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**NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 23-1224

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NOEL GARCIA  
Appellant

v.

PHILADELPHIA DISTRICT ATTORNEY'S OFFICE;  
LYNNE M. ABRAHAM

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil Action No. 2:22-cv-03864)  
District Judge: Honorable John M. Gallagher

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Submitted for Possible Dismissal Pursuant to 28 U.S.C. § 1915(e)(2)(B), or  
Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6  
May 11, 2023

Before: KRAUSE, PORTER, and MONTGOMERY-REEVES, Circuit Judges

(Opinion filed: June 1, 2023)

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OPINION\*

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PER CURIAM

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

Plaintiff Noel Garcia appeals pro se and in forma pauperis from the District Court's order dismissing his complaint.<sup>1</sup> We will summarily affirm.

Garcia alleges that on September 15, 2008, the Philadelphia District Attorney's Office issued an arrest warrant against him on the charges of aggravated assault, simple assault, and reckless endangerment of another person. At the time, he was already in the custody of the Pennsylvania Department of Corrections, serving an aggregate sentence for unrelated criminal convictions, and the charges relate to conduct that occurred while Garcia was incarcerated. According to Garcia, the State neither arraigned him on, nor pursued resolution of, the charges listed on the 2008 arrest warrant. Garcia claims that the warrant was cancelled on February 12, 2021, and that he was never brought before a judicial officer for a preliminary arraignment for a probable cause determination.<sup>2</sup>

As a result of the 2008 warrant and detainer, Garcia filed a complaint against Defendants Abraham and the Philadelphia District Attorney's Office, claiming they violated his Fourth and Fourteenth Amendment rights, falsely arrested and imprisoned him, and subjected him to malicious prosecution. Garcia requests compensatory and punitive damages. Garcia alleges that he suffered mental anguish, resulting in him receiving a schizophrenia diagnosis in 2022, and physical pain and discomfort, including a polyp on his colon that required an evaluation for fecal diversion. At the initial

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<sup>1</sup> Garcia filed three motions for leave to amend his complaint, which the District Court construed as supplements to the original complaint. We do the same.

<sup>2</sup> Garcia also alleges that the charges were dismissed without explanation on the same date.

screening on his complaint, the District Court dismissed the complaint with prejudice for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). This appeal followed.<sup>3</sup>

We have jurisdiction pursuant to 28 U.S.C. § 1291 and exercise plenary review over the District Court's dismissal under § 1915(e)(2)(B)(ii). See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000). We may summarily affirm the District Court's judgment if the appeal presents no substantial question, see 3d Cir. L.A.R. 27.4 and I.O.P. 10.6, and must dismiss the appeal under § 1915 if it is frivolous.

To state a claim under 42 U.S.C. §1983, "a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law." West v. Atkins, 487 U.S. 42, 48 (1988). "A defendant in a civil rights action must have personal involvement in the alleged wrongs" to be liable. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). Garcia alleges that Defendants the Philadelphia District Attorney's Office and Abraham, the former Philadelphia County District Attorney, were responsible for the issuance of the September 2008 warrant, the unnecessary delay in bringing Garcia before a judicial officer for arraignment, and the cancellation of the warrant and charges in 2021 without explanation. Upon careful consideration, we agree with the District Court's assessment of Garcia's complaint.

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<sup>3</sup> On March 24, 2023, Garcia filed a motion to amend his appeal that primarily sought to provide supplemental authority in support of the appeal. We construe the proposed amendment as a supplement to his notice of appeal.

It is well settled that prosecutors are entitled to absolute immunity from liability for monetary damages under § 1983 for activities that are “intimately associated with the judicial phase of the criminal process.” Imbler v. Pachtman, 424 U.S. 409, 430 (1976). This absolute immunity entitles District Attorneys and other supervisory prosecutors to absolute immunity from claims based on their role in initiating and pursuing a prosecution on behalf of the Commonwealth, Id. at 430-31, and in seeking an arrest warrant, Kalina v. Fletcher, 522 U.S. 118, 129 (1997). Similarly, a prosecutor is entitled to absolute immunity from § 1983 claims related to conduct that is “directly connected with the prosecutor’s basic trial advocacy duties,” Van de Kamp v. Goldstein, 555 U.S. 335, 346 (2009) or is acting in a role that is an extension of the prosecutor’s fundamental judgment of “whether and when to prosecute.” Imbler, 424 U.S. at 431 n.33. Thus, prosecutors are entitled to absolute immunity from claims for damages related to their roles in choosing when and whether to dismiss charges or withdrawal an arrest warrant lodged against a defendant. See Burns v. Reed, 500 U.S. 478, 486 (1991) (extending absolute immunity to protect those functions in which the prosecutor acts as an “advocate for the State,” even if they “involve actions preliminary to the initiation of a prosecution and actions apart from the courtroom”). Thus, we agree with the District Court’s determination that Defendant Abraham is entitled to absolute immunity and the individual capacity claims against her must be dismissed.

Garcia also brought a claim against the Philadelphia District Attorney’s office pursuant to Monell v. Dep’t of Soc. Serv., 436 U.S. 658 (1978), and an official capacity

claim against Defendant Abrahams. To state a § 1983 claim against a municipality or public entity, including its employees acting in an official capacity, a complaint must allege that a constitutional deprivation was caused by an official policy or informally adopted custom. Reitz v. County of Bucks, 125 F.3d 139, 148 (3d Cir. 1997); see Kentucky v. Graham, 473 U.S. 159, 166 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”). Garcia’s allegations related to the claimed custom or policy of the District Attorney’s office are too vague and conclusory to show evidence of an actionable custom or policy on the part of the DA’s office. See Reitz, 125 F.3d at 145; McTernan v. City of York, 564 F.3d 636, 659 (3d Cir. 2009). The District Court therefore correctly dismissed these claims.

For the foregoing reasons, the appeal does not present a substantial question. We will summarily affirm the District Court’s order. See 3d Cir. L.A.R. 27.4 (2011); 3d Cir. I.O.P. 10.6 (2018).

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

NOEL GARCIA,  
Plaintiff,

v.

PHILADELPHIA DISTRICT  
ATTORNEY'S OFFICE, *et al.*,  
Defendants.

CIVIL ACTION NO. 22-CV-3864

**ORDER**

AND NOW, this 22<sup>nd</sup> day of December, 2022, upon consideration of Noel Garcia's Motion to Proceed *In Formā Pauperis* (ECF No. 2), Prisoner Trust Fund Account Statement (ECF No. 3), *pro se* Complaint (ECF No. 1), Motion for Leave to Amend Complaint (ECF No. 7), Motion for Allowance to Amend Complaint (ECF No. 9), Motion for Leave to Amend Complaint (ECF No. 10), and Motion to Appoint Counsel (ECF No. 8), it is **ORDERED** that:

1. Leave to proceed *in formā pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. Noel Garcia, #HQ-9129, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Warden of SCI Houtzdale or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Garcia's inmate account; or (b) the average monthly balance in Garcia's inmate account for the six-month period immediately preceding the filing of this case. The Warden or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Garcia's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the

Clerk of Court equaling 20% of the preceding month's income credited to Garcia's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

3. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Warden of SCI Houtzdale.
4. The Complaint is **DEEMED** filed.
5. Garcia's Motion for Leave to Amend Complaint, Motion for Allowance to Amend Complaint, and Motion for Leave to Amend Complaint are **GRANTED**.
6. Garcia's Complaint is **DISMISSED WITH PREJUDICE** for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) for the reasons stated in the Court's Memorandum.
7. Garcia's Motion to Appoint Counsel is **DENIED AS MOOT**.
8. The Clerk of Court shall **CLOSE** this case.

**BY THE COURT:**

/s/ John M. Gallagher

**JOHN M. GALLAGHER, J.**

(2)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**NOEL GARCIA,**  
**Plaintiff,**

**v.**

**PHILADELPHIA DISTRICT  
ATTORNEY'S OFFICE, et al.,**  
**Defendants.**

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**CIVIL ACTION NO. 22-CV-3864**

**MEMORANDUM**

**GALLAGHER, J.**

**DECEMBER 22, 2022**

Plaintiff Noel Garcia, a convicted prisoner currently incarcerated at SCI Houtzdale, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, asserting violations of his constitutional rights. Currently before the Court are Garcia's Complaint ("Compl." (ECF No. 1)), three motions to amend the complaint,<sup>1</sup> his Motion for Leave to Proceed *In Forma Pauperis*,

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<sup>1</sup> Since filing his Complaint, Garcia has filed three motions for leave to amend his Complaint. (See ECF Nos. 7, 9, 10.) His first Motion to Amend seeks to clarify his Complaint by adding a supervisory liability claim against Defendant Abraham. (ECF No. 7.) His second Motion to Amend seeks to clarify his claims by explaining how each named Defendant acted under color of state law and in violation of his constitutional rights. (See ECF No. 9.) His third Motion to Amend corrects the spelling of defendant Abraham's first name. (See ECF No. 10.)

In general, an amended complaint, once submitted to the Court, serves as the governing pleading in the case because an amended complaint supersedes the prior pleading. See *Shahid v. Borough of Darby*, 666 F. App'x 221, 223 n.2 (3d Cir. 2016) (*per curiam*) ("Shahid's amended complaint, however, superseded his initial complaint." (citing *W. Run Student Hous. Assocs. LLC v. Huntingdon Nat'l Bank*, 712 F.3d 165, 171 (3d Cir. 2013))); see also *Garrett v. Wexford Health*, 938 F.3d 69, 82 (3d Cir. 2019), *cert. denied*, 140 S. Ct. 1611 (2020) ("In general, an amended pleading supersedes the original pleading and renders the original pleading a nullity. Thus, the most recently filed amended complaint becomes the operative pleading.") (internal citations omitted); see also *Argentina v. Gillette*, 778 F. App'x 173, 175 n.3 (3d Cir. 2019) (holding that "liberal construction of a *pro se* amended complaint does not mean accumulating allegations from superseded pleadings").

Moreover, the Federal Rules of Civil Procedure do not contemplate piecemeal pleadings or the amalgamation of pleadings, even in the context of a *pro se* litigant. See *Bryant v. Raddad*, No. 21-1116, 2021 WL 2577061, at \*2 (E.D. Pa. June 22, 2021) ("Allowing a plaintiff to file partial amendments or fragmented supplements to the operative pleading, 'presents an undue risk



and his Prisoner Trust Fund Account Statement. (ECF Nos. 2, 3.) Garcia asserts individual and official capacity claims against the Philadelphia District Attorney's Office and former District Attorney Lynne Abraham. (Compl. at 2.) For the following reasons Garcia will be granted leave to proceed *in forma pauperis* and his Complaint will be dismissed with prejudice.

## I. FACTUAL ALLEGATIONS<sup>2</sup>

Garcia alleges that on September 15, 2008, an arrest warrant was issued by the Philadelphia District Attorney's Office, and he was detained on charges of aggravated assault, simple assault, and reckless endangerment of another person.<sup>3</sup> (Compl. at 20.) At the time, he was in the custody of the Pennsylvania Department of Corrections as a result of unrelated crimes.<sup>4</sup> (*Id.*) Garcia alleges that the charges arose from an incident that occurred at a

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of piecemeal litigation that precludes orderly resolution of cognizable claims.” (quoting *Uribe v. Taylor*, No. 10-2615, 2011 WL 1670233, at \*1 (E.D. Cal. May 2, 2011)); *Brooks-Ngwenya v. Bart Peterson's the Mind Tr.*, No. 16-193, 2017 WL 65310, at \*1 (N.D. Ind. Jan. 6, 2017) (“Piecemeal pleadings cause confusion and unnecessarily complicate interpretation of a movant's allegations and intent[] . . .”).

Garcia's first and second proposed amendments include few facts, and merely advance legal assertions. As such, both would be subject to dismissal were either deemed the operative pleading. See *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations”); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (court is “not bound to accept as true a legal conclusion couched as a factual allegation.”) (citation omitted). It is unlikely that Garcia understood the consequences of serially requesting leave to amend his Complaint. In the interests of judicial economy, the Court will grant Garcia's motions, construe the proposed amendments as supplements to the original Complaint, and screen the filings together.

<sup>2</sup> The allegations set forth in this Memorandum are taken from Corbin's Complaint and supplements thereto. (ECF No. 1, 7, 9, 10.) The Court adopts the pagination supplied by the CM/ECF docketing system. Additionally, the Court includes facts reflected in the publicly available state court docket, of which this Court may take judicial notice. See *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006).

<sup>3</sup> A copy of the warrant is included with the Complaint. (See *id.* at 21.)

<sup>4</sup> Publicly available state court dockets reflect that on June 10, 2009, Garcia entered into a negotiated guilty plea on charges stemming from three separate arrests that occurred in 2007 and early 2008. The charges included third-degree murder and related offenses, two counts of aggravated assault, attempted murder, conspiracy to commit murder and related weapons

Philadelphia County jail during which Garcia was assaulted by correctional officers who were escorting him from one cell block to another. (*Id.* at 20 n.1.) Garcia alleges that he was never arraigned on the charges set forth in the warrant, and that the Commonwealth did not otherwise pursue resolution of the charges. He alleges that on February 12, 2021, the warrant was cancelled and the charges were dismissed without explanation. (*Id.*)

Garcia alleges that Defendants Abraham and the Philadelphia District Attorney's Office were aware of the warrant and its cancellation and were responsible for the delay in pursuing the charges by virtue of their positions. (*Id.* at 25-26.) He further alleges that as a result of the issuance and pendency of the warrant, he was subjected to 13 years in custody before the warrant was cancelled and the charges dismissed. (*Id.* at 26.) He claims that he has experienced poor physical and mental health as a result. (*Id.* at 27.)

Garcia asserts claims for violations of his Fourth and Fourteenth Amendment rights and for false arrest, false imprisonment, and malicious prosecution against Defendants Abraham and the Philadelphia District Attorney's Office. (*Id.* at 3, 25.) He asserts a municipal liability claim pursuant to *Monell v. Dep't of Soc. Serv. of the City of New York*, 436 U.S. 658 (1978) against the District Attorney's Office. (*Id.*) He seeks an award of compensatory and punitive damages. (*Id.* at 5.)

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offenses, and four counts of recklessly endangering another person. He was sentenced to an aggregate term of 22 to 45 years' imprisonment, for which he was incarcerated the entire time the arrest warrant mentioned in the Complaint was pending against him. *See Commonwealth v. Garcia*, CP-51-CR-10672-2007 (C.P. Philadelphia); *Commonwealth v. Garcia*, CP-51-CR-10740-2007 (C.P. Philadelphia); and *Commonwealth v. Garcia*, CP-51-CR-4348-2008 (C.P. Philadelphia). *See also Commonwealth v. Garcia*, No. 1186EDA 2012, 2013 WL 11264057, at \*1 (Pa. Super. Ct. June 24, 2013).

## II. STANDARD OF REVIEW

The Court will grant Garcia leave to proceed *in forma pauperis* because it appears that he is incapable of paying the fees to commence this civil action.<sup>5</sup> Accordingly, his Complaint is subject to screening pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). That provision of the Prison Litigation Reform Act requires the Court to dismiss the Complaint if it fails to state a claim. Whether a complaint fails to state a claim under § 1915(e)(2)(B)(ii) is governed by the same standard applicable to motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), *see Tourscher v. McCullough*, 184 F.3d 236, 240 (3d Cir. 1999), which requires the Court to determine whether the complaint contains “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). “At this early stage of the litigation,’ ‘[the Court will] accept the facts alleged in [the *pro se*] complaint as true,’ ‘draw[] all reasonable inferences in [the plaintiff’s] favor,’ and ‘ask only whether [that] complaint, liberally construed, . . . contains facts sufficient to state a plausible [] claim.’” *Shorter v. United States*, 12 F.4th 366, 374 (3d Cir. 2021) (quoting *Perez v. Fenoglio*, 792 F.3d 768, 774, 782 (7th Cir. 2015)). Conclusory allegations do not suffice. *Iqbal*, 556 U.S. at 678. As Garcia is proceeding *pro se*, the Court construes his allegations liberally. *Vogt v. Wetzel*, 8 F.4th 182, 185 (3d Cir. 2021) (citing *Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-45 (3d Cir. 2013)).

## III. DISCUSSION

The vehicle by which federal constitutional claims may be brought in federal court is 42 U.S.C. § 1983. “To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged

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<sup>5</sup> Because he is a prisoner, the PLRA requires Garcia to pay the full amount of the filing fee in installments regardless of the outcome of this case.

deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988). “A defendant in a civil rights action must have personal involvement in the alleged wrongs” to be liable. *See Rode v. Dellarciprete*, 845 F.2d 1195, 1207 (3d Cir. 1988); *Dooley v. Wetzel*, 957 F.3d 366, 374 (3d Cir. 2020) (“Personal involvement requires particular ‘allegations of personal direction or of actual knowledge and acquiescence.’” (quoting *Rode*, 845 F.2d at 1207)). *See Iqbal*, 556 U.S. at 676 (explaining that “[b]ecause vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official’s own individual actions, has violated the Constitution”).

Garcia alleges that former Philadelphia County District Attorney Lynne Abraham and the Philadelphia District Attorney’s Office were responsible for the issuance of the September 2008 warrant, for the unnecessary delay in bringing Garcia before a judicial officer for arraignment, and for the ultimate cancellation of the warrant without explanation.<sup>6</sup> He does not allege that Defendant Abraham personally engaged in this conduct, only that she was responsible for it by reason of her position as head of the District Attorney’s Office. (Compl. at 25-26; Motion to Amend, ECF No. 7 at 1-2.) He asserts claims for false arrest, false imprisonment, and malicious prosecution. These claims are not plausible and will be dismissed.

Prosecutors are entitled to absolute immunity from liability under § 1983 for acts that are “intimately associated with the judicial phase of the criminal process” such as “initiating a prosecution and . . . presenting the State’s case.” *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976). Moreover, District Attorneys and other supervisory prosecutors are likewise entitled to absolute immunity from claims based on their role in pursuing a prosecution on behalf of the

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<sup>6</sup> The Court notes that Defendant Abraham served as District Attorney from May 1991 through January 2010 and therefore could not have been personally involved in the decision to cancel the warrant and drop the charges against Garcia in 2021.

Commonwealth. *See Van de Kamp v. Goldstein*, 555 U.S. 335, 348-49 (2009). *See also Durham v. McElynn*, 772 A.2d 68, 69 (Pa. 2001) (citations omitted) (tort claims against district attorneys and assistant district attorneys properly dismissed because “high public officials are immune from suits seeking damages for actions taken or statements made in the course of their official duties.”) Because issuance of an arrest warrant and the decision whether to pursue charges against a criminal defendant fall squarely within a district attorney’s role as an advocate of the Commonwealth, Defendant Abraham is entitled to absolute immunity and the claims against her must be dismissed with prejudice. *See Ekwunife v. City of Philadelphia*, 245 F.Supp.3d 660, 670-72 (E.D. Pa. 2017).

Garcia also asserts a claim against the Philadelphia District Attorney’s Office. However, the United States Court of Appeals for the Third Circuit has held that district attorneys’ offices in Pennsylvania are not entities subject to suit under § 1983. *See Reitz v. Cty. of Bucks*, 125 F.3d 139, 148 (3d Cir. 1997) (holding that “the Bucks County District Attorney’s Office is not an entity for purposes of 1983 liability”). For this reason, too, Garcia’s official capacity claim against Defendant Abraham, which must also be deemed to be a claim against the Philadelphia District Attorney’s Office, *see Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985) (“Official capacity suits . . . ‘generally represent only another way of pleading an action against an entity of which an officer is an agent.’”), is not plausible. These claims will be dismissed with prejudice.

#### IV. CONCLUSION

For the reasons stated, Garcia will be granted leave to proceed *in forma pauperis* and his Complaint will be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). Garcia will not be granted leave to amend these claims because amendment would be futile. *Grayson v.*

*Mayview State Hosp.*, 293 F.3d 103, 108, 110 (3d Cir. 2002). Garcia's request for appointment of counsel will be denied as moot. An appropriate Order follows.

**BY THE COURT:**

/s/ John M. Gallagher

**JOHN M. GALLAGHER, J.**