

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Toni Marie Davis — PETITIONER
(Your Name)

VS.

Bill de Blasio, City of New York — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

I believe I was granted leave to proceed *in forma pauperis* in Maryland District Court in another case

Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

The appointment was made under the following provision of law: _____
_____, or

a copy of the order of appointment is appended.

RECEIVED

FEB 14 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

Toni Marie Davis
(Signature)

RECEIVED

FEB - 7 2023

OFFICE OF THE CLERK
SUPREME COURT, U.S.

**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Toni Marie Davis, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ 0	\$ _____	\$ _____	\$ _____
Self-employment	\$ 0	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ 0	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ 0	\$ _____	\$ _____	\$ _____
Gifts	\$ 0	\$ _____	\$ _____	\$ _____
Alimony	\$ 0	\$ _____	\$ _____	\$ _____
Child Support	\$ 0	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ 0	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ 900 a month	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ 0	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ 345 Food stamp ²	\$ _____	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ 900 + Food stamp 05	\$ _____	\$ _____	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
Amazon	Halibut Ave	July 2021	\$ 85 for 150 a month
			\$
			\$

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
			\$
			\$
			\$

4. How much cash do you and your spouse have? \$ N/A

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
	\$	\$
	\$	\$
	\$	\$

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed. *None*

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith"). *N/A*

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>248</u>	\$ _____
Are real estate taxes included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$ <u>88.88</u>	\$ _____
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ <u>345</u> Foodstar \$ <u>7.05</u>	
Clothing	\$ <u>200</u>	\$ _____
Laundry and dry-cleaning	\$ <u>245</u>	\$ _____
Medical and dental expenses	\$ _____	\$ _____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ _____	\$ _____
Credit card(s)	\$ _____	\$ _____
Department store(s)	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	<u>\$ 781</u>	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes

No

If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes

No

If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I am unable to pay at this time because I am not working at this time and unfortunately I do not have any money saved up. please here my case. Thank you.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 03, 2023

Tom Marie Davis
(Signature)

No. _____

SUPREME COURT OF THE UNITED STATES

Toni Marie Davis,

Petitioner,

vs.

Bill de Blasio, City of New York,

Respondent.

**On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Second Circuit**

PETITION FOR A WRIT OF CERTIORARI

**Toni Marie Davis
Petitioner
123 West 29th street Apt 10L
Baltimore, Maryland 21218
Phone: (410) 889-1404
E-Mail: y1final@yahoo.com**

Friend of the Court

Question Presented

Whether Ms. Davis's complaint plausibly accuses The City of New York including Mayor Bill de Blasio of violating The Constitution of The United States of America as well as The New York Constitution and other great federal and state laws of the United States of America by legislating from the executive branch of the New York City Government by making new laws/mandates making all US Citizens have to show acceptable proof of vaccination to go to work, movie theaters, live music, concert venues, museums and galleries, Aquariums and zoo's, professional sports arenas, stadiums, convention centers, exhibit halls, performing arts theaters, bowling alleys, Arcades, pool and billiard halls, recreational game centers, casinos, Restaurants, Catering halls, event spaces, hotel banquet rooms, bars, cabarets, night clubs. Cafeterias, grocery stores, coffee shops, fast food, quick service, Gyms, fitness centers, fitness classes, pools, indoor studios, dance studios, sports classes, this whole mandate is known as the Key to NYC Pass. The unvaccinated now has to show CDC issued vaccination card, the New York State Excelsior Pass, the Clear Health Pass, and/or the NYC COVID Safe App. And also starting December 14th, 2021 the program required children aged 5-11 to show proof of one vaccination dose for all venues as well. There by violating the constitution and great laws of this land, which violate Ms. Davis's rights along with the rights of every unvaccinated person in America that will be unable to go to or come into New York City and live free.

Question 1

The United States Court of Appeals for The Second Circuit Dismissed my appeal claiming that it is frivolous. I would like the Supreme Courts very valuable opinion. What do you think?

Question 2

Does the Mayor and The City of New York get to ban people that are unvaccinated from working, going to the grocery store and basically anywhere else it wants to the point where the unvaccinated really can't leave their homes because they refuse to take an experimental drug. A drug that we now know, the drug companies admit and we can prove causes all kinds of illnesses including Sudden death and unrepairable heart problems like myocarditis and Blood clots. Not to mention the fact that it appears now that the only ones catching and catching it multiple times I might add and also spreading it are the vaccinated. Today is 02/03/2023 and I have never been vaccinated and I have never had Covid-19 in any way shape or form and I don't wear mask.

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Constitutional Provisions and Federal Laws

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Federal Law 18 U.S. Code § 241 - Conspiracy against rights

Harassment including Intentional conflict of emotional distress

Petition for Writ of Certiorari

I Toni Marie Davis, a citizen of the United States of America, respectfully petitions this court for a writ of certiorari to review the judgment of the Second Circuit Court of Appeals.

Opinions Below

The decision by the Second Circuit Court of Appeals dismissed my Appeal on October 21, 2022. That order is attached in Exhibit A.

Jurisdiction

My Appeal was dismissed on October 21, 2022. I Toni Marie Davis invoke this Court's jurisdiction under 28 U.S.C. S 1257, having timely filed this petition for a writ of certiorari within ninety days of the Second Circuit Court of Appeals judgment.

Constitutional Provisions Involved

Violation of the 14th Amendment of the United States Constitution

14th Amendment: Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

A) Articles 1-3: Branches, Checks, and Balances

The first three articles of the Constitution establish three branches of government with specific powers: Executive (headed by the President), Legislative (Congress) and Judicial (Supreme Court).

Article I, Section 1 of the United States Constitution States

Article I, Section 1, of the United States Constitution, provides that: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

New York Constitution

Article 9 - Local Governments

Section 2 - Powers and duties of legislature; home rule powers of local governments; statute of local governments.

Universal Citation: NY Const art 9 § 2

The legislature shall provide for the creation and organization of local governments in such manner as shall secure to them the rights, powers, privileges and immunities granted to them by this constitution.

Subject to the bill of rights of local governments and other applicable provisions of this constitution, the legislature:

Shall enact, and may from time to time amend, a statute of local governments granting to local governments powers including but not limited to those of local legislation and administration in addition to the powers vested in them by this article. A power granted in such statute may be repealed, diminished, impaired or suspended only by enactment of a statute by the legislature with the approval of the governor at its regular session in one calendar year and the re-enactment and approval of such statute in the following calendar year.

Shall have the power to act in relation to the property, affairs or government of any local government only by general law, or by special law only (a) on request of two-thirds of the total membership of its legislative body or on request of its chief executive officer concurred in by a majority of such membership, or (b) except in the case of the city of New York, on certificate of necessity from the governor reciting facts which in the judgment of the governor constitute an emergency requiring enactment of such law and, in such latter case, with the concurrence of two-thirds of the members elected to each house of the legislature.

Shall have the power to confer on local governments powers not relating to their property, affairs or government including but not limited to those of local legislation and administration, in addition to those otherwise granted by or pursuant to this article, and to withdraw or restrict such additional powers.

In addition to powers granted in the statute of local governments or any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

Federal Law 42 U.S. Code § 1985 - Conspiracy to interfere with civil rights

Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the

United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State

shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Law 18 U.S. Code § 241 - Conspiracy against rights

U.S. Code

Federal offence

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Harassment including Intentional conflict of emotional distress

“The tort of intentional infliction of emotional distress was first recognized as a separate cause of action without the need for an accompanying tort in Cullison v. Medley, 570 N.E.2d 27 (Ind. 1991). In Cullison, the Indiana Supreme Court defined the tort as occurring where” one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another.” Lindsey v. DeGroot, 898 N.E.2d 1251, 1264 (Ind. App. 2009). The elements of the tort, then, are that the defendant: (1) engages in extreme and outrageous conduct; (2) which intentionally or recklessly; (3) causes; (4) severe emotional distress to another”. (John P. Borger, Leita Walker, Katie Feiereisel, Nicole Truso, and Terran

Chambers, Employment Libel & Privacy Law (2017 Edition), Minnesota/Privacy,
II.A.1. (Media Law Resource Center. Matthew Bender)

Statement of the Case

In this Writ to certiorari I intend to argue that Mayor de Blasio of New York including New York City at the encouragement of President Biden has violated the U.S Constitution and other federal laws of this great land in the employment of and by consent of the City of New York. Injuring me as an unvaccinated person who can no longer function in the City of New York because of the illegal vaccine passport/mandates/laws put in place by the Mayor and The City.

The Mayor has deprived me of equal protection of the laws, and of equal privileges. What the Mayor has done is completely illegal, and an abuse of power, it is unconstitutional and a violation of the above referenced Constitutions and federal laws.

The Mayor has deprived me of having and exercising any rights and privileges as a citizen of the United States of America.

First I want to reiterate the following places I cannot go in New York City because I am not vaccinated: work, movie theaters, live music, concert venues, museums and galleries, Aquariums and zoo's, professional sports arenas, stadiums, convention centers, exhibit halls, performing arts theaters, bowling ally's, Arcades, pool and billiard halls, recreational game centers, casinos, Restaurants, Catering halls, event spaces, hotel banquet rooms, bars, cabarets, night clubs. Cafeterias, grocery stores, coffee shops, fast food, quick service, Gyms, fitness centers, fitness classes, pools, indoor studios, dance studios, sports classes, this whole mandate is known as the Key to NYC Pass. We now according to him cannot work unless we are vaccinated. As of December 14, 2021, Mayor Bill de Blasio increased his reign

of terror on the unvaccinated because of the new variant call Omicron and so the Mayors new laws make acceptable proof of vaccination include a CDC issued vaccination card, the New York State Excelsior Pass, the Clear Health Pass, and the NYC COVID Safe App. Starting December 14th, 2021 the program required children aged 5-11 to show proof of one vaccination dose for those venues as well. Starting December 27, 2021, New Yorkers aged 12 and older are now required to show proof of two vaccine doses, instead of one, except for those who have received the Johnson & Johnson vaccine.

He is even going after our children, which in fact usurps the God given rights of the parents. You now need to have papers like the Jews needed back when they were being persecuted and murdered by Nazi Germany.

The fact of the matter

Mayor de Blasio is not a king he is an elected leader of the City of New York. He does not have the authority to command we the people to do as he says. Legislature/Congress makes the laws of this land not the Mayors, Governors or Presidents. Both the New York Supreme Court and the United States Supreme Court agree that Mayors do not get to make new laws. Legislature/Congress makes new laws. The United States Constitution was put into place for such a time as this. It is so that we the people will not be ruled and dictated to by our elected leaders, who are in fact and probably to their great surprise, our servant's.

ELECTED LEADERS ARE THE SERVENTS OF THE PEOPLE NOT THE OTHER WAY AROUND

Direct appeal

Whether Ms. Davis's complaint plausibly accuses the City of New York including Mayor Bill de Blasio of violating the Constitution of The United States as well as the New York Constitution and other great federal and state laws of the United States of America. There by violating her rights along with the rights of every unvaccinated person in America that will be unable to go to or come into New York City and live free.

REASONS FOR GRANTING THE WRIT

To avoid erroneous deprivations of rights, this Court should clarify who in the land has the right to make new laws in this great land called America. And to enforce the laws that have been outrageously broken by the City of New York and including Mayor Bill de Blasio in an attempt to rule and rain as king in a land that has made sure through the constitution and other laws of the land that we would never have a king. There are three branches of government for a reason.

In SUPREME COURT OF THE UNITED STATES, Nos. 21A244 and 21A247, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL., APPLICANTS 21A244 v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL. OHIO, ET AL., APPLICANTS 21A247 v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, ET AL.

[January 13, 2022] Also including Cite as: 595 U. S. ____ (2022) 1. GORSUCH, J., concurring SUPREME COURT OF THE UNITED STATES. Nos.

21A244 and 21A247 NATIONAL FEDERATION OF INDEPENDENT BUSINESS, ET AL., APPLICANTS

21A244 v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY

AND HEALTH ADMINISTRATION, ET AL.

OHIO, ET AL., APPLICANTS

21A247 v.

DEPARTMENT OF LABOR, OCCUPATIONAL SAFETY

AND HEALTH ADMINISTRATION, ET AL.

ON APPLICATIONS FOR STAYS

[January 13, 2022]

The Supreme Court struck down President Biden's Mandate/law and said in so doing the following:

"Although COVID-19 is a risk that occurs in many workplaces, it is not an occupational hazard in most," the Court ruled. "COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases."

"Court ruled that COVID-19 is not an occupational hazard but a 'universal risk' And the court said that President Biden and his administration needed to go through congress to make new laws he could not make them from the Executive Branch of the government".

ALSO

You're Honor's a State Supreme Court judge in Nassau County has ruled against Gov. Kathy Hochul's statewide mask mandate. In case Matter of Demetriou v-New York State Department of Health. A New York judge struck down the state's mask mandate on Monday January 24, 2022, one week before it was due to expire, ruling the governor overstepped her authority in imposing a rule that needed to have been passed by the state legislature.

Judge Thomas Rademaker of New York State Supreme Court on Long Island found that the state legislature last year curbed any governor's ability to issue decrees, such as a mask mandate, amid a declared state of emergency.

Rademaker wrote that his ruling that "enacting any laws to this end is entrusted solely to the State Legislature."

Justice Thomas Rademaker said the rule amounted to "a law that was promulgated and enacted unlawfully by an Executive branch state agency, and therefore void and unenforceable as a matter of law."

Justice Thomas Rademaker also said "Commissioner Bassett and Governor Hochul must take their case to the State Legislature," he wrote.

Judge Thomas Rademaker ruled that Hochul's executive order was unconstitutional as it bypassed the lawmaking powers of the legislature.

CONCLUSION

For the foregoing reasons, Miss Davis respectfully requests that this Court issue a writ of certiorari to review the judgment of the Second Court of Appeals. Please do rule in my favor and I thank you for your time and consideration in this matter.

DATED this 3rd day of February 2023.



Toni Marie Davis

123 West 29th street Apt 10L

Baltimore, Maryland 21218

Phone: 410-889-1404

Email: y1final@yahoo.com

Certificate of Service

I HEREBY CERTIFY, that on this 3rd day of February 2023, a copy of this Complaint was mailed via First Class Postage to all parties

Respondents

1. Mayor Bill de Blasio

City Hall

New York, NY 10007

2. City of New York

City Hall

New York, NY 10007

3. Solicitor General of the United States
Room 5614

Department of Justice
950 Pennsylvania Ave
N.W. Washington D.C. 20530-0001

Toni Marie Davis

Petitioner

Toni Marie Davis

E.D.N.Y. - Bklyn.
21-cv-4853
Matsumoto, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 21st day of October, two thousand twenty-two.

Present:

Debra Ann Livingston,
Chief Judge,
William J. Nardini,
Steven J. Menashi,
Circuit Judges.

Toni Marie Davis,

Plaintiff-Appellant,

v.

21-2781

Bill de Blasio, City of New York,

Defendant-Appellee.

Appellant, pro se, moves for default judgment. Upon due consideration, it is hereby ORDERED that the motion is DENIED. It is further ORDERED that the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Pillay v. INS*, 45 F.3d 14, 17 (2d Cir. 1995) (per curiam).

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

Catherine O'Hagan Wolfe



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
TONI MARIE DAVIS,

MEMORANDUM AND ORDER

Plaintiff,

21-CV-4853 (KAM) (LB)

-against-

MAYOR BILL DE BLASIO; CITY OF
NEW YORK,

Defendants.

-----x
KIYO A. MATSUMOTO, United States District Judge:

Plaintiff Toni Marie Davis, a resident of Baltimore, Maryland, brings this *pro se* action pursuant to 28 U.S.C. § 1331, alleging that her constitutional rights have been violated by New York City's COVID-19 mask mandate. (ECF No. 1, Complaint ("Compl.")) Plaintiff's request to proceed *in forma pauperis* ("IFP") is granted. (ECF No. 2.) For the reasons set forth below, plaintiff's claim is dismissed for lack of standing.

BACKGROUND

Plaintiff's complaint contains many statements reflecting her strong disagreement with the New York City COVID-19 mask mandate, but fails to allege specific facts demonstrating how the mandate violates plaintiff's constitutional rights. (See generally Compl.) Specifically, plaintiff asserts that New York City Mayor Bill de Blasio "has exercised Nazi style Tyrannical rule over the city of New York including all 5 boroughs." (*Id.* at 3.) She asserts that Mayor

de Blasio "is using Covid as an excuse to infringe on the liberties and sovereignty of the American people in an attempt to ultimately take control." (*Id.* at 5.) Plaintiff claims that Mayor de Blasio's actions will lead to forced vaccine mandates which will lead to "civil war." (*Id.* at 6.) Plaintiff questions how President Biden can restrict travel for Americans due to the COVID-19 pandemic but use taxpayers money to evacuate "30,000 unvaccinated covid having Afghans into this country." (*Id.*) Plaintiff seeks fifteen billion dollars in punitive damages "for the horrific acts against the freedoms of the American people and the Will of God who said WHOM THE LORD SETS FREE IS FREE INDEED." (*Id.* at 11 (emphasis in original)).

STANDARD OF REVIEW

A complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Matson v. Bd. of Educ.*, 631 F.3d 57, 63 (2d Cir. 2011) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Although all allegations contained in the complaint are assumed to be true, this tenet is "inapplicable to legal conclusions." *Iqbal*, 556 U.S. at 678. In reviewing a *pro se* complaint, the court must be mindful that the plaintiff's

pleadings should be held "to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)); see also *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (noting that even after *Twombly*, courts "remain obligated to construe a *pro se* complaint liberally").

In addition to requiring sufficient factual matter to state a plausible claim to relief, pursuant to Rule 8 of the Federal Rules of Civil Procedure, plaintiff must provide a short, plain statement of claim against each defendant named so that they have adequate notice of the claims against them. *Iqbal*, 556 U.S. 678 (Rule 8 "demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation."). A pleading that only "tenders naked assertions devoid of further factual enhancement" will not suffice. *Id.* (internal citations and alterations omitted). To satisfy this standard, the complaint must at a minimum "disclose sufficient information to permit the defendant to have a fair understanding of what the plaintiff is complaining about and to know whether there is a legal basis for recovery." *Kittay v. Kornstein*, 230 F.3d 531, 541 (2d Cir. 2000) (internal quotation marks omitted).

Under 28 U.S.C. § 1915(e)(2)(B), a district court shall dismiss an *in forma pauperis* action where it is satisfied that the action "(i) is frivolous or malicious; (ii) fails to

state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." An action is "frivolous" when either: (1) "the 'factual contentions are clearly baseless,' such as when allegations are the product of delusion or fantasy"; or (2) "the claim is 'based on an indisputably meritless legal theory.'" *Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998) (internal citation omitted).

DISCUSSION

To bring suit in a federal court, a plaintiff must establish that she has standing to pursue her claims under Article III of the United States Constitution. *E.M. v. N.Y.C. Dep't of Educ.*, 758 F.3d 442, 449 (2d Cir. 2014). "'The irreducible constitutional minimum of standing' derives from Article III, Section 2 of the U.S. Constitution, which limits federal judicial power to 'cases' and 'controversies.'" *Natural Res. Def. Council, Inc. v. U.S. Food & Drug Admin.*, 710 F.3d 71, 79 (2d Cir. 2013) (quoting U.S. Const. art. III, § 2 and *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "To establish that a case or controversy exists so as to confer standing under Article III, a plaintiff must satisfy three elements: (a) the plaintiff must suffer an 'injury in fact,' (b) that injury must be 'fairly traceable' to the challenged action, and (c) the injury must be likely to be 'redressed by a favorable decision'

of the federal court." *Id.* (citations omitted); *see also Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013) ("[F]or a federal court to have authority under the Constitution to settle a dispute, the party before it must seek a remedy for a personal and tangible harm."). To have standing to bring a constitutional claim, a plaintiff must show that she was personally deprived of rights or privileges guaranteed by the United States Constitution. *See Collins v. W. Hartford Police Dep't*, 324 F. App'x 137, 139 (2d Cir. 2009) (summary order); *Cunningham v. U.S.*, No. 18-cv-4492, 2020 WL 6799685, at *2 (E.D.N.Y. Nov. 19, 2020).

Here, plaintiff, a resident of Maryland, has failed to allege facts to show how she is personally affected by the New York City mask mandate. Furthermore, even if she had alleged that she was personally deprived of her rights, her allegations would not constitute an injury in fact that is concrete and particularized to establish standing. Any alleged harm is speculative and hypothetical as plaintiff has not alleged an actual injury. Accordingly, because plaintiff fails to allege any facts to show that she has personally suffered a constitutional injury she lacks standing to bring this suit. *See e.g., Schiavo v. Carney*, No. 20-cv-1384, 2021 WL 2936137, at *3-4 (D. Del. July 13, 2021) (noting that there are no allegations in the complaint of an injury personal to plaintiff

as a result of the mask mandate); *Beaudoin v. Baker*, No. 20-cv-11187, 2021 WL 1162927, at *4 (D. Mass. Mar. 25, 2021) (finding plaintiff has no standing to challenge mask mandate); *Bechade v. Baker*, No. 20-cv-11122, 2020 WL 5665554, at *3 (D. Mass. Sept. 23, 2020) (plaintiff who did not show mask requirement caused any concrete and particularized or actual or imminent harm did not have standing).

CONCLUSION

Plaintiff's complaint is dismissed without prejudice for lack of subject matter jurisdiction due to Plaintiff's lack of standing. See Fed. R. Civ. P. 12(h)(3); 28 U.S.C. § 1915(e)(2)(B). The court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. See *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). The Clerk of Court is respectfully directed to enter judgment, close this case, send a copy of this Order and the judgment to plaintiff, and note service on the docket.

SO ORDERED.

/s/
KIYO A. MATSUMOTO
United States District Judge
Eastern District of New York

Dated: October 4, 2021
Brooklyn, New York