, 282 F. App'x 973, 976-

[6] Plaintiff also requests non-monetary relief by referring to "quo warranto," which is "[a] common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed." Quo warranto, *Black's Law Dictionary* (11th ed. 2019). However, quo warranto "can afford no relief for official misconduct and cannot be employed to test the legality of the official action of public or corporate officers." *United States ex rel. State of Wis. v. First Fed. Sav. & Loan Ass'n*, 248 F.2d 804, 808 (7th Cir. 1957) (citation omitted). Moreover, federal district courts have no original jurisdiction over quo warranto proceedings. *Id.* at 809.

[7] Plaintiff also references 28 U.S.C. § 1332, which relates to subject matter jurisdiction based upon diversity of citizenship. His complaint does not identify his citizenship or that of any other party.

77 (3d Cir. 2008) (citing *United States v. Testan*, 424 U.S. 392, 400-02 (1976)).

D. Conclusion

Because Plaintiff has failed to state any claim upon which relief may be granted, it is respectfully recommended that the Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

If Plaintiff wishes to challenge this Report and Recommendation, he must seek review by the district judge by filing objections by May 17, 2021. Failure to file timely objections will waive the right of appeal.

/s/Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

Dated: April 29, 2021

cc: William F. Kaetz
11350-067
Essex County Jail
354 Doremos Avenue
Newark, NJ 07105

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 21-289
	)	Judge Ranjan
FREDA L. WOLFSON, et al.,	)	Magistrate Judge Dodge
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the Amended Complaint be dismissed under 28 U.S.C. § 1915(e)(2)(B) with prejudice.

II. Report

A. Relevant Background

Plaintiff William F. Kaetz brings this *pro se* civil rights action under 42 U.S.C. §§ 1983 and 1985 and various other statutes, arising out of events that have occurred during his pending criminal prosecution. He is a federal pretrial detainee in custody at the Allegheny County Jail in Pittsburgh, Pennsylvania related to charges of threats to assault and murder a United States district judge, interstate communications containing threats to injure, making restricted information publicly available and being a felon in possession of a firearm and ammunition. See 2:21-cr-71 (D.N.J.).[1]

Plaintiff submitted a civil rights complaint to this district along with a motion for leave to proceed in forma pauperis ("IFP"). His motion was granted and the complaint was docketed (ECF

[1] His criminal case was transferred to this District on May 11, 2021 and is pending before the Honorable J. Nicholas Ranjan at Docket No. 2:21-cr-211.

No. 6).

In his original Complaint, Plaintiff named as defendants Freda L. Wolfson, the Chief Judge of the District Court for the District of New Jersey, plus "all 3rd U.S. Dist. judges enforcing pandemic Speedy Trial Act continuances," "all 3rd Dist. Attorneys enforcing pandemic Speedy Trial Act continuances," and the United States.[2] (Compl. at 13-15.) Plaintiff alleged that he has been denied his constitutional rights under the Sixth Amendment, [3] the Speedy Trial Act,[4] and the Fifth Amendment's equal protection and due process clauses because of "Standing Orders" and "Emergency Orders" that have delayed his criminal trial. He contended that by the issuance of various court orders entered in response to the coronavirus pandemic, he has been denied his constitutional right to be indicted within sixty days of his arrest and proceed to trial within one hundred days of his arrest. Count I of the Complaint alleged that in violation of 42 U.S.C § 1983, the delays in his criminal proceedings have deprived him of his constitutional rights under the Sixth Amendment and the Speedy Trial Act. In Count II, he alleged a conspiracy to deprive him of his rights in violation of 42 U.S.C. § 1985.

A Report and Recommendation ("R&R") was issued (ECF No. 8), recommending that the Complaint be dismissed under 28 U.S.C. § 1915(e)(2)(B). The R&R concluded, among other things, that Plaintiff's Complaint impermissibly sought to raise challenges to his criminal case, he could not bring claims against judges and prosecutors who had no part in his criminal prosecution and defendants have absolute immunity.

---

[2] Given that Plaintiff's charges are being prosecuted in a district in the Third Circuit, the Court concludes that his references to the "3rd District" are meant to refer to the Third Circuit.
[3] In relevant part, the Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial...." U.S. Const. amend. VI.
[4] 18 U.S.C. § 3161(b), (c).

After the R&R was issued, Plaintiff's motion to amend (ECF No. 9) was granted and he filed an Amended Complaint on May 19, 2021 (ECF No. 12). He describes his pleading as a "Complaint for Injunctive, Writ, Habeas, Monetary relief and Declaratory Damages." It references the First, Fourth, Fifth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments, 5 U.S.C. § 502 (the Administrative Procedures Act), 18 U.S.C. § 1964 (RICO), 42 U.S.C. §§ 2000bb to 2000bb-4 (RFRA), 42 U.S.C. §§ 2000cc to 2000cc-5 (RLUIPA), 28 U.S.C. § 1346 (FTCA), and N.J.S.A 10:6-2 (the New Jersey Civil Rights Act), and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) as the bases for Plaintiff's claims.

As a review of the Amended Complaint reveals, however, all of Plaintiff's claims stem from the issuance of standing orders, emergency orders and continuances related to the current pandemic.

B. Standard of Review

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), courts are required to screen complaints at any time where a prisoner has been granted leave to proceed *in forma pauperis*. 28 U.S.C. § 1915(e)(2). The PLRA provides in relevant part that:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> i. is frivolous or malicious;
> ii. fails to state a claim upon which relief may be granted; or
> iii. seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). Thus, the Amended Complaint must be screened to determine whether it should be dismissed.

C. Analysis

Plaintiff's claims arise out of the criminal charges that were filed against him in the United States District Court for the District of New Jersey and subsequently were transferred to this Court. His Amended Complaint alleges that all United States district judges in the Third Circuit have unconstitutionally delayed criminal proceedings, including his own, by issuing standing orders and emergency orders in response to the coronavirus pandemic. He also alleges that all Third Circuit United States attorneys are enforcing these allegedly unconstitutional orders, and that Chief Judge Wolfson improperly issued such orders. He incorporates by reference his criminal case, No. 2:20-cr-01090-01 (D.N.J.),[5] and his previously-filed civil rights case in this district (No. 21-cv-62), in which he alleges that criminal charges were filed against him in retaliation for his exercise of his First Amendment right to free speech. A Report and Recommendation was issued on June 7, 2021 recommending dismissal of that action under 28 U.S.C. § 1915(e)(2)(B).

Plaintiff's claims in this case are meritless and should be dismissed, as discussed below.

1. Failure to State a Claim

The Supreme Court has held that a complaint must contain facially plausible claims, that is, a plaintiff must "plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). A plaintiff must plead and demonstrate a defendant's "personal involvement in the alleged wrongs." *Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988).

In the Amended Complaint, Plaintiff attempts to assert claims against "all 3rd District Court Judges [sic] enforcing pandemic speedy trial act [sic] continuances" and "all 3rd District

[5] This docket number relates to his appeal from Chief Magistrate Judge Eddy's detention order. That case was closed when Judge Ranjan affirmed the order of detention.

U.S. Attorneys [sic] who are enforcing pandemic speedy trial act [sic] continuances." He cannot state a claim against all judges in the Third Circuit, however, because other than the specific judges involved in his criminal case, there are no allegations in the Amended Complaint that they committed any acts or failed to take some action that allegedly caused harm to Plaintiff or violated his civil rights. Simply put, they are not alleged to be involved in his criminal proceedings in any way, including, but not limited to, issuing orders related to the Speedy Trial Act or the pandemic. The Court also takes judicial notice of the criminal dockets related to Plaintiff's current criminal charges. These dockets confirm that only Chief Judge Wolfson and Judge Ranjan allegedly have taken or failed to take any action that relates in any way to Plaintiff's criminal proceedings.

Similarly, the Amended Complaint does not allege that "all" Third Circuit prosecutors or the United States generally have engaged in any conduct related to Plaintiff or are involved in his criminal proceedings.

Moreover, Plaintiff has not pleaded any basis for asserting claims on behalf of other potential criminal defendants in matters in which he is not involved. He may not do so because "the federal courts adhere to a prudential rule that '[o]rdinarily, one may not claim standing ... to vindicate the constitutional rights of some third party.'" *The Pitt News v. Fisher*, 215 F.3d 354, 362 (3d Cir. 2000) (quoting *Singleton v. Wulff*, 428 U.S. 106, 114 (1976)).

Because Plaintiff's generalized claims against all Third Circuit judges, Third Circuit prosecutors and the United States fail to state a claim on which relief may be granted, they should be dismissed.

2. Plaintiff's Claims Relating to his Pending Prosecution

A federal pretrial detainee cannot challenge the proceedings in his pending federal criminal case by filing a civil lawsuit or a habeas corpus petition under 28 U.S.C. § 2241. Rather, a

defendant who seeks to challenge some aspect of his criminal prosecution must assert such claims in the criminal case itself. "Where a defendant is awaiting trial, the appropriate vehicle for his constitutional rights are pretrial motions or the expedited appeal procedure provided by the Bail Reform Act, 18 U.S.C. § 3145(b), (c)." *Whitmer v. Levi*, 276 F. App'x 217, 219 (3d Cir. 2008). *See also Falcon v. U.S. Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir. 1995) ("It seems to us to go far afield to seek habeas corpus relief which could conceivably interfere with the trial judge's control of the criminal case pending before him.")

Thus, the only appropriate proceeding in which Plaintiff may challenge his confinement or the timing of his trial is his current criminal proceeding before Judge Ranjan, not in a civil lawsuit. For that reason alone, his claims must be dismissed.

Moreover, Plaintiff's counsel in his criminal case previously filed two motions to dismiss which raised similar challenges to his confinement and delays in his prosecution. See 21-cr-71 (D.N.J.), ECF Nos. 43, 44. Judge Ranjan denied both motions. See ECF Nos. 60, 61.

As relevant here, Judge Ranjan dismissed Plaintiff's contention that his rights under the Speedy Trial Act were violated when an indictment was returned more than thirty days after his arrest. The Court held that the time was effectively tolled by the standing orders entered by Chief Judge Wolfson in response to the COVID-19 pandemic, orders which were "well supported" and "predicated on findings pertaining to 'real time' public health risks." Judge Ranjan also concluded that Plaintiff failed to show that his speedy trial rights under the Sixth Amendment were violated as his defense would not be impaired by the delay.

The Court further held that Plaintiff's due process rights under the Fifth Amendment were not violated as he failed to show that the delay between the alleged crimes and the federal indictment prejudiced his defense. Further, Plaintiff did not demonstrate that the government

deliberately delayed bringing the indictment to obtain an improper tactical advantage or to harass him.

Because Plaintiff's Fifth Amendment, Sixth Amendment and Speedy Trial Act challenges to his pending criminal proceeding have been decided, he cannot attempt to circumvent Judge Ranjan's rulings through a civil lawsuit that raises the same issues. Similarly, any further challenges to his criminal prosecution must be raised in those proceedings.

As for the prosecutors involved in Plaintiff's criminal case, they have no role in "enforcing" the Court's standing or emergency orders related to the pandemic or deciding Speedy Trial Act motions. Courts, not federal prosecutors, enforce their standing orders and rule on speedy trial matters. Indeed, prosecutors are required to comply with court orders.

As previously referenced, Plaintiff identifies a number of other constitutional amendments, statutes and decisions under which he purports to bring claims. Merely reciting a series of constitutional amendments or statutes does not state a claim upon which relief could be granted, however. As stated by the Supreme Court, "a pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive *sua sponte* screening for failure to state a claim, the complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted).

Plaintiff has not connected any of the cited legal doctrines, statutes or amendments to factual allegations that support any such claims. As a review of the Amended Complaint demonstrates, all of Plaintiff's claims arise from standing orders and continuances related to the pandemic that purportedly have an impact on his criminal case. *See* Amended Complaint at pp.

10-30. All such issues must be resolved by Judge Ranjan.

Thus, because Plaintiff is precluded from bringing a civil lawsuit to challenge issues related to his pending criminal prosecution, the Amended Complaint should be dismissed.

3. Immunity

Even if Plaintiff could survive these challenges, all of the defendants are immune from suit. Plaintiff's claims against all Third Circuit district judges must be dismissed because "judges are immune from suit under section 1983 for monetary damages arising from their judicial acts." *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 768 (3d Cir. 2000) (citations omitted). While judges are not immune for any actions taken in a nonjudicial capacity, or "in the complete absence of all jurisdiction," *id.* at 768-69, Plaintiff's claims do not relate to such acts despite contention that district judges "acted in all absence of jurisdiction," and standing orders are "administrative" in nature. Chief Judge Wolfson, who entered the standing order, was acting in her judicial capacity, as is Judge Ranjan, who is presiding over Plaintiff's criminal prosecution, and Chief Magistrate Judge Eddy, who presided over his initial criminal proceedings. Regardless of Plaintiff's views about the constitutionality of the Courts' orders, the orders that were issued and the decisions rendered were made in a judicial capacity in matters in which they had jurisdiction. *See Kaplan v. Miller*, 653 F. App'x 87, 89-90 & n.3 (3d Cir. 2016).

Plaintiff has also named all federal prosecutors who "enforce" standing orders related to the pandemic. Any such claim that is even potentially implicated by the allegations in the Amended Complaint relate to their conduct "in initiating a prosecution and in presenting the State's case," and thus are barred by absolute immunity. *See Johnson v. Koehler*, 733 F. App'x 583, 585 (3d Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976)).

Finally, the United States is also immune from suit. "It is a fundamental principle of

sovereign immunity that federal courts do not have jurisdiction over suits against the United States unless Congress, via a statute, expressly and unequivocally waives the United States' immunity to suit." *United States v. Bein,* 214 F. 3d 408, 412 (3d Cir. 2000). Neither the Constitution nor 28 U.S.C. § 1331, which provides subject matter jurisdiction for federal question cases, contains such a waiver. *See Clinton County Comm'rs v. U.S. E.P.A.*, 116 F. 3d 1018, 1021 (3d Cir. 1997). "Neither the United States nor its agencies have waived sovereign immunity for constitutional claims." *Mierzwa v. United States,* 282 F. App'x 973, 976-77 (3d Cir. 2008).

D. Conclusion

A plaintiff should be granted leave to amend unless amendment would be inequitable or futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002). Here, Plaintiff has already amended his complaint once. More importantly, he has no basis to assert claims on behalf of himself or others against all district court judges, prosecutors and the United States. In addition, claims related to his prosecution and incarceration must be raised in the context of his criminal proceedings. Thus, amendment of his claims would be futile.

For these reasons, it is respectfully recommended that the Amended Complaint be dismissed with prejudice under 28 U.S.C. § 1915(e)(2)(B).

If Plaintiff wishes to challenge this Report and Recommendation, he must seek review by the district judge by filing objections by July 19, 2021. Failure to file timely objections will waive the right of appeal.

s/Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

Dated: June 30, 2021

cc: William F. Kaetz
195434
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ, Plaintiff, v. FREDA L. WOLFSON, et al., Defendants.	2:21-cv-289-NR-PLD

ORDER

Before the Court is Magistrate Judge Dodge's Report and Recommendation (ECF 17), recommending that Mr. Kaetz's amended complaint be dismissed with prejudice. Mr. Kaetz, proceeding pro se, has filed objections to the R&R. ECF 21. The Court has carefully considered the record—including Mr. Kaetz's amended complaint, the R&R, and Mr. Kaetz's objections—and has conducted a de novo review of the R&R and Mr. Kaetz's objections. *See* 28 U.S.C. § 636(b)(1).

After a de novo review, the Court overrules Mr. Kaetz's objections, and adopts Magistrate Judge Dodge's R&R in whole as the opinion of the Court. *See United States v. Raddatz*, 447 U.S. 667, 676 (1980) ("[I]n providing for a 'de novo determination' ... Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." (cleaned up)); *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("[I]t must be assumed that the normal practice of the district judge is to give some reasoned consideration to the magistrate's report before adopting it as the decision of the court. When a district court does accept the Magistrate's report,

that is a judicial act, and represents the district court's considered judgment." (cleaned up)).

The Court adds only the following to Magistrate Judge Dodge's well-reasoned and thorough R&R. First, as Mr. Kaetz acknowledges in his objections, he filed the same objections to the R&R in this case as he did in another case he is pursuing. *See* ECF 21, p. 1. Many of the objections relate to the R&R in the other case, at case number 2:21-cv-62, also before this Court. To the extent it's relevant, then, the Court incorporates its Order adopting the R&R in the other case, here. That said, Mr. Kaetz cannot raise new allegations and claims in his objections to the R&R, so the variety of new allegations and claims he raises in his objections in this case have been waived.[1] *See, e.g.*, *Johnson v. DelBaso*, No. 17-1559, 2021 WL 567247, at *1 n.1 (W.D. Pa. Feb. 16, 2021) (Colville, J.) ("To the extent Petitioner raises any new claims in his objections that were not included within his Petition, those claims are deemed waived and will not be considered by the Court." (citation omitted)); *Washington v. Gilmore*, No. 17-988, 2021 WL 688088, at *2 (W.D. Pa. Feb. 23, 2021) (Conti, J.).

Second, when the R&R issued, Mr. Kaetz was detained pending trial. Since then, however, he pled guilty in the underlying criminal case, was sentenced by this Court, and concluded his term of imprisonment. *See United States v. Kaetz*, 2:21-cr-211, Dkt. Nos. 113, 116 (W.D. Pa. Aug. 2, 2021). The Court therefore updates the R&R's factual background in that regard. Further, Mr. Kaetz's guilty plea—and his acknowledgment of guilt—moot much of his claims in this case; indeed, he has withdrawn aspects of his claims and requested relief because of his guilty plea. *See* ECF 26.

Third, the Court emphasizes two additional points, which the R&R also conveys. Consistent with Magistrate Judge Dodge's analysis, "[i]t is axiomatic that

[1] As Magistrate Judge Dodge noted in the R&R, the crux of Mr. Kaetz's claims here is that courts have erred in tolling the Speedy Trial Act clock due to COVID-19.

an inmate lacks standing to assert complaints on behalf of other inmates." *Calipo v. Wolf*, No. 18-cv-320, 2019 WL 6879570, at *4 (W.D. Pa. Nov. 15, 2019), *report and recommendation adopted*, 2019 WL 6877181 (W.D. Pa. Dec. 17, 2019) (Baxter, J.) (citations omitted); *see* ECF 17, p. 5. Thus, only the claims that relate to Mr. Kaetz, specifically, are before the Court. Moreover, as the R&R emphasized, in Mr. Kaetz's underlying criminal case, this Court already considered—and rejected—the arguments Mr. Kaetz now raises. Having unsuccessfully utilized the proper vehicle to assert his claims and arguments, Mr. Kaetz cannot now seek a second bite at the apple via this improper channel.

Accordingly, the Court adopts Magistrate Judge Dodge's Report and Recommendation (ECF 17) in whole and as supplemented by this order, and overrules all of Mr. Kaetz's objections (ECF 21). Mr. Kaetz's amended complaint (ECF 12) is **DISMISSED WITH PREJUDICE**. The Clerk of Court shall mark this case **CLOSED**.

DATED: February 7, 2022

BY THE COURT:

/s/ *J. Nicholas Ranjan*
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 21-62
	)	
UNKNOWN US MARSHALS, et al.,	)	Magistrate Judge Dodge
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

II. Report

A. Relevant Background

Plaintiff William F. Kaetz brings this pro se civil rights action pursuant to 42 U.S.C. §§ 1983 and 1985 arising out of events that led to his current incarceration. He is a federal pretrial detainee in custody at the Essex County Jail in Newark, New Jersey, awaiting trial on charges of threats to assault and murder a United States District Judge, interstate communications containing threats to injure, making restricted information publicly available and being a felon in possession of a firearm and ammunition. See 2:21-cr-71 (D.N.J.).[1]

[1] The docket reflects that Plaintiff was arrested on October 19, 2020 and was charged by criminal complaint. An order pursuant to 28 U.S.C. § 636(f) was issued on October 19, 2020 that temporarily assigned Magistrate Judge Eddy of this district to handle the initial criminal proceedings. Judge Eddy entered orders of detention on October 19, 2020 and October 26, 2020. An indictment was returned on January 21, 2021 and Plaintiff was arraigned on February 2, 2021. The criminal case is currently pending in the District of New Jersey and is before District Judge J. Nicholas Ranjan of this district.

On January 13, 2021, Plaintiff submitted a civil rights complaint to this district without paying the filing fee or submitting a motion for leave to proceed in forma pauperis ("IFP"). After he submitted the motion to proceed IFP, the case was reopened and his Complaint was docketed on February 25, 2021 (ECF No. 11).

Plaintiff alleges that, during the course of one or more civil cases he had filed in the District of New Jersey, he came to believe that the "alleged federal judge" who was assigned to his cases failed to do her judicial duties, was biased against him and acted with a "total lack of jurisdiction" by violating his due process rights and her oath of office. As a result, he "petitioned" US marshals to "question" the judge. Instead they took his words out of context and "rearranged" them to "create the illusion of a crime" and he was then arrested.

In his Complaint, Plaintiff alleges claims of "deprivation of his constitutional rights and retaliation against him for exercising his constitutionally protected rights" (Count I),[2] conspiracy to deprive him of his rights in violation of 42 U.S.C. § 1985 (Count II), and retaliation for exercising his First Amendment rights (Count III). In addition to the Honorable Claire Cecchi, the federal district judge, Plaintiff also names as defendants the "unknown US Marshals" who arrested him; FBI Agent Mathew Hohman; Paul Safier, a senior inspector with the Marshal in New Jersey; Soo Song, an Assistant United States Attorney in the Western District of Pennsylvania; and the United States. He seeks from each defendant damages of $1,000 for each day he is incarcerated, $500,000 for the "psychological stigma" he is alleged to have sustained and "quo warranto relief, ouster [of] defendants from office for misconduct." (Compl. at 5-7.)[3]

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[2] The only constitutional deprivation identified by Plaintiff in his Complaint is the deprivation of his First Amendment right of free speech: he alleges that as a result of the fact that he petitioned the U.S. Marshal's Office to question the judge, he was arrested and is being criminally prosecuted for doing so.

[3] Plaintiff may have filed his Complaint in this district because he believes that the criminal case

B. Standard of Review

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), courts are required to screen complaints at any time where, as is the case here, the plaintiff has been granted leave to proceed *in forma pauperis*. 28 U.S.C. § 1915(e)(2). The PLRA provides in relevant part that:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> i. is frivolous or malicious;
> ii. fails to state a claim upon which relief may be granted; or
> iii. seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). Thus, the Court must initially screen Plaintiff's Complaint in order to determine if it should be dismissed at this time.

C. Analysis

A review of the allegations of the Complaint establishes that it should be dismissed under 28 U.S.C. § 1915(e)(2)(B). Plaintiff's claims arise out of the criminal charges pending against him in the United States District Court for the District of New Jersey. All of the claims asserted in the Complaint are based on his allegation that "fraudulent charges" were created against him in retaliation for his exercise of his First Amendment rights. Moreover, he cites in support of his Complaint all of his filings in the "fraudulent criminal complaint case no:2:20-mj-09421."[4]

It is well settled that a federal pretrial detainee cannot challenge the proceedings in his

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against him is pending in this district. However, as noted above, while the criminal case is pending in the District of New Jersey, Judge Ranjan is presiding over this case.

[4] This is the docket number of the initial criminal proceedings that were temporarily assigned to Magistrate Judge Eddy.

pending federal criminal case by filing a civil lawsuit. Rather, a defendant who seeks to challenge some aspect of his criminal prosecution must assert such claims in the criminal case itself. "Where a defendant is awaiting trial, the appropriate vehicle for his constitutional rights are pretrial motions or the expedited appeal procedure provided by the Bail Reform Act, 18 U.S.C. § 3145(b), (c)." *Whitmer v. Levi*, 276 F. App'x 217, 219 (3d Cir. 2008). Indeed, Plaintiff, through his counsel, has filed two motions to dismiss the counts against him in the pending criminal case. See 21-cr-71 (D.N.J.), ECF Nos. 43, 44. On April 5, 2021, Judge Ranjan denied both motions. See ECF Nos. 60, 61. Thus, all challenges to his criminal prosecution must be addressed in his criminal case.

To the extent that any of Plaintiff's claims can be construed as independent of his pending criminal proceedings, they are equally unavailing, as explained below.

1. Section 1983 Claims

The Complaint asserts that certain of Plaintiff's claims are brought pursuant to 42 U.S.C. § 1983, which applies when a person has acted "under color of state law." It is clear from the face of the Complaint, however, that the defendants in this case are the United States, a federal judge and various federal officials or employees. None of them can be sued under § 1983 because they act pursuant to federal law, not under color of state law. *See Hindes v. F.D.I.C.*, 137 F.3d 148, 158 (3d Cir. 1998) ("federal agencies and officers are facially exempt from section 1983 liability inasmuch as in the normal course of events they act pursuant to federal law.") *See also Brown v. Philip Morris Inc.*, 250 F.3d 789, 800 (3d Cir. 2001) ("It is well established that liability under § 1983 will not attach for actions taken under color of federal law.") In addition, the Court of Appeals has explained that "[t]he United States and other governmental entities are not persons within the meaning of Section 1983." *Polsky v. United States*, 844 F.3d 170, 173 (3d Cir. 2016) (quoting *Accardi v. United States*, 435 F.2d 1239, 1241 (3d Cir. 1970)).

In *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971), the Supreme Court established a direct cause of action under the United States Constitution against federal officials for violation of federal constitutional rights. *See Mack v. Yost*, 968 F.3d 311, 314 (3d Cir. 2020). In *Ziglar v. Abbasi*, 137 S.Ct. 1843, 1848 (2017), however, the Supreme Court held that expansion of *Bivens* claims beyond the three specific contexts in which the Court had applied it is "disfavored." These specific contexts were Fourth Amendment, Fifth Amendment and Eighth Amendment claims.

Plaintiff has not asserted any such claims. As a review of his Complaint reflects, Plaintiff alleges violations of the First Amendment. In Count III, he asserts that he was prosecuted in retaliation for exercising his First Amendment right of free speech. Even before *Abbasi*, the Supreme Court noted that: "We have never held that *Bivens* extends to First Amendment claims." *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012) (granting qualified immunity to Secret Service agents on retaliatory arrest claim). In *Vanderklok v. United States*, 868 F.3d 189 (3d Cir. 2017), the Third Circuit Court of Appeals recognized that its prior cases assuming the validity of a *Bivens* claim in a First Amendment context were no longer valid post *Abbasi* and held that *Bivens* did not afford a remedy against airport security screeners who allegedly engaged in a retaliatory prosecution against a traveler who exercised First Amendment rights. *Id.* at 198, 209. Thus, Plaintiff cannot rely upon *Bivens* to pursue his First Amendment claim against the defendants in this action.

Likewise, Plaintiff's claim in Count I, in which he alleges that the defendants, under color of state law, violated his constitutional rights and retaliated against him for exercising his constitutionally protected rights, must be dismissed as well. The only constitutional claim raised in his Complaint relates to his First Amendment rights. As observed above, all of his allegations

arise out of his criminal prosecution and either have been or will be addressed by the court in the context of that prosecution.

Simply put, Plaintiff's Complaint fails to allege any basis for Section 1983 claims against the defendants in this action.

2. Conspiracy Claims

Plaintiff alleges in Count II that the defendants conspired against him to deprive him of his constitutional rights in violation of 42 U.S.C. §§ 1983 and 1985. As noted above, Plaintiff cannot bring a claim under § 1983 because he has named only federal actors, not state actors. *See Davis v. Samuels*, 962 F.3d 105, 115 (3d Cir. 2020) ("All of the defendants here, however, are alleged to be federal actors or to have acted under color of federal law, so the 1983 claim cannot stand.")

Plaintiff does not identify the subsection of 42 U.S.C. § 1985 on which he attempts to rely in Count II. Section1985(1) prohibits a conspiracy to interfere with the duties of an officer of the United States, and § 1985(2) relates to conspiracy to obstruct justice or to threaten or otherwise intimidate a juror, witness or party to an action. Plaintiff has alleged no facts that would implicate either of these provisions. Therefore, the only subsection which arguably applies is § 1985(3) which relates to conspiracies to deprive persons of rights or privileges under the Fourteenth and Fifteenth Amendments. As noted previously, Plaintiff does not allege a violation of his Fourteenth or Fifteenth Amendment rights. Moreover, with respect to § 1985(3), the Supreme Court has held that the conspiracy must be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 829 (1983). Plaintiff alleges no such animus here. Thus, he has failed to state a § 1985 claim.

3. Immunity

Even if Plaintiff could survive these challenges, some of the defendants he has named are immune from suit in this matter. Plaintiff's claims against the district judge are indisputably meritless, as "judges are immune from suit under section 1983 for monetary damages arising from their judicial acts." *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 768 (3d Cir. 2000) (citations omitted). While judges are not immune for any actions taken in a non-judicial capacity, or "in the complete absence of all jurisdiction," *id.* at 768-69, Plaintiff's claims do not relate to such acts. Although Plaintiff alleges that the district judge was acting "with a total lack of jurisdiction by violating my due process rights and violating [the judge's] oath of office," it is clear from his factual allegations that he asserts that the judge was biased and "failed to do her judicial duties" with respect to his civil cases that were before her. After he asked the US Marshals to "question" the district judge, he was arrested. Regardless of Plaintiff's views about the judge's decisions or alleged bias towards him, the decisions rendered were clearly made in a judicial capacity in cases in which the judge had jurisdiction. *See Kaplan v. Miller*, 653 F. App'x 87, 89-90 & n.3 (3d Cir. 2016) (judge had immunity when the plaintiff alleged that "Judge Miller has certainly shown his bias when he consistently Denies all my Motions, which state the truth to all my allegations pertaining to all defendants.")[5]

Plaintiff has also named a federal prosecutor for her role in filing charges against him and otherwise conspiring to retaliate against him for "petitioning the government." Because his claims

[5] Plaintiff also requests non-monetary relief by referring to "quo warranto," which is "[a] common-law writ used to inquire into the authority by which a public office is held or a franchise is claimed." Quo warranto, *Black's Law Dictionary* (11th ed. 2019). However, quo warranto "can afford no relief for official misconduct and cannot be employed to test the legality of the official action of public or corporate officers." *United States ex rel. State of Wis. v. First Fed. Sav. & Loan Ass'n*, 248 F.2d 804, 808 (7th Cir. 1957) (citation omitted). Moreover, federal district courts have no original jurisdiction over quo warranto proceedings. *Id.* at 809.

against the prosecutor all concern her conduct "in initiating a prosecution and in presenting the State's case," absolute immunity bars these claims. *See Johnson v. Koehler*, 733 F. App'x 583, 585 (3d Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976)).

Finally, the United States is also immune from suit. "It is a fundamental principle of sovereign immunity that federal courts do not have jurisdiction over suits against the United States unless Congress, via a statute, expressly and unequivocally waives the United States' immunity to suit." *United States v. Bein*, 214 F.3d 408, 412 (3d Cir. 2000) (citing *United States v. Mitchell*, 463 U.S. 206, 212 (1983)). Neither the Constitution nor 28 U.S.C. § 1331 (which provides subject matter jurisdiction for federal question case, including civil rights actions) contains such a waiver. *See Clinton County Comm'rs v. U.S. E.P.A.*, 116 F.3d 1018, 1021 (3d Cir. 1997); *Jaffee v. United States*, 592 F.2d 712 (3d Cir. 1979). "Neither the United States nor its agencies have waived sovereign immunity for constitutional claims." *Mierzwa v. United States*, 282 F. App'x 973, 976-77 (3d Cir. 2008) (citing *United States v. Testan*, 424 U.S. 392, 400-02 (1976)).

D. Conclusion

For these reasons, it is respectfully recommended that the Complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

If Plaintiff wishes to challenge this Report and Recommendation, he must seek review by the district judge by filing objections by May 10, 2021. Failure to file timely objections will waive the right of appeal.

/s/Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

Dated: April 21, 2021

cc: William F. Kaetz
11350-067
Essex County Jail

354 Doremos Avenue
Newark, NJ 07105

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 21-62
	)	Judge Ranjan
UNKNOWN US MARSHALS, et al.,	)	Magistrate Judge Dodge
	)	
Defendants.	)	

REPORT AND RECOMMENDATION

I. Recommendation

It is respectfully recommended that the Second Amended Complaint be dismissed under 28 U.S.C. § 1915(e)(2)(B).

II. Report

A. Procedural Background

Plaintiff William F. Kaetz originally brought this *pro se* action arising out of events that led to his current incarceration. He is a federal pretrial detainee in custody at the Allegheny County Jail awaiting trial on charges of threats to assault and murder a United States District Judge, interstate communications containing threats to injure, making restricted information publicly available and being a felon in possession of a firearm and ammunition.[1]

On January 13, 2021, Plaintiff submitted a civil rights complaint to this district without paying the filing fee or submitting a motion for leave to proceed *in forma pauperis* ("IFP"). After he submitted the motion to proceed IFP, the case was reopened and his Complaint was docketed

[1] Plaintiff's criminal case had been pending in the District of New Jersey at docket number 2:21-cr-71 (D.N.J.) before District Judge J. Nicholas Ranjan of this district. On May 11, 2021, Judge Ranjan granted a motion for transfer of venue and the case was transferred to this Court and docketed at No. 2:21-cr-211.

on February 25, 2021 (ECF No. 11).

In his original Complaint, Plaintiff alleged that, during one or more civil cases that he had filed in the District of New Jersey, he came to believe that the "alleged federal judge" who was assigned to his cases failed to do her judicial duties, was biased against him and acted with a "total lack of jurisdiction" by violating his due process rights and her oath of office. As a result, he "petitioned" US marshals to "question" the judge. Instead, they took his words out of context and "rearranged" them to "create the illusion of a crime" and he was arrested.

The Complaint alleged claims of "deprivation of his constitutional rights and retaliation against him for exercising his constitutionally protected rights," conspiracy to deprive him of his rights in violation of 42 U.S.C. § 1985, and retaliation for exercising his First Amendment rights. Along with the federal district judge, the Honorable Claire Cecchi, Plaintiff also named as defendants the "unknown US Marshals" who arrested him; FBI Agent Mathew Hohman; Paul Safier, a senior inspector with the Marshal in New Jersey; Soo Song, an Assistant United States Attorney in the Western District of Pennsylvania; and the United States.

On April 21, 2021, a Report and Recommendation ("R&R") was issued (ECF No. 14) recommending that the Complaint be dismissed under 28 U.S.C. § 1915(e)(2)(B). The R&R concluded that Plaintiff could not use § 1983 to bring claims against the Defendants, who are all federal actors; his claim for First Amendment retaliation failed as a matter of law; that he failed to state a conspiracy claim under § 1985; and that several defendants have absolute immunity. Further, as stated in the R&R, Plaintiff's Complaint was an inappropriate attempt to raise challenges to his criminal case which already been raised and decided in that proceeding.

After the R&R was issued, Plaintiff filed an Amended Complaint and then a Second Amended Complaint ("SAC"), the latter of which is the operative document. Besides the original

defendants, he added as party defendants the U.S. Marshal Service, the United States District Court for the District of New Jersey, and the United States Department of Justice.

B. The Second Amended Complaint

The forty-seven page SAC purports to assert claims a multitude of claims, including those alleged to arise under the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution, as well as many statutes, including 5 U.S.C. § 502 (the Administrative Procedures Act), 18 U.S.C. § 1964 (RICO), 42 U.S.C. §§ 2000bb to 2000bb-4 (RFRA), 42 U.S.C. §§ 2000cc to 2000cc-5 (RLUIPA), 28 U.S.C. § 1346 (FTCA), and N.J.S.A 10:6-2 (the New Jersey Civil Rights Act). Plaintiff seeks, among other things, monetary damages and injunctive and declaratory relief, as well as "quo warranto" relief.

Despite its length, however, the SAC includes a dearth of factual allegations that purport to be the basis for his claims. District Judge Cecchi purportedly instigated an investigation to target him. Defendant Safier is alleged to have targeted him for investigation and the Marshal Service and unknown Marshals allegedly "raided and arrested" him with "deadly force." (SAC at 10.) Defendants Hohman, Song and the Department of Justice are alleged to be conspirators in targeting him for investigation and depriving him of his constitutional rights. Plaintiff describes the United States and the U.S. District Court of New Jersey as entities which employ some of the defendants. (*Id.*)

Plaintiff claims that the defendants targeted him before he was arrested by creating a crime from his petitions, discriminated against him by classifying him in "demeaning groups" because of his views, and took his words out of context and added words to create a crime. (SAC at 23-24.) *See also* SAC at 19-24, in which Plaintiff alleges his opposition to socialism and Marxist groups, and the government's duty to reject socialists and Marxists from holding office. He also

cites a number of court decisions that he asserts support his First Amendment retaliation claim based on being targeted. (*See* SAC at 13-18.)

The majority of the remaining allegations and case citations in the SAC relate to issues regarding Plaintiff's continuing incarceration, the Speedy Trial Act and COVID-19 related matters. Notably, Plaintiff has commenced a separate lawsuit filed in this Court at Civ. A. No. 21-289 related to his continued incarceration, the Speedy Trial Act and COVID-19 concerns. He has also raised some of these issues in his criminal proceeding.

C. Standard of Review

Under the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) ("PLRA"), courts are required to screen complaints at any time where, as is the case here, the plaintiff has been granted leave to proceed *in forma pauperis*. 28 U.S.C. § 1915(e)(2). The PLRA provides in relevant part that:

> Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—
>
> (A) the allegation of poverty is untrue; or
>
> (B) the action or appeal—
>
> i. is frivolous or malicious;
> ii. fails to state a claim upon which relief may be granted; or
> iii. seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2). Thus, the Court must first screen the SAC to determine whether it should be dismissed.

D. Analysis

Plaintiff's claims arise out of events that occurred both before and after his arrest on the criminal charges that were brought against him in the United States District Court for the District of New Jersey and were later transferred to this Court. For many reasons, as discussed below, the

SAC should be dismissed.

1. Post-Arrest Claims

With respect to events that took place after his arrest, Plaintiff, who is a pretrial detainee, alleges at some length that delays in his prosecution and the Court's standing orders related to COVID-19 violate the Speedy Trial Act as well as his Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendment rights. Plaintiff also contends that in denying his motion for release on bail in his criminal case, Judge Ranjan "did not recognize the whole scenario of the case, viewed words in isolation, left out exculpatory words (Brady material) and inserted words to support the government's viewpoint discrimination targeting only certain words and views of my speech, and changed my meaning of my speech, and filtered my speech." (SAC at 16.) Together with monetary damages, he seeks habeas corpus relief and a series of writs, injunctions and orders related to his incarceration. Plaintiff has also made many of the same or similar allegations in the separate civil action he brought at Civ. A. No. 21-289.

A federal pretrial detainee cannot challenge the proceedings in his pending federal criminal case by filing a civil lawsuit, including a habeas corpus petition under 28 U.S.C. § 2241. Rather, a defendant who seeks to challenge some aspect of his criminal prosecution must assert such claims in the criminal case itself. "Where a defendant is awaiting trial, the appropriate vehicle for his constitutional rights are pretrial motions or the expedited appeal procedure provided by the Bail Reform Act, 18 U.S.C. § 3145(b), (c)." *Whitmer v. Levi*, 276 F. App'x 217, 219 (3d Cir. 2008). *See also Falcon v. U.S. Bureau of Prisons*, 52 F.3d 137, 139 (7th Cir. 1995) ("It seems to us to go far afield to seek habeas corpus relief which could conceivably interfere with the trial judge's control of the criminal case pending before him.")

Through his counsel, Plaintiff has already challenged his pending prosecution by filing two motions to dismiss the counts against him in the pending criminal case, *see* 21-cr-71 (D.N.J.), ECF Nos. 43, 44, both of which were denied by Judge Ranjan. *See* ECF Nos. 60, 61. He has also moved for and been denied pretrial release. Thus, Plaintiff has employed and may continue to employ the appropriate means in his criminal case by which to challenge his prosecution.

Simply put, Plaintiff cannot challenge these and other rulings in his pending criminal case under the guise of a civil lawsuit. Rather, any challenges to his criminal prosecution must be addressed in that proceeding. Thus, all of Plaintiff's claims that relate to his current incarceration and pending criminal proceedings must be dismissed. That includes claims related to the Speedy Trial Act, COVID-19 and the Fifth, Sixth, Eighth, Ninth, Tenth, Thirteenth, Fourteenth and Fifteenth Amendments, as well as his claim for habeas corpus relief and all requests for writs, injunctions and orders related to his incarceration.[2]

Plaintiff's claims about the events leading to his arrest are also without merit, as discussed below.

2. Section 1983 and Statutory Claims

The SAC asserts that certain of Plaintiff's claims are brought under 42 U.S.C. § 1983, which applies when a person has acted "under color of state law." But the defendants here are the United States, a federal judge and various federal officials, agencies or employees. They cannot be sued under § 1983 because they act under federal law, not under color of state law. *See Hindes v. F.D.I.C.*, 137 F.3d 148, 158 (3d Cir. 1998) ("federal agencies and officers are facially exempt

[2] Even if Plaintiff had adequately stated a claim relating to his ongoing incarceration and prosecution, all the actions of Judge Cecchi, the "unknown US Marshals" who arrested Plaintiff, FBI Agent Mathew Hohman, Paul Safier and the U.S. Marshal Service are alleged to have occurred prior to or during his arrest.

from section 1983 liability inasmuch as in the normal course of events they act pursuant to federal law.") *See also Brown v. Philip Morris Inc.*, 250 F.3d 789, 800 (3d Cir. 2001) ("It is well established that liability under § 1983 will not attach for actions taken under color of federal law.") In addition, as the Court of Appeals has explained, "[t]he United States and other governmental entities are not persons within the meaning of Section 1983." *Polsky v. United States*, 844 F.3d 170, 173 (3d Cir. 2016) (quoting *Accardi v. United States*, 435 F.2d 1239, 1241 (3d Cir. 1970)). For the same reason, he cannot bring a conspiracy claim under § 1983. *See Davis v. Samuels*, 962 F.3d 105, 115 (3d Cir. 2020) ("All of the defendants here, however, are alleged to be federal actors or to have acted under color of federal law, so the 1983 claim cannot stand.")

The exception to this general principle is explained in *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). In *Bivens*, the Supreme Court established a direct cause of action under the United States Constitution against federal officials for violating federal constitutional rights. *See Mack v. Yost*, 968 F.3d 311, 314 (3d Cir. 2020). In *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1848 (2017), however, the Supreme Court held that expansion of *Bivens* claims beyond the three specific contexts in which the Court had applied it is "disfavored." These specific contexts were Fourth Amendment, Fifth Amendment and Eighth Amendment claims.

While Plaintiff states that he is bringing claims under the Fourth, Fifth and Eighth Amendments, he has failed to state a claim upon which relief may be granted related to any purported violation of his civil rights before or during his arrest. Although the SAC references all three of these amendments, Plaintiff has not connected them to the alleged events underlying this case. As established by the Supreme Court, "a pleading that offers 'labels or conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To survive *sua sponte* screening for failure to state a claim, the complaint must allege "sufficient factual matter" to show that the claim is facially plausible. *Fowler v. UPMS Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009) (citation omitted). "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." *Fair Wind Sailing, Inc. v. Dempster*, 764 F.3d 303, 308 n.3 (3d Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678). Thus, merely reciting constitutional amendments does not state a claim upon which relief could be granted.

The Fourth Amendment assures the right against unreasonable searches and seizures. The sole allegation in the SAC that might relate to a civil rights claim is the bald allegation that unknown U.S. Marshals "raided and arrested" him with "deadly force." These allegations do not state a Fourth Amendment claim. To maintain a § 1983 excessive force claim, "a plaintiff must establish: (1) injury (2) which resulted directly and only from a use of force that was clearly excessive, and (3) the excessiveness of which was clearly unreasonable." *Shepherd on behalf of Est. of Shepherd v. City of Shreveport*, 920 F.3d 278, 283 (5th Cir. 2019) (citation omitted). Plaintiff was arrested, but even if his home were raided and the force used to arrest him was "deadly," he identifies no excessive force, injury or other allegedly unconstitutional conduct that could support a civil rights claim in connection with his arrest. As reflected in the docket of his criminal proceeding, a judge determined that there was probable cause for his arrest. He was then arrested. Thus, in the absence of any allegations that support a violation of Plaintiff's Fourth Amendment rights, his claim should be dismissed.

The Fifth Amendment provides that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." There are no allegations in the SAC that state a civil

Fifth Amendment as to the named defendants. In one of the few decisions recognizing a Fifth Amendment *Bivens* claim, the Supreme Court permitted an employee of a member of Congress to bring a *Bivens* action alleging gender discrimination under that provision. *See Davis v. Passman*, 442 U.S. 228, 248-49 (1979). Plaintiff's allegations bear no resemblance to the scenario in that case and "even a modest extension [of *Bivens*] is still an extension." *Abbasi*, 137 S. Ct. at 1864. *See Vega v. United States*, 881 F.3d 1146, 1152-55 (9th Cir. 2018) (declining to extend *Bivens* to federal inmate's procedural due process claim under the Fifth Amendment).

Because Plaintiff is a pretrial detainee, the Eighth Amendment does not apply to him. "[T]he Eighth Amendment's Cruel and Unusual Punishments Clause does not apply until 'after sentence and conviction.'" *Hubbard v. Taylor*, 399 F.3d 150, 164 (3d Cir. 2005) (footnote omitted) (quoting *Graham v. Connor*, 490 U.S. 386, 392 n.6 (1989)). Thus, Plaintiff's Eighth Amendment claim also fails as a matter of law.

The only constitutional claim raised in the SAC that is relevant to the events leading to his arrest is Plaintiff's First Amendment claim. He asserts that he was arrested in retaliation for exercising his First Amendment right of free speech and expands on his allegations to contend that he suffered "viewpoint discrimination" by being placed in groups such as "tax protestors" and "serial filers." He also describes his claims as including "Majority or reverse Discrimination" and "Dissenting and Demeaning Group Designation Discrimination." (SAC at 18.) In the SAC, Plaintiff describes a lawsuit that he filed in the United States District Court for the District of New Jersey, No. 19-cv-8100, in which he claimed that "there are Socialist and Muslims in government positions that are pushing Socialism (equal to Marxism, Communism), it is an act to overthrow the Constitutional form of government and a violation of their Oath of Office and creating a Totalitarianism government." (SAC at 19.) That case was dismissed on December 15, 2020 for

lack of subject matter jurisdiction based on his lack of standing and is currently on appeal.

As held in *Abbasi,* expansion of *Bivens* claims beyond the three enumerated constitutional claims is disfavored. Indeed, even before *Abbasi* was decided, the Supreme Court noted that: "We have never held that *Bivens* extends to First Amendment claims." *Reichle v. Howards*, 566 U.S. 658, 663 n.4 (2012) (granting qualified immunity to Secret Service agents on retaliatory arrest claim). In *Vanderklok v. United States*, 868 F.3d 189 (3d Cir. 2017), the Third Circuit recognized that after *Abbasi*, its prior cases that assumed the validity of a *Bivens* claim in a First Amendment context were no longer valid and held that *Bivens* did not afford a remedy against airport security screeners who allegedly engaged in a retaliatory prosecution against a traveler who exercised First Amendment rights. *Id.* at 198, 209.

In the SAC, Plaintiff references decisions that predate *Abassi* and are no longer good law. He also asserts that *Vanderklok* is distinguishable because it involved non-government employees and "methodological stare decisis is not favored." (SAC at 17-18.) However, the holding of *Abassi*, as recognized in *Vanderklok*, is that a plaintiff cannot utilize *Bivens* to assert claims other than those the Supreme Court has recognized, a holding that is binding on this Court.

Plaintiff cannot rely on *Bivens* to pursue a First Amendment claims against the defendants. Thus, his First Amendment claim should be dismissed.

Although Plaintiff also mentions § 1985 in the SAC, the Supreme Court has held that a conspiracy under that statute must be motivated by "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action." *United Bhd. of Carpenters & Joiners of Am., Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 829 (1983). *See also Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263 (1993) (protestors who were blocking access to abortion clinics were not acting with animus against a "class" because the affected individuals

could not be identified circularly as those being affected, nor was the protest directed at women as a class). As the Court of Appeals has summarized, § 1985 protects "victims of historically pervasive discrimination" and those with "immutable characteristics." *Magnum v. Archdiocese of Philadelphia*, 253 F. App'x 224, 230 (3d Cir. 2007). Thus, the statute could be invoked by a class of mentally impaired individuals, *Lake v. Arnold*, 112 F.3d 682, 687 (3d Cir. 1997), but not by a group of "tenant organizers," *Carchman v. Korman Corp.*, 594 F.2d 354, 356 (3d Cir. 1979), or by minor children, "whose sole classifying characteristic (i.e., their minority) is not immutable," *Magnum*, 253 F. App'x at 230. *See also Farber v. City of Paterson,* 440 F.3d 131, 142-43 (3d Cir. 2006) (political affiliation was not a protected class); *Adams v. Teamsters Local 115*, 214 F. App'x 167, 168 n.7 (3d Cir. 2007) (demonstrators' § 1985(3) claim for conspiracy in retaliation for their exercise of their First Amendment right to free speech was foreclosed by the decision in *Farber*).

Plaintiff states that he faced "viewpoint discrimination" and was part of a majority or "dissenting and demeaning group." Plaintiff's viewpoint and his political opinions do not constitute "immutable characteristics," however, nor does his claim of "majority discrimination" make him a victim of historically pervasive discrimination. As a result, he cannot state a conspiracy claim under § 1985(3) based on these beliefs.

Despite his litany of other constitutional and statutory provisions, Plaintiff has connected no amendments, statutes or legal doctrines to the events referenced in the SAC that occurred before or during his arrest. Moreover, as alleged in the SAC, his Fifth, Sixth, Eighth, Thirteenth, Fourteenth and Fifteenth Amendment claims relate to his current confinement and criminal prosecution, not to events during or before his arrests. *See* SAC at 41-42.

Finally, while Plaintiff also requests non-monetary relief by referring to "quo warranto," federal district courts have no original jurisdiction over quo warranto proceedings. *See United*

States ex rel. State of Wis. v. First Fed. Sav. & Loan Ass'n, 248 F.2d 804, 809 (7th Cir. 1957).

3. Immunity

Even if Plaintiff could survive these challenges, many defendants he has named are immune from suit.

Plaintiff's claims against the district judge are meritless, as "judges are immune from suit under section 1983 for monetary damages arising from their judicial acts." *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760, 768 (3d Cir. 2000) (citations omitted). While judges are not immune for any actions taken in a non-judicial capacity, or "in the complete absence of all jurisdiction," *id.* at 768-69, Plaintiff's claims do not relate to such acts. Although Plaintiff alleges that the district judge was acting "with a total lack of jurisdiction by violating my due process rights and violating [the judge's] oath of office," he alleges that the judge was biased and "failed to do her judicial duties" with respect to his civil cases before her. After he asked the US Marshals to "question" the district judge, he was arrested. Regardless of Plaintiff's views about the judge's decisions or alleged bias towards him, the decisions rendered were made in a judicial capacity in cases in which the judge had jurisdiction. *See Kaplan v. Miller*, 653 F. App'x 87, 89-90 & n.3 (3d Cir. 2016) Plaintiff also references 28 U.S.C. § 453, which governs the oath for justices and judges. But that "is also outside the jurisdiction of the court because that statute does not provide [plaintiff] with "an independent right to monetary damages." *Bobka v. United States*, 133 Fed. Cl. 405, 411-12 (2017) (citation omitted). The same is true for 28 U.S.C. § 544, the oath of office for United States Attorneys, and 5 U.S.C. § 3331, the oath of office for government employees. *See Williams v. County of Fresno*, 2021 WL 2168402, at *6 (E.D. Cal. May 27, 2021).

The United States is also immune from suit. "It is a fundamental principle of sovereign immunity that federal courts do not have jurisdiction over suits against the United States unless

Congress, via a statute, expressly and unequivocally waives the United States' immunity to suit." *United States v. Bein*, 214 F.3d 408, 412 (3d Cir. 2000) (citing *United States v. Mitchell*, 463 U.S. 206, 212 (1983)). Neither the Constitution nor 28 U.S.C. § 1331,[3] which provides subject matter jurisdiction for federal question cases, including civil rights actions, contains such a waiver. *See Clinton County Comm'rs v. U.S. E.P.A.*, 116 F.3d 1018, 1021 (3d Cir. 1997); *Jaffee v. United States*, 592 F.2d 712 (3d Cir. 1979). "Neither the United States nor its agencies have waived sovereign immunity for constitutional claims." *Mierzwa v. United States*, 282 F. App'x 973, 976-77 (3d Cir. 2008) (citing *United States v. Testan*, 424 U.S. 392, 400-02 (1976)). For the same reasons, the US Marshal Service and the US Department of Justice also have immunity.

Plaintiff has also asserted claims against Defendant Song, an assistant United States attorney, for her role in filing charges against him and otherwise conspiring to retaliate against him for "petitioning the government." Because his claims against her relate to her conduct "in initiating a prosecution and in presenting the State's case," however, absolute immunity bars these claims. *See Johnson v. Koehler*, 733 F. App'x 583, 585 (3d Cir. 2018) (citing *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976)).

Finally, Plaintiff's claims against the United States District Court for the District of New Jersey are also unavailing as "federal courts are immune from such claims." *Davis v. City of Phila.*, 2019 WL 4034685, at *2 (E.D. Pa. Aug. 27, 2019).

E. Conclusion

The Third Circuit has held that a plaintiff who submits a complaint subject to dismissal for failure to state a claim should receive leave to amend unless amendment would be inequitable or

[3] Plaintiff also references 28 U.S.C. § 1332, which relates to subject matter jurisdiction based on diversity of citizenship. His complaint does not identify his citizenship or that of any other party.

futile. *Grayson v. Mayview State Hosp.*, 293 F.3d 103, 114 (3d Cir. 2002).

Plaintiff has already amended his claims twice. It would be futile to allow any further amendment because as discussed in this Report, all claims related to Plaintiff's confinement and prosecution must be brought in his criminal proceedings. Further, Plaintiff's claims about pre-confinement activities are fundamentally flawed for multiple reasons, including the inapplicability of § 1983 to federal actors, the failure to state a *Bivens* claim and the immunity of most of the defendants.

For these reasons, it is respectfully recommended that the Second Amended Complaint be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B).

If Plaintiff wishes to challenge this Report and Recommendation, he must seek review by the district judge by filing objections by June 24, 2021. Failure to file timely objections will waive the right of appeal.

s/ Patricia L. Dodge
PATRICIA L. DODGE
United States Magistrate Judge

Dated: June 7, 2021

cc: William F. Kaetz
195434
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ, Petitioner, v. UNITED STATES OF AMERICA, et al., Respondents.	2:21-cv-1614-NR-PLD

ORDER

Before the Court is Magistrate Judge Dodge's Report and Recommendation (ECF 12), recommending that Mr. Kaetz's Petition for a Writ of Habeas Corpus be summarily dismissed. Mr. Kaetz, proceeding pro se, has filed objections to the R&R. ECF 15. The Court has carefully considered the record—including Mr. Kaetz's petition (ECF 8), his amendments to the petition (ECF 10 & 11), the R&R, and Mr. Kaetz's objections—and has conducted a de novo review of the R&R and Mr. Kaetz's objections. *See* 28 U.S.C. § 636(b)(1).

After a de novo review, the Court overrules Mr. Kaetz's objections, and adopts Magistrate Judge Dodge's R&R in whole as the opinion of the Court.[1] *See United*

[1] While the R&R correctly recommends dismissal on grounds other than the merits, the Court makes the following additional observations. Contrary to Mr. Kaetz's arguments and objections, his plea agreement clearly and unequivocally stated that, in addition to serving 16 months imprisonment, he would serve three years of supervised release, of which "the first six months of supervised release be served in home detention." *See United States v. Kaetz*, 2:21-cr-211, Dkt. No. 111-1, pp. 3-4 (W.D. Pa. Aug. 2, 2021). This was pursuant to a Rule 11(c)(1)(C) stipulated sentence, which the Court accepted. *Id.* This agreement is unambiguous, and facially belies the arguments Mr. Kaetz raises here. Further, Mr. Kaetz's emphasis on the Sentencing Guidelines in his current petition is unavailing. To begin with, the Court sentenced Mr. Kaetz pursuant to his stipulated sentence, not one predicated solely on the application of the Guidelines. But even if there were no stipulated sentence, the Sentencing Guidelines are advisory only, and nothing prevents the Court from imposing home detention as a condition of supervised release.

States v. Raddatz, 447 U.S. 667, 676 (1980) ("[I]n providing for a 'de novo determination' ... Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." (cleaned up)); *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("[I]t must be assumed that the normal practice of the district judge is to give some reasoned consideration to the magistrate's report before adopting it as the decision of the court. When a district court does accept the Magistrate's report, that is a judicial act, and represents the district court's considered judgment." (cleaned up)).

Accordingly, the Court adopts Magistrate Judge Dodge's Report and Recommendation (ECF 12) in whole, and overrules all of Mr. Kaetz's objections (ECF 15). Mr. Kaetz's petition (ECF 8) is **DISMISSED**. It is further ordered that Mr. Kaetz's motion for leave to appeal in forma pauperis (ECF 19) is **DENIED WITHOUT PREJUDICE**, in light of this Order. The Clerk of Court shall mark this case **CLOSED**.

DATED: February 7, 2022

BY THE COURT:

/s/ *J. Nicholas Ranjan*
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM F. KAETZ, Plaintiff, v. UNKNOWN U.S. MARSHALS, et al., Defendants.	2:21-cv-62-NR-PLD

ORDER

Before the Court is Magistrate Judge Dodge's Report and Recommendation (ECF 29), recommending that Mr. Kaetz's second amended complaint be dismissed with prejudice. Mr. Kaetz, proceeding pro se, has filed objections to the R&R. ECF 34. The Court has carefully considered the record—including Mr. Kaetz's second amended complaint, the R&R, and Mr. Kaetz's objections—and has conducted a de novo review of the R&R and Mr. Kaetz's objections. *See* 28 U.S.C. § 636(b)(1).

After a de novo review, the Court overrules Mr. Kaetz's objections, and adopts Magistrate Judge Dodge's R&R in whole as the opinion of the Court. *See United States v. Raddatz*, 447 U.S. 667, 676 (1980) ("[I]n providing for a 'de novo determination' ... Congress intended to permit whatever reliance a district judge, in the exercise of sound judicial discretion, chose to place on a magistrate's proposed findings and recommendations." (cleaned up)); *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) ("[I]t must be assumed that the normal practice of the district judge is to give some reasoned consideration to the magistrate's report before adopting it as the decision of the court. When a district court does accept the Magistrate's report,

that is a judicial act, and represents the district court's considered judgment." (cleaned up)).

The Court adds only the following to Magistrate Judge Dodge's well-reasoned and thorough R&R. First, Mr. Kaetz cannot raise new allegations and claims in his objections to the R&R, so the variety of new allegations and claims he now raises have been waived. *See, e.g.*, *Johnson v. DelBaso*, No. 17-1559, 2021 WL 567247, at *1 n.1 (W.D. Pa. Feb. 16, 2021) (Colville, J.) ("To the extent Petitioner raises any new claims in his objections that were not included within his Petition, those claims are deemed waived and will not be considered by the Court." (citation omitted)); *Washington v. Gilmore*, No. 17-988, 2021 WL 688088, at *2 (W.D. Pa. Feb. 23, 2021) (Conti, J.).

Second, when the R&R issued, Mr. Kaetz was detained pending trial. Since then, however, he pled guilty in the underlying criminal case, was sentenced by this Court, and has concluded his term of imprisonment. *See United States v. Kaetz*, 2:21-cr-211, Dkt. Nos. 113, 116 (W.D. Pa. Aug. 2, 2021). The Court therefore updates the R&R's factual background in that regard. Further, Mr. Kaetz's guilty plea—and his acknowledgment of guilt—moot much of his claims in this case; indeed, he has withdrawn aspects of his claims and requested relief because of his guilty plea. *See* ECF 39. Additionally, the R&R concluded that Mr. Kaetz's Eighth Amendment claim fails, in part, because it could not be brought until after his "sentence and conviction." ECF 29, p. 9. But Mr. Kaetz's sentence and conviction notwithstanding, his Eighth Amendment claim still fails because there is no *Bivens* remedy for his claim. *See Ziglar v. Abbasi*, 137 S. Ct. 1843, 1855, 1857 (2017) (stating that the only *Bivens* remedy for an Eighth Amendment violation is for "failure to provide adequate medical treatment," and noting that the Supreme Court has "declined to create an implied [*Bivens*] damages remedy" for Eighth Amendment violations outside of that specific context); *see also id.* at 1857 ("[T]he Court has made clear that expanding the *Bivens* remedy is now a 'disfavored' judicial activity. This is in accord with the Court's

observation that it has consistently refused to extend *Bivens* to any new context or new category of defendants." (citations omitted)).

Finally, contrary to much of Mr. Kaetz's claims and objections, the Third Circuit recently determined that there is no *Bivens* remedy for a First Amendment retaliation claim. *See Bistrian v. Levi*, 912 F.3d 79, 95-96 (3d Cir. 2018). In *Bistrian*, the Third Circuit acknowledged that its prior precedents stating otherwise are no longer controlling following the Supreme Court's decision in *Abbasi*. *Id.* at 95. In concluding that no *Bivens* remedy is available, the Third Circuit found that its "conclusion aligns with a strong trend in district courts, post-*Abbasi*, holding that a *Bivens* retaliation claim under the First Amendment should not be recognized." *Id.* at 96 (citation omitted).

Accordingly, the Court adopts Magistrate Judge Dodge's Report and Recommendation (ECF 29) in whole and as supplemented by this order, and overrules all of Mr. Kaetz's objections (ECF 34). Mr. Kaetz's second amended complaint (ECF 23) is **DISMISSED WITH PREJUDICE**. The Clerk of Court shall mark this case **CLOSED**.

DATED: February 7, 2022

BY THE COURT:

/s/ J. Nicholas Ranjan
United States District Judge

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