Appendix

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 21-2357

DAVID FRANK CAMPEAU, JR., a natural born man and Citizen of the Unite States of America; CHRISTIN CAMPEAU, a natural born woman and Citizen of the Federal Republic of Germany, Appellants

v.

EDWARD SANDERCOCK, Prothonotary of the Court of Common Pleas of Wayne County of the Commonwealth of Pennsylvania; KATHLEEN BAUSMAN, Field Office Director of the United States Customs and Immigration Services, Philadelphia Field Office.

On Appeal from the United States District Court for the Middle District of Pennsylvania
(D.C. Civil Action No. 3:12-cv-00280)
District Judge: Honorable Malachy E. Manion

Submitted Pursuant to Third Cicuit LAR 34.1(a)
March 28, 2022
Before: GREENAWAY, JR., PORTER and NYGAARD, Circuit Judges
Opinion Filed: May 20,2022)

OPINION

PER CURIAM

Pro se appellants David Frank Campeau and Christin Campeau appeal from the District Court's judgment dismissing their complaint. For the reasons that follow, we will affirm.

The appellants state that, in 2014, they exchanged marriage vows at a ceremony and later signed a self-generated "Certificate of Marriage" before witnesses. When appellant David Campeau tried to record the "Certificate of Marriage" with the Wayne County Prothonotary's Office in late 2015, employees of that office told Campeau that the document could not be recorded because Campeau had not first obtained a marriage license in accordance with Pennsylvania law. Campeau sued Prothonotary Sandercock in state court, alleging that Pennsylvania's marriage law was unconstitutional. The lawsuit was unsuccessful, as was Campeau's subsequent appeal to the Pennsylvania Supreme Court. The United States Supreme Court denied a petition for writ of certiorari in 2018.

In the meantime, Christin Campeau, who is apparently a German citizen, filed a Form I-485 to apply for permanent residence or adjust status with the United States

Customs and Immigration Service (USCIS). The USCIS denied the application in April 2016 because the appellants had not entered a legally valid marriage. When she sought review of that ruling, the USCIS issued a decision on February 15, 2019, affirming that appellants had not entered a legally valid marriage under the laws of Pennsylvania. In the decision, the USCIS explained that David Campeau's unsuccessful litigation regarding the validity of the marriage was further explanation why Christin had not established eligibility for adjustment of status. The appellants filed a complaint in federal district court against Prothonotary Sandercock and USCIS Field Office Director Bausman, alleging violations of the appellants' rights under the U.S. Constitution. A Magistrate Judge recommended granting Sandercock's motion to dismiss the complaint on statute of limitations grounds. The appellants filed objections and Bausman filed a motion to dismiss. The District Court dismissed the complaint against the appellees in an order entered on May 18, 2021, and denied Bausman's motion to dismiss as moot. After the District Court denied the appellants' motion for reconsideration, the appellants filed this timely appeal of the May 18 order.

On appeal, the appellants concede that the two-year statute of limitations for personal injury actions in Pennsylvania bars their claims against Sandercock, and that the District Court properly dismissed their claims asserted against him. However, they argue that their claims against Bausman should have survived dismissal. Assuming arguendo that the claims against Bausman are not time-barred, we will affirm because the complaint fails to state a claim against her.[1]

In their complaint, the appellants alleged that their rights under the Fifth, Ninth, and Fourteenth Amendments were violated when Bausman upheld the USCIS's denial of Christin Campeau's Form 1-495.[2] First, the appellants argued that Bausman infringed on their rights to due process and equal protection under the Fifth and Fourteenth Amendments, see ECF No. 1 at 27-29, when she concluded that the appellants had not established that they had a legally valid marriage under Pennsylvania law.[3] To state a claim for a violation of substantive due process rights,

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[1] Our review is plenary, see Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220 (3d Cir. 2011), and we may affirm the District Court's judgment "on any basis supported by the record." Murray v. Bledsoe, 650 F.3d 246, 247 (3d Cir. 2011) (per curiam)

[2] The appellants brought their lawsuit under 42 U.S.C. § 1983, which, by its own terms, authorizes suits against state and local officers; it does not provide a cause of action against federal actors. See id.; Kach v. Hose, 589 F.3d 626, 646 (3d Cir. 2009) (to state a claim under § 1983, a party must allege deprivation of a federal constitutional or statutory right by a state actor). For that reason, dismissal of the claims asserted against Bausman under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction would have also been appropriate. However, the appellants asked that we vacate and remand to allow them to amend their complaint to bring a lawsuit pursuant to Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971), against Bausman. But that amendment would be futile because, as we explain, the appellants have failed to state a claim upon which relief may be granted, regardless of what cause of action it is packaged in.

[3] We consider the appellants' due process and equal protection claims against Bausman under the

the appellants needed to allege that Bausman infringed on a fundamental liberty interest without narrowly tailoring the infringement to serve a compelling state interest. See Reno v. Flores, 507 U.S. 292, 301- 02 (1993). Some of the liberty interests that the appellants identified qualify as fundamental rights, see Obergefell v. Hodges, 576 U.S. 644, 664 (2015) (right to marry is a fundamental right), and Troxel v. Granville, 530 U.S. 57, 66 (2000) (parents' interest in care, custody, and control of their children is fundamental liberty interest). State laws requiring a marriage license do not violate these rights, as has been made plain to David Campeau in his litigation before. See, e.g., Campeau v. Sandercock, No. 597 M.D. 2015. 3 Case: 21-2357 at 6-7 (Pa. Commw. Ct. Aug. 15. 2016). Additionally, it is well settled that, in accordance with Congress's plenary authority to set immigration requirements for aliens to enter the United States, a citizen does not have a Constitutional right to have an alien spouse reside in the United States, see Bakran v. Sec'y, United States Dept. of Homeland Sec., 894 F.3d 557, 565 (3d Cir. 2018). The fact that the appellants have children together does not change our analysis. See Morales-Izquierdo v. Dept. of Homeland Sec., 600 F.3d 1076, 1091 (9th Cir. 2010), abrogated in part on other grounds by Garfias Rodriguez v. Holder, 702 F.3d 504 (9th Cir. 2012) (en banc).

We also discern no violation of the appellants' rights to equal protection. In order to state an equal protection claim for members of a non-suspect class, the appellants needed to "allege[] that [they have] been intentionally treated differently from other similarly situated and that there is no rational basis for the difference in treatment." Vill. of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam); see also Arca-Pineda v. Att'y Gen., 527 F.3d 101, 105 (3d Cir. 2008) ("disparate treatment of different groups of aliens triggers only rational basis review under equal protection doctrine") (citation omitted). The appellants argued that the USCIS routinely grants adjustment of status to aliens who have married under the laws of Pennsylvania. But they are not similarly situated to such aliens because the appellants were not married under the laws of Pennsylvania—which is why the USCIS denied their Form I-485 application. So their equal protection argument fails.[4]

Accordingly, we will affirm the judgment of the District Court.

Fifth Amendment because she is a federal official. Cf. Nguyen v. U.S. Catholic Conference, 719 F.2d 52, 54 (3d Cir. 1983) (noting that the Fifth Amendment restricts federal government action). Practically speaking, Fifth and Fourteenth Amendment claims use the same analytical rubric. That is, while the Fifth Amendment contains no Equal Protection Clause, we have construed the Fifth Amendment to contain a guarantee of equal protection from that Amendment's prohibition of federal government discriminatory action "so unjustifiable as to be violative of due process." Abdul-Akbar v. McKelvie, 239 F.3d 307, 316 (3d Cir. 2001) (en banc) (internal quotation marks and citation omitted).

[4] We have considered the remaining arguments in the complaint and are satisfied that none states a claim.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 21-2357

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v.

EDWARD SANDERCOCK, Prothonotary of the Court of Common Pleas of Wayne County of the Commonwealth of Pennsylvania; KATHLEEN BAUSMAN, Field Office Director of the United States Customs and Immigration Services, Philadelphia Field Office.

On Appeal from the United States District Court for the Middle District of Pennsylvania
(D.C. Civil Action No. 3:12-cv-00280)
District Judge: Honorable Malachy E. Manion

Submitted Pursuant to Third Cicuit LAR 34.1(a)

March 28, 2022

Before: GREENAWAY, JR., PORTER and NYGAARD, Circuit Judges

JUDGEMENT

This cause came to the be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR34.1(a) on March 28, 2022. On consideration wherof, it is now hereby

ORDERED and **ADJUDGED** by this Court that the judgement of the District Court entered May 18, 2021, be and the same is hereby **AFFIRMED**. Costs not taxed. All of the above in accordance with the opinion of the Court.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 21-2357

DAVID FRANK CAMPEAU, JR., a natural born man and Citizen of the Unite States of America; CHRISTIN CAMPEAU, a natural born woman and Citizen of the Federal Republic of Germany, Appellants

v.

EDWARD SANDERCOCK, Prothonotary of the Court of Common Pleas of Wayne County of the Commonwealth of Pennsylvania; KATHLEEN BAUSMAN, Field Office Director of the United States Customs and Immigration Services, Philadelphia Field Office.

(D.C. Civil Action No. 3:12-cv-00280)

ORDER

Present: CHAGARES, Chief Judge, MCKEE, AMBRO, JORDAN, HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, and NYGAARD*

The petition for rehearing filed by appellant 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 original panel and the Court en banc, is denied.

BY THE COURT,

s/David J. Porter
Circuit Judge

Dated: August 11, 2022
Lmr/cc: All Counsel of Record

* The Vote of Senior Judge Nygaard is Limited to Panel Rehearing Only.

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA

DAVID FRANK CAMPEAU, et al.,	:	**CIVIL ACTION NO. 3:21-280**
Plaintiffs	:	**(MANNION, D.J.)**
v.	:	
EDWARD SANDERCOCK, et al.,	:	
Defendants	:	

ORDER

Presently before the court is the Plaintiffs' motion for reconsideration, (Doc. 21), of the court's May 18, 2021 order, (Doc. 20), adopting the report and recommendation of Magistrate Judge Martin C. Carlson and dismissing the Plaintiffs' Complaint

In their motion, Plaintiffs seek reconsideration of the May 18, 2021 order to the extent it dismissed their claims against Defendant Kathleen Bausman, Field Office Director of the Philadelphia Field Office of the United States Citizenship and Immigration Service. Plaintiffs largely rehash arguments from their earlier filings, asserting that their claims against Bausman were not time-barred since they were timely filed within two years of February 15, 2019—the date they believe their cause of action accrued. The report and recommendation adopted by the court, however, thoroughly addressed Plaintiffs' argument that the statute of limitations only began to run in February 2019 when immigration officials issued the notice that Plaintiffs had failed to establish a legally valid marriage. Plaintiffs simply disagree with the court's ruling. Disagreement with a court's ruling, however, does not justify the grant of a motion for reconsideration.

Crucially, Plaintiffs' motion has not established the existence of any of the four instances that justify the grant of a motion for reconsideration: "(1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion for summary judgment; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." Howard Hess Dental Labs. Inc. v. Dentsply Intern., Inc., 602 F.3d 237, 251 (3d Cir. 2010) (internal quotation marks omitted).

Accordingly, for these reasons, Plaintiffs' motion for reconsideration of the court's May 18, 2021 order, (Doc. 21), is **DENIED**.

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: July 8, 2021

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF PENNSYLVANIA

DAVID FRANK CAMPEAU, et al.,	:	**CIVIL ACTION NO. 3:21-2804**
Plaintiffs	:	**(MANNION, D.J.**
v.	:	
EDWARD SANDERCOCK, et al.,	:	
Defendants		

ORDER

Presently before the court is the report and recommendation ("Report") of Magistrate Judge Martin C. Carlson, (Doc. 15), which recommends that the defendant Edward Sandercock's motion to dismiss, (Doc. 11), be granted and that the plaintiffs David Frank Campeau and Christin Campeau's Complaint, (Doc. 1), be dismissed. Campeau filed objections to the Report.

When objections are timely filed to the report and recommendation of a magistrate judge, the district court must review de novo those portions of the report to which objections are made. 28 U.S.C. §636(b)(1); Brown v. Astrue, 649 F.3d 193, 195 (3d Cir. 2011). Although the standard is de novo, the extent of review is committed to the sound discretion of the district judge and the court may rely on the recommendations of the magistrate judge to the extent it deems proper. *Rieder v. Apfel*, 115 F.Supp.2d 496, 499 (M.D.Pa. 2000) (citing *U.S. v. Raddatz*, 447 U.S. 667, 676 (1980)).

Even where no objections are made to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P.72(b), advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. Local Rule 72.3

In his Report, Judge Carlson observes that the plaintiffs are attempting to relitigate claims that Pennsylvania's marriage statutes are unconstitutional—claims which have been thoroughly considered and rejected by various courts for the past six years. More particularly, the plaintiffs bring this case approximately five years after they first identified their legal claim with a lawsuit in the Commonwealth Court of Pennsylvania in December 2015. In light of the two-year statute of limitations, Judge Carlson recommends that the court grant the defendant Edward Sandercock's motion to dismiss and dismiss the Complaint as time-barred since the plaintiffs were aware of their grievances with Pennsylvania's marriage statutes for more than five years prior to filing the present Complaint.

Although the plaintiffs have filed objections, they do nothing to dissuade the court from adopting the Report. The plaintiffs' objections first take issue with extraneous matters such as Judge Carlson's accurate observation that plaintiff David Frank

Campeau is a "prodigious, but prodigiously unsuccessful, pro se litigant." (Doc. 15, at 1). The plaintiffs also argue that having a grievance with a statute, knowing a statute is unconstitutional, or having knowledge of potential consequences of a statute cannot be considered events that would begin the accrual of the statute of limitations for a Section 1982 claim. Instead, they argue "it is when a claimant discovers a person, subjected, or caused to be subjected, the claimant to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, while acting under color of state law." (Doc. 18, at 4-5). This is a distinction without a difference, however, since the plaintiffs initially brought substantially the same claims as they allege now and thus they had indeed "discovered" they were subject to the alleged deprivation of their rights when they filed their initial complaint.

In their third objection, the plaintiffs argue that, contrary to the Report, their prior claims were never thoroughly considered. The plaintiffs then proceed to criticize the Commonwealth Court's disposition of their claims, calling its reasoning "bogus" and stating that it "makes no logical sense." (Doc. 18, at 5, 6). However, the fact that the plaintiffs' claims were not addressed as thoroughly as they would have liked or resolved in their favor does not equate to a lack of consideration of their claims.

Finally, the plaintiffs contend that they "[d]iligently" attempted to protect their rights and yet the Report incorrectly "insinuate[s]" that they have not been diligent in seeking a remedy. Although the plaintiffs discuss several tragic events they experienced in recent years, this does not change the fact that the statute of limitations has run on their claims. Similarly, contrary to the plaintiffs' stated belief, their choice to pursue their claims with "the USCIS" did not excuse them from filing their claims within the requisite statute of limitations. Accordingly, the plaintiffs' objections will be overruled.

The court has conducted a thorough review of all pertinent filings and finds the Report of Judge Carlson to be well-reasoned and well-supported. As such, the court will adopt the Report in its entirety as the decision of the court.

Finally, the court notes that the defendant Kathleen Bausman also recently filed a motion to dismiss. (Doc. 17). In light of the court's disposition on the Report, however, the motion will be denied as moot.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The Report of Judge Carlson, (Doc. 15), is **ADOPTED IN ITS ENTIRETY**;

(2) The plaintiffs' objections to the Report, (Doc. 18), are **OVERRULED**;

(3) Campeau's Complaint, (Doc. 1), is **DISMISSED**;

(4) Bausman's motion to dismiss, (Doc. 17), is **DENIED AS MOOT**; and

(5) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion

MALACHY E. MANNION United States District Judge

DATE: May 18, 2021

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

		Civil No. 3:21-CV-280
DAVID FRANK CAMPEAU, et al.,	:	**(Judge Mannion)**
Plaintiffs,	:	**(Magistrate Judge Carlson)**
v.	:	
EDWARD SANDERCOCK, et al.		
Defendants.	:	

REPORT AND RECOMMENDATION

I. Statement of Facts and of the Case

David Campeau is a prodigious, but prodigiously unsuccessful, pro se litigant whose prior lawsuits have failed on multiple occasions in both the state and federal courts. See e.g., Campeau v. Sandercock, 138 S. Ct. 670, 199 L. Ed. 2d 534 (2018); Campeau v. Bates, No. 1903 C.D. 2016, 2017 WL 3597036, at *1 (Pa. Commw. Ct. Aug. 22, 2017); Campeau v. Sandercock, 639 Pa. 563, 161 A.3d 253 (2017); Campeau v. Soc. Sec. Admin., 575 F. App'x 35, 38 (3d Cir. 2014); Campeau v. Soc. Sec. Admin., No. CV 13-5396, 2014 WL 12470018, at *1 (E.D. Pa. Jan. 23, 2014), aff'd, 575 F. App'x 35 (3d Cir. 2014). Several factors combine to account for this history of litigative failure. First, Campeau often grounds his cases upon eccentric, idiosyncratic legal theories, such as his past belief that he was a "Steward for the Kingdom of Israel." Campeau v. Soc. Sec. Admin., 575 F. App'x at 37. In addition, Campeau's delay has often been his downfall with some of Campeau's cases barred by the applicable statute of limitations. Campeau v. Soc. Sec. Admin., No. CV 13-5396, 2014 WL 12470018, at *1 (E.D. Pa. Jan. 23, 2014), aff'd, 575 F. App'x 35 (3d Cir. 2014).

So it is here. On February 16, 2021, Campeau filed a pro se complaint in this court on behalf of himself and Christin Campeau. (Doc. 1). In this complaint, Campeau identified himself as a "natural born man" and challenged the constitutionality of Pennsylvania's marriage statutes. (Id.) According to Campeau's complaint, in August of 2014, he and Christin Campeau entered into some type of marital union "[i]n accord with God's mandate to marry," utilizing forms of his own invention. (Id., ¶¶ 1-6). Some 16 months later, on December 22, 2015, Campeau traveled to the Wayne County Prothonotary's office to record his marriage, but it was explained to Campeau that his self-created paperwork did not conform with the requirements of Pennsylvania law. (Id., ¶¶ 1-16).

Campeau immediately sought judicial redress, filing a lawsuit in the Commonwealth Court on December 24, 2015 challenging the constitutionality of Pennsylvania's marriage statutes. (Id., ¶ 27). On August 17, 2016, the

Commonwealth Court dismissed Campeau's case with prejudice. (Id., ¶ 29). Campeau appealed this adverse ruling to the Pennsylvania Supreme Court, but that Court affirmed the dismissal of his lawsuit on May 25, 2017. (Id., ¶ 31). Campeau v. Sandercock, 639 Pa. 563, 161 A.3d 253 (2017). Undeterred, Campeau sought United States Supreme Court review of this challenge to Pennsylvania's marriage statutes through a petition for writ of certiorari. (Id., ¶¶ 32-33). That petition was denied on January 8, 2018. Campeau v. Sandercock, 138 S. Ct. 670 (2018).

While Campeau was unsuccessfully litigating this constitutional question in state and federal courts, he was also concurrently engaged in a dispute with immigration officials regarding the legal status of Christin Campeau, who is identified in this complaint as a "natural born woman"[1] and German citizen. According to Campeau's complaint, as early as April of 2016, immigration officials informed the plaintiffs that they could not lawfully adjust the immigration status of Christin Campeau due to the fact that there was no evidence that she and David Campeau had entered into a legally valid marriage. (Id., ¶ 34). Campeau's subsequent efforts to contest his 2016 decision were unavailing, with immigration officials reminding Campeau in February of 2019 that he had thoroughly litigated these issues regarding the Constitutionality of Pennsylvania's marriage statutes. (Id., Exhibit B). However, immigration officials made it plain that the 2016 denial of this application did not prevent the plaintiffs from filing new applications or petitions in future. (Id.)

The instant complaint filed by Campeau repeats these claims, which have been thoroughly considered by the courts over the past six years, arguing once again that Pennsylvania's marriage statutes are unconstitutional. Thus, Campeau brings this case more than five years after he first identified his legal claim regarding the constitutionality of Pennsylvania marriage statutes by filing a lawsuit that advanced similar claims in the Commonwealth Court in December of 2015. In fact, it has been more than four years since the Commonwealth Court dismissed this initial case filed by Campeau, and more than three years have elapsed since Campeau's claims were rejected by the Pennsylvania and United States Supreme Courts. Therefore, in terms of the applicable statute of limitations, we are presented with an unusual spectacle in this case—a lawsuit that is subject to a two-year statute of limitations but endeavors to revive a constitutional claim that the United States Supreme Court refused to consider some three years after the Supreme Court denied Campeau's petition for writ of certiorari

It is against this backdrop that Defendant Sandercock has moved to dismiss this case arguing, inter alia, that it is barred by the applicable two-year statute of limitations. (Doc. 11). This motion has been briefed by the parties and is, therefore, ripe for resolution. (Docs. 12, 13 and 14).

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[1] The plaintiffs' insistence on describing themselves as "natural born" begs the question of how the plaintiffs believe that the rest of us got here, but we need not answer this question for today's purposes.

For the reasons set forth below, it is recommended that the motion to dismiss be granted.

II. Discussion

A. Standard of Review – Motion to Dismiss

Defendant Sandercock has moved to dismiss this complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, "failure to state a claim upon which relief can be granted." With respect to this benchmark standard for legal sufficiency of a complaint, the United States Court of Appeals for the Third Circuit has aptly noted the evolving standards governing pleading practice in federal court, stating that:

> Standards of pleading have been in the forefront of jurisprudence in recent years. Beginning with the Supreme Court's opinion in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007) continuing with our opinion in Phillips [v. County of Allegheny, 515 F.3d 224, 230 (3d Cir. 2008)] and culminating recently with the Supreme Court's decision in Ashcroft v. Iqbal –U.S.–, 129 S. Ct. 1937 (2009) pleading standards have seemingly shifted from simple notice pleading to a more heightened form of pleading, requiring a plaintiff to plead more than the possibility of relief to survive a motion to dismiss.

Fowler v. UPMC Shadyside, 578 F.3d 203, 209-10 (3d Cir. 2009).

In considering whether a complaint fails to state a claim upon which relief may be granted, the Court must accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom are to be construed in the light most favorable to the plaintiff. Jordan v. Fox Rothschild, O'Brien & Frankel, Inc., 20 F.3d 1250, 1261 (3d Cir. 1994). However, a court "need not credit a complaint's bald assertions or legal conclusions when deciding a motion to dismiss." Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997). Additionally, a court need not "assume that a ... plaintiff can prove facts that the ... plaintiff has not alleged." Associated Gen. Contractors of Cal. v. California State Council of Carpenters, 459 U.S. 519, 526 (1983). As the Supreme Court held in Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007), in order to state a valid cause of action a plaintiff must provide some factual grounds for relief which "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of actions will not do." Id. at 555. "Factual allegations must be enough to raise a right to relief above the speculative level." Id.

In keeping with the principles of Twombly, the Supreme Court has underscored that a trial court must assess whether a complaint states facts upon which relief can be granted when ruling on a motion to dismiss. In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court held that, when considering a motion to dismiss, a court should "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 679. According to the

Supreme Court, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 678. Rather, in conducting a review of the adequacy of complaint, the Supreme Court has advised trial courts that they must:

> [B]egin by identifying pleadings that because they are no more than conclusions are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Id. at 679.

Thus, following Twombly and Iqbal, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a complaint must recite factual allegations sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation. As the Third Circuit has stated:

> [A]fter Iqbal, when presented with a motion to dismiss for failure to state a claim, district courts should conduct a two-part analysis. First, the factual and legal elements of a claim should be separated. The District Court must accept all of the complaint's well-pleaded facts as true, but may disregard any legal conclusions. Second, a District Court must then determine whether the facts alleged in the complaint are sufficient to show that the plaintiff has a 'plausible claim for relief.' In other words, a complaint must do more than allege the plaintiff's entitlement to relief. A complaint has to 'show' such an entitlement with its facts.

Fowler, 578 F.3d at 210-11.

Two years after Fowler, the Third Circuit further observed:

> The Supreme Court in Twombly set forth the "plausibility" standard for overcoming a motion to dismiss and refined this approach in Iqbal. The plausibility standard requires the complaint to allege "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570, 127 S. Ct. 1955. A complaint satisfies the plausibility standard when the factual pleadings "allow[ ] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Iqbal, 129 S. Ct. at 1949 (citing Twombly, 550 U.S. at 556, 127 S. Ct. (1955)). This standard requires showing "more than a sheer possibility that a defendant has acted unlawfully." Id. A complaint which pleads facts "merely consistent with" a defendant's liability, [ ] "stops short of the line between possibility and plausibility of 'entitlement of relief.'"

Burtch v. Milberg Factors, Inc., 662 F.3d 212, 220-21 (3d Cir. 2011)

In practice, consideration of the legal sufficiency of a complaint entails a three-step analysis:

> First, the court must "tak[e] note of the elements a plaintiff must plead to state a claim." Iqbal, 129 S. Ct. at 1947. Second, the court should identify allegations that, "because they are no more than conclusions, are not entitled to the assumption of truth." Id. at 1950. Finally, "where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief." Id.

Santiago v. Warminster Tp., 629 F.3d 121, 130 (3d Cir. 2010).

In addition to these pleading rules, a civil complaint must comply with the requirements of Rule 8(a) of the Federal Rules of Civil Procedure, which defines what a complaint should say and provides that:

> (a) A pleading that states a claim for relief must contain (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.
>
> Fed. R. Civ. P. 8(a).

Thus, a well-pleaded complaint must contain more than mere legal labels and conclusions. Rather, a plaintiff's complaint must recite factual allegations which are sufficient to raise the plaintiff's claimed right to relief beyond the level of mere speculation, set forth in a "short and plain" statement of a cause of action.

Finally, in considering a motion to dismiss, the court generally relies on the complaint, attached exhibits, and matters of public record. Sands v. McCormick, 502 F.3d 263, 268 (3d Cir. 2007). The court may also consider "undisputedly authentic document[s] that a defendant attached as an exhibit to a motion to dismiss if the plaintiff's claims are based on the [attached] documents." Pension Benefit Guar. Corp. v. White Consol. Indus., 998 F.2d 1192, 1196 (3d Cir. 1993). Moreover, "documents whose contents are alleged in the complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered." Pryor v. Nat'l Collegiate Athletic Ass'n, 288 F.3d 548, 560 (3d Cir. 2002); see also U.S. Express Lines, Ltd. v. Higgins, 281 F.3d 382, 388 (3d Cir. 2002) (holding that "[a]lthough a district court may not consider matters extraneous to the pleadings, a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss in one for summary judgment"). However, the court may not rely on other parts of the record in determining a motion to dismiss, or when determining whether a proposed amended complaint is futile because it fails to state a claim upon which relief may be granted. Jordan, 20 F.3d at 1261.

B. The Plaintiffs' Claims Are Time-Barred.

Defendant Sandercock's motion to dismiss asserts a statute of limitations defense,

arguing that the Campeaus' constitutional challenge to Pennsylvania's marriage statutes is clearly time-barred. Application of the statute of limitations is an affirmative defense and the defendant has the burden of proof on that defense. Although a statute of limitations is ordinarily pleaded as an affirmative defense, a district court may order a complaint dismissed as time-barred where it is obvious from the face of the complaint that the statute of limitations has run and no further development of the factual record would be needed to properly consider the defense's application. See Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014); Robinson v. Johnson, 313 F.3d 128, 134-35 (3d Cir. 2002) (permitting a limitations defense to be raised in a motion under Rule 12(b)(6) "only if 'the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.'"). However, "'[i]f the bar is not apparent on the face of the complaint, then it may not afford the basis for a dismissal of the complaint under Rule 12(b)(6).'" Robinson, 313 F.3d at 134-35 (quoting Bethel v. Jendoco Constr. Co., 570 F.2d 1168, 1174 (3d Cir. 1978))

In this case, the plaintiffs' claims are brought under 42 U.S.C. § 1983, a statute that is not itself a font of constitutional rights, but is instead the statutory vehicle that plaintiffs may use to bring claims alleging violations of the Constitution or other federal law. Section 1983 does contain its own statute of limitations, but instead borrows the most applicable statute of limitations under state law. With respect to constitutional claims such as those alleged in this case, it is well settled that the applicable statute of limitations is that applied to personal injury actions, which, in Pennsylvania, is two years. Wilson v. Garcia, 471 U.S. 261, 266-67 (1985); 42 Pa. Con. Stat. Ann. § 5524. A cause of action accrues for statute of limitations purposes when a plaintiff knows or has reason to know of the injury that constitutes the basis of the cause of action. Sameric Corp. of Delaware, Inc. v. City of Philadelphia, 142 F.3d 582, 599 (3d Cir. 1998); see also Smith v. Delaware Cnty. Court, 260 F. App'x 454, 455 (3d Cir. 2008). While this two-year limitations period may be extended based upon a continuing wrong theory, a plaintiff must make an exacting showing to avail himself of this grounds for tolling the statute of limitations. For example, it is well settled that the "continuing conduct of [a] defendant will not stop the ticking of the limitations clock [once] plaintiff obtained requisite information [to state a cause of action]. On discovering an injury and its cause, a claimant must choose to sue or forego that remedy." Barnes v. American Tobacco Co., 161 F.3d 127, 154 (3d Cir. 1998) (quoting Kichline v. Consolidated Rail Corp., 800 F. 2d 356, 360 (3d Cir. 1986)). See also Lake v. Arnold, 232 F.3d 360, 266-68 (3d Cir. 2000).

Judged by these legal benchmarks, it is submitted that this complaint should be dismissed as time-barred. The gist of this complaint is the plaintiffs' constitutional attack upon the Pennsylvania marriage statutes. Yet, it is undeniably true that the plaintiffs were aware of their grievance with these laws for more than five years at the time that they filed the instant complaint in February of 2021. We know this to a certainty because the plaintiffs tell us in their federal complaint that they first brought these claims in a case they filed in Pennsylvania's Commonwealth Court on December 24, 2015. (Doc. 1, ¶ 27). Indeed, the plaintiffs' complaint meticulously

catalogues their dilatory conduct in bring this case. Not only do the plaintiffs acknowledge a subjective awareness that they believed Pennsylvania's marriage statutes to be unconstitutional as early as December of 2015, they describe protracted and fruitless efforts to set aside these statutes, efforts that were unavailing since the Commonwealth Court dismissed their case more than four years ago and the Pennsylvania and United States Supreme Courts denied petitions for review of this state court decision more than three years prior to the filing of this lawsuit. Thus, the Campeaus' complaint would ask us to find this lawsuit timely even though a period long beyond the 2-year statute of limitations had run after the United States Supreme Court had denied David Campeau's petition for writ of certiorari from an earlier, unsuccessful challenge to these laws. Further, the plaintiffs' complaint makes it clear that they were also subjectively aware since at least April of 2016 that they faced potential immigration consequences due to their inability to establish that they had entered into a lawful marriage. (Id., ¶ 34). Thus, for more than 4 years prior to filing this complaint, the plaintiffs admit that they understood that Pennsylvania's marriage statutes and their inability to establish that they had a legally valid marriage could impair their ability to receive a favorable adjustment of Christin Campeau's immigration status.

Given these undisputed facts alleged by the plaintiffs, the instant complaint runs afoul of settled legal principles regarding the operation of the statute of limitations. These principles recognize that: "[T]he statute of limitations begins to run when the 'plaintiff knows, or in the exercise of reasonable diligence should have known, (1) that he has been injured, and (2) that his injury has been caused by another's conduct.' " Blanyar v. Genova Prod. Inc., 861 F.3d 426, 432 (3d Cir. 2017). These legal tenets also acknowledged that: "On discovering an injury and its cause, a claimant must choose to sue or forego that remedy." Barnes, 161 F.3d at 154.

Judged by these settled legal tenets, it is evident that the plaintiffs knew of their grievance with Pennsylvania's marriage statutes and its immigration implications by April of 2016—more than 4 years prior to filing this lawsuit. Therefore, a straightforward application of the two-year statute of limitations to the well-pleaded facts in the plaintiffs' complaint compels its dismissal under the statute of limitations.

Cast against this settled caselaw, the Campeaus' efforts to save this fatally untimely claim are entirely unpersuasive and unavailing. Ignoring the legal implications of all of their litigation prior to February of 2019, the plaintiffs insist that the statute of limitations only began to run on the last occasion when their claims were rejected, the February 2019 final notice from immigration officials to the plaintiffs that their unsuccessful state court litigation had not altered that agency's April 2016 conclusion that they had failed to establish a legally valid marriage.

We should decline the invitation to embrace this curious tolling argument. The Campeaus' argument, if embraced, would turn the statute of limitations on its head. It would take a rule that requires due diligence by plaintiffs in timely bringing claims,

and would turn it into a proposition which encourages unconscionable delay in litigation by allowing litigants to unsuccessfully pursue claims for years in various forums and then would permit them to wait years after they had failed to prove those claims before reinstituting their lawsuit in yet another court. This interpretation of the statute of limitations is entirely inconsistent with well-established case law, and antithetical to the purposes underlying limitations periods. Therefore, this construction of the statute of limitations should be rejected by this court and this complaint should be dismissed as time-barred.

III. Recommendation

Accordingly, for the foregoing reasons, IT IS RECOMMENDED THAT Defendant Sandercock' s motion to dismiss the plaintiffs' complaint (Doc. 11) be GRANTED.

The parties are further placed on notice that pursuant to Local Rule 72.3:

> Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within fourteen (14) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

Submitted this 26th day of April 2021.

S/ Martin C. Carlson
Martin C. Carlson
United States Magistrate Judge