

FILED: October 18, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7576
(3:20-cv-00675-MHL-EWH)

MARVIN EDUARDO LUNA GOMEZ

Plaintiff - Appellant

v.

INTERNAL REVENUE SERVICE

Defendant - Appellee

O R D E R

The court denies the petitions for rehearing.

Upon consideration of appellant's motions to consolidate and for additional photocopying loans, the court denies the motions.

Entered at the direction of the panel: Judge Agee and Judge Rushing acting as a quorum pursuant to 28 U.S.C. § 46(d).

For the Court

/s/ Patricia S. Connor, Clerk

S.C. Pg. 6
UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-7576

MARVIN EDUARDO LUNA GOMEZ,

Plaintiff - Appellant,

v.

INTERNAL REVENUE SERVICE,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. M. Hannah Lauck, District Judge. (3:20-cv-00675-MHL-EWH)

Submitted: February 17, 2022

Decided: February 23, 2022

Before AGEE and RUSHING, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Marvin Eduardo Luna Gomez, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

Marvin Eduardo Luna Gomez appeals the district court's order dismissing his action as frivolous. On appeal, we confine our review to the issues raised in the informal brief. *See* 4th Cir. R. 34(b). Because Gomez's informal brief does not challenge the bases for the district court's disposition, he has forfeited appellate review of the court's order. *See Jackson v. Lightsey*, 775 F.3d 170, 177 (4th Cir. 2014) ("The informal brief is an important document; under Fourth Circuit rules, our review is limited to issues preserved in that brief."). Accordingly, we affirm the district court's judgment. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

S.C.Pg.29

MARVIN EDUARDO LUNA GOMEZ,

Plaintiff,

v.

Civil Action No. 3:20cv675

INTERNAL REVENUE SERVICE,

Defendant.

ORDER

In accordance with the accompanying Memorandum Opinion, it is hereby ORDERED that:

1. Gomez's claims are DISMISSED WITH PREJUDICE for failure to state a claim;
2. The action is DISMISSED WITH PREJUDICE; and,
3. The Clerk is DIRECTED to note the disposition of the action for the purposes of 28 U.S.C. § 1915(g).

Should Gomez desire to appeal, a written notice of appeal must be filed with the Clerk of the Court within sixty (60) days of the date of entry hereof. Failure to file a notice of appeal within that period may result in the loss of the right to appeal.

The Clerk is DIRECTED to send the Memorandum Opinion and Order to Plaintiff.

It is so ORDERED.

Date: 10-21-21
Richmond, Virginia

M. Hannah Hank
M. Hannah Hank
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

S.C.PJ.30

MARVIN EDUARDO LUNA GOMEZ,

Plaintiff,

v.

Civil Action No. 3:20cv675

INTERNAL REVENUE SERVICE,

Defendant.

MEMORANDUM OPINION

Marvin Eduardo Luna Gomez, a Virginia inmate proceeding *pro se* and *in forma pauperis*, filed this 42 U.S.C. § 1983 action.¹ By Memorandum Order entered on April 1, 2021, the Court directed Plaintiff to file a Particularized Complaint. (ECF No. 11.) Plaintiff filed a Particularized Complaint. (ECF No. 12.) The matter is before the Court for evaluation pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A.² For the reasons set forth below, the Court will DISMISS the action for failure to state a claim and because it is legally frivolous.

I. Standard of Review

Pursuant to the Prison Litigation Reform Act (“PLRA”), this Court must dismiss any action filed by a prisoner if the Court determines the action (1) “is frivolous” or (2) “fails to state

¹ This statute provides, in pertinent part:

Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

42 U.S.C. § 1983.

APPENDIX B

² The statute provides, in pertinent part: “The Court shall review . . . as soon as practicable after docketing . . . a complaint in a civil action in which a prisoner seeks redress from a governmental entity.” 28 U.S.C. § 1915A(a).

a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(i), (ii). The first standard includes claims based upon "an indisputably meritless legal theory," or claims where the "factual contentions are clearly baseless." *Clay v. Yates*, 809 F. Supp. 417, 427 (E.D. Va. 1992) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)), *aff'd*, 36 F.3d 1091 (4th Cir. 1994). The second standard, failure to state a claim on which relief may be granted, is the familiar standard for a motion to dismiss under Fed. R. Civ. P. 12(b)(6).

"A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (citing 5A Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1356 (1990)). In considering a motion to dismiss for failure to state a claim, a plaintiff's well-pleaded allegations are taken as true and the complaint is viewed in the light most favorable to the plaintiff. *Mylan Lab 'ys, Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993); *see also Martin*, 980 F.2d at 952. This principle applies only to factual allegations, however, and "a court considering a motion to dismiss can choose to begin by identifying allegations that, because they are no more than conclusions, are not entitled to the assumption of truth." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

The Federal Rules of Civil Procedure "require[] only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (second alteration in original) (citation omitted). Plaintiffs cannot satisfy this standard with complaints containing only "labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Id.* (citations omitted). Instead, a plaintiff must allege facts sufficient "to raise a right to relief above the speculative level," *id.* (citation omitted),

stating a claim that is “plausible on its face,” rather than merely “conceivable,” *id.* at 570. “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.” *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp.*, 550 U.S. at 556). In order for a claim or complaint to survive dismissal for failure to state a claim, the plaintiff must “allege facts sufficient to state all the elements of [his or] her claim.” *Bass v. E.I. DuPont de Nemours & Co.*, 324 F.3d 761, 765 (4th Cir. 2003) (citing *Dickson v. Microsoft Corp.*, 309 F.3d 193, 213 (4th Cir. 2002); *Iodice v. United States*, 289 F.3d 270, 281 (4th Cir. 2002)). Lastly, while the Court liberally construes *pro se* complaints, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), it will not act as the inmate’s advocate and develop, *sua sponte*, statutory and constitutional claims that the inmate failed to clearly raise on the face of his or her complaint. *See Brock v. Carroll*, 107 F.3d 241, 242–43 (4th Cir. 1997) (Luttig, J., concurring); *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985).

II. Gomez’s Allegations

Gomez’s claims are far from clear. He appears to contend that he was victim of identity theft. (Compl. 1, ECF No. 12.)³ He seems to claim that either through fraud or incompetence, the Internal Revenue Service (“IRS”) improperly failed to pay him a refund in 2017. (*Id.* 1–2.) This resulted in hardship for Gomez and he claims the IRS “is responsible for everything that happened to [him] from May of 2017 to August 03 – 2017, and everything that came with the conviction of 08/03/2020.” (*Id.* 6.) Gomez contends that he suing the IRS for “direct contempt, contempt, and constructive contempt.” (*Id.* 5.) He seeks \$188,750 in damages. (*Id.* 6.)

³ The Court employs the pagination assigned by the CM/ECF docketing system. The Court corrects the capitalization, punctuation, and spelling in the quotations from Gomez’s submissions.

IRS. See *FDIC v. Meyer*, 510 U.S. 471, 475 (1994) ("Absent a waiver, sovereign immunity shields the Federal Government and its agencies from suit."); *Abell v. Sothen*, 214 F. App'x 743, 751 (10th Cir. 2007) (concluding sovereign immunity barred plaintiffs' attempt to sue the IRS). Accordingly, Gomez's claims and the action will be DISMISSED for failure to state a claim and as legally frivolous.

IV. Conclusion

For the foregoing reasons, Gomez's claims will be DISMISSED for failure to state a claim and as legally frivolous. The action will be DISMISSED WITH PREJUDICE. Let the Clerk note the disposition of the action for the purposes of 28 U.S.C. § 1915(g).

An appropriate Order will accompany this Memorandum Opinion.

Date: **10-21-21**
Richmond, Virginia


M. Hannah Ladd
United States District Judge

APPENDIX B



S.C.PG.42
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MARVIN EDUARDO LUNA GOMEZ,

Plaintiff,
v.
Civil Action No. 3:20CV675

INTERNAL REVENUE SERVICE,

Defendant.

MEMORANDUM ORDER
(Directing Plaintiff to File a Particularized Complaint)

In order to state a viable claim under 42 U.S.C. § 1983,¹ a plaintiff must allege that a person acting under color of state law deprived him or her of a constitutional right or of a right conferred by a law of the United States. *See Dowe v. Total Action Against Poverty in Roanoke Valley*, 145 F.3d 653, 658 (4th Cir. 1998) (citing 42 U.S.C. § 1983). Courts must liberally construe *pro se* civil rights complaints in order to address constitutional deprivations. *Gordon v. Leake*, 574 F.2d 1147, 1151 (4th Cir. 1978). Neither “inanimate objects such as buildings, facilities, and grounds” nor collective terms such as “staff” or “agency” are persons amenable to suit under § 1983. *Lamb v. Library People Them*, No. 3:13-8-CMC-BHH, 2013 WL 526887, at *2-3 (D.S.C. Jan. 22, 2013) (citations omitted) (internal quotations omitted) (explaining the plaintiff’s “use of the

¹ That statute provides, in pertinent part:

Every person who, under color of any statute . . . of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law

42 U.S.C. § 1983.

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collective term ‘people them’ as a means to name a defendant in a § 1983 claim does not adequately name a ‘person’’’); *see Preval v. Reno*, No. 99-6950, 2000 WL 20591, at *1 (4th Cir. 2000) (citations omitted) (affirming district court’s determination that Piedmont Regional Jail is not a “person” under § 1983). Accordingly, Plaintiff is DIRECTED, within fourteen (14) days of the date of entry hereof, to particularize his Complaint in conformance with the following directions and in the order set forth below:

a. At the very top of the particularized pleading, Plaintiff is directed to place the following caption in all capital letters “PARTICULARIZED COMPLAINT FOR CIVIL ACTION NUMBER 3:20CV675.”

b. The first paragraph of the particularized pleading must contain a list of defendants. Thereafter, in the body of the particularized complaint, Plaintiff must set forth legibly, in separately numbered paragraphs, a short statement of the facts giving rise to his claims for relief. Thereafter, in separately captioned sections, Plaintiff must clearly identify each civil right violated. Under each section, the Plaintiff must list each defendant purportedly liable under that legal theory and explain why he believes each defendant is liable to him. Such explanation should reference the specific numbered factual paragraphs in the body of the particularized complaint that support that assertion. Plaintiff shall also include a prayer for relief.

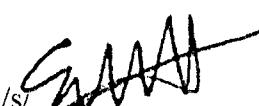
c. The particularized pleading will supplant the prior complaints. The particularized pleading must stand or fall of its own accord. Plaintiff may not reference statements in the prior complaints.

FAILURE TO COMPLY WITH THE FOREGOING DIRECTIONS WILL RESULT IN DISMISSAL OF THE ACTION. *See* Fed. R. Civ. P. 41(b).

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

Date: April 1, 2021
Richmond, Virginia


/s/
Elizabeth W. Hanes
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

MARVIN EDUARDO LUNA GOMEZ,

Plaintiff,

v.

Civil Action No. 3:20CV675

INTERNAL REVENUE SERVICE,

Defendant.

MEMORANDUM ORDER
(Conditionally Docketing Action)

Plaintiff, a Virginia inmate, has submitted this civil action. He also has applied to proceed *in forma pauperis*. It is ORDERED that:

1. This action is CONDITIONALLY docketed.
2. Within thirty (30) days from the date of entry hereof, Plaintiff must submit a statement under oath or under penalty of perjury that:

- (A) Identifies the nature of the action;
- (B) States his belief that he is entitled to relief;
- (C) Avers that he is unable to prepay fees or give security therefor; and,
- (D) Includes a statement of the assets he possesses.

The Court is forwarding to Plaintiff an affidavit for compliance with the above procedures. Failure to complete the affidavit **in its entirety will result in summary dismissal of the action.**

3. The Clerk shall obtain a certified copy of Plaintiff's trust fund account for the six (6) month period immediately preceding the initiation of this action.
4. Plaintiff must affirm his intention to pay the entire \$350.00 filing fee. Accordingly, he is required to read, sign, and return to the Court the enclosed consent to collection of fees form within thirty (30) days of the date of entry hereof.

5. Failure to comply strictly with any of the above time requirements will result in summary dismissal of the action. *See Fed. R. Civ. P. 41(b).*

6. Plaintiff need not comply with paragraphs 1 through 5 if he submits the full \$350.00 filing fee, a \$50.00 administrative fee, and withdraws his request to proceed *in forma pauperis* within thirty (30) days of the date of entry hereof.

7. Plaintiff is prohibited from filing any other pleadings, motions, memoranda, or material not specifically required herein or otherwise specifically ordered by the Court until he is granted leave to proceed *in forma pauperis* or pays the full filing fee. Any documents submitted in violation of this paragraph will not be considered. Moreover, Plaintiff is REQUIRED to write the case number on any submission.

8. Each submission must bear the appropriate civil action number for the case to which it pertains. If Plaintiff has more than one action pending and Plaintiff fails to identify a case number on any submission, the Court will only docket that submission in the earliest filed case. Plaintiff may also not submit one single response to comport with the directives of the Court in more than one individual case. Instead, Plaintiff must submit a separate response for each individual action. If Plaintiff attempts to submit one response listing a group of case numbers, the Court will only docket that submission in the first-listed civil action on that submission. The Court will not consider the submission as a response in any other civil action.

9. The Court DOES NOT ACCEPT documents or pleadings submitted on paper that exceeds 8½ inches by 11 inches in size, or that contains writing on the reverse side of a page.

**ANY SUBMISSION MADE IN VIOLATION OF THIS PARAGRAPH WILL NOT BE
CONSIDERED BY THE COURT.**

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10. Plaintiff must immediately advise the Court of his new address in the event that he is transferred, released, or otherwise relocated while the action is pending. **FAILURE TO DO SO WILL RESULT IN DISMISSAL OF THE ACTION.**

11. All correspondence for the Court shall be directed to: Spottswood W. Robinson III and Robert R. Merhige, Jr., Federal Courthouse, 701 East Broad Street, Richmond, VA 23219.

The Clerk is DIRECTED to send a copy of this Memorandum Order to Plaintiff.

It is so ORDERED.

/s/ RCY

Roderick C. Young
United States Magistrate Judge

Date: September 8, 2020
Richmond, Virginia

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

FERNANDO GALINDO
CLERK OF COURT

MARK S. DAVIS
CHIEF JUDGE

CONSENT TO COLLECTION OF FEES

September 8, 2020

Marvin Eduardo Luna Gomes,
Plaintiff,

v.

Internal Revenue Services,
Defendants.

Civil Action No. 3:20cv675

I, Marvin E. Luna Gomez, inmate no. #1417981, understand that I must pay a filing fee in the amount of \$350.00 in the above styled action. Accordingly, I acknowledge that I must submit an initial partial filing fee equal to twenty percent (20%) of the greater of:

- (a) the average monthly deposits to my trust account for the six-month period immediately preceding the submission of this action; or
- (b) the average monthly balance in my trust account for the six-month period immediately preceding the submission of this action.

I further acknowledge that I must make monthly payments towards the balance of the \$350.00 filing fee. These monthly payments shall be equal to twenty percent (20%) of the preceding month's deposits to my inmate account. Accordingly, I agree to maintain a balance of twenty percent (20%) of the previous month's income in my account for payment to the court. I recognize that if I fail to maintain such a balance my action is subject to immediate dismissal.

I hereby consent for the appropriate prison official to withdraw from my account and forward to the court a money order equal to twenty percent (20%) my preceding month's income to the United States District Court. I agree that if I am transferred prior to payment of the full fee, the balance owing will be reported to the new institution with directions to continue the withdrawal of funds until the entire fee is paid. Payment will continue, if necessary, after resolution of this action until the full filing is paid.

I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the court pursuant to 28 U.S.C. § 1915(f)(2)(B).

Date: 09/17/2020

Marvin Eduardo Luna Gomez
SIGNATURE OF INMATE