24-___

In The

SUPREME COURT OF THE UNITED STATES

PALANI KARUPAIYAN

--Petitioners

v.

STATE OF NEW YORK, et al

-- Respondents

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the 2nd Circuit (23-1257)

APPENDIX: for PETITION FOR A WRIT OF CERTIORARI

Palani Karupaiyan.
Pro se, Petitioner,
1326 W William St,
Room#2.
Philadelphia, PA 19132
212-470-2018(M)

List of Appendix

1. UNITED STATES COURT OF APPEALS -CA2'S SUMMARY ORDER MAY 15 2024

23-1257-cv *Karupaiyan v. State of New York*

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

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 15th day of May, two thousand twenty-four.

Present:

DENNIS JACOBS,
WILLIAM J. NARDINI,

STEVEN J. MENASHI, *Circuit Judges.*

PALANI KARUPAIYAN,

Plaintiff-Appellant,

v. 23-1257-cv

STATE OF NEW YORK, CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT (NYPD), JOHN DOES POLICE OFFICERS OF NYPD, FREDRICK DSOUZA, PRAVIN PANDEY, RAJA PANDEY, ADAR MANAGEMENT CORP.,

Defendants-Appellees

For Plaintiff-Appellant:
Palani Karupaiyan, *pro se*, Philadelphia, PA
For Defendants-Appellees: No appearance

Appeal from a judgment of the United States District Court for the Eastern District of New York (Ann M. Donnelly, *District Judge*).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED IN PART, VACATED IN PART,** and **REMANDED** for further action consistent with this order.

Plaintiff-Appellant Palani Karupaiyan, *pro se*, sued the State and City of New York, the New York City Police Department ("NYPD"), unnamed NYPD officers, three private individuals, and a real estate company under various federal and state causes of action. Karupaiyan's allegations stem from several disagreements and altercations with his co-tenants and his apartment's management company, as well as purported discrimination by New York City police officers who allegedly responded to his residence and

arrested him after one of his co-tenants called 911 after an altercation. After granting Karupaiyan *in forma pauperis* status, the district court dismissed his complaint under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim but permitted him leave to amend. *See Karupaiyan v. New York*, No. 23-CV-5424 (AMD) (LB), 2023 WL 9020011 (E.D.N.Y. Sept. 8, 2023). Instead of amending, Karupaiyan appealed.[1] We assume the parties' familiarity with the case.

I. Forfeiture of Issues on Appeal

While we liberally construe *pro se* filings to raise the strongest arguments they suggest, *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017), *pro se* appellants must still clearly state the issues on appeal in their briefs, *see Moates v. Barkley*, 147 F.3d 207, 209 (2d Cir. 1998). We normally do not decide issues that are not briefed. *Id.*; *see also LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995) ("[W]e need not manufacture claims of error for an appellant proceeding *pro se* . . . .").[2] Nor will we decide issues that a *pro se* appellant briefs only "in passing." *Gerstenbluth v. Credit Suisse Secs. (USA) LLC*, 728 F.3d 139, 142 n.4 (2d Cir. 2013).

Karupaiyan's brief largely fails to address the substance of the district court's decision dismissing his complaint. The only substantive grounds his brief could be read to raise are that Defendant-Appellee Fredrick Dsouza filed a "false charge" against him and that his alleged arrest

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[1] Because the time to amend has long since run despite multiple extensions, the dismissal without prejudice has ripened into a final and appealable order over which we may exercise jurisdiction. *See* 28 U.S.C. § 1291; *Salmon v. Blesser*, 802 F.3d 249, 252 n.2 (2d Cir. 2015).

[2] Unless otherwise indicated, case quotations omit all internal quotation marks, alteration marks, footnotes,

was discriminatory, which can be read to challenge the dismissal of his false arrest and malicious prosecution claims under 42 U.S.C. § 1983. We accordingly conclude that he has forfeited all other issues.

II. *Sua Sponte* Dismissal

Karupaiyan appears to challenge the district court's *sua sponte* dismissal of his complaint under § 1915(e)(2)(B). While we have cautioned against *sua sponte* dismissals without notice and opportunity to be heard in certain contexts, *see Catzin v. Thank You & Good Luck Corp.*, 899 F.3d 77, 82–83 (2d Cir. 2018), the district court granted Karupaiyan leave to amend his complaint to fix the defects identified, but he did not take advantage of the offer. We discern no error in the *sua sponte* dismissal under these circumstances.

III. Merits

We review *de novo* Karupaiyan's challenge to the dismissal of his false arrest and malicious prosecution claims arising out of his alleged arrest. *McEachin v. McGuinnis*, 357 F.3d197, 200 (2d Cir. 2004). We conclude that he failed to state a claim for false arrest under 42 U.S.C. § 1983 against Fredrick Dsouza and Pravin Pandey because they are private citizens and did not act under color of state law. A private individual becomes a state actor for the purposes of § 1983 only when (1) the state compelled the conduct, (2) the private party acted jointly with a state, or (3) the private party fulfilled a role that is traditionally a public state function. *See Sybalski v. Indep. Group Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir. 2008). Filing a complaint with the police does not fit within any of these categories. *See Dahlberg v. Becker*, 748 F.2d 85, 93 (2d Cir. 1984) (holding that "mere invocation" of state legal

procedures does not amount to state action under § 1983).

Karupaiyan also fails to plead a false arrest or malicious prosecution claim under § 1983 against NYPD officers or the City of New York, as he does not allege any facts showing that the officers lacked probable cause for the arrest, *see Ashley v. City of New York*, 992 F.3d 128, 136 (2d Cir. 2021) ("Probable cause to arrest is a complete defense to an action for false arrest."), or that the criminal proceedings terminated in his favor, *see Manganiello v. City of New York*, 612 F.3d 149, 161 (2d Cir. 2010) (requiring a plaintiff to plead "termination of the proceeding in [his] favor").

The remainder of Karupaiyan's brief seeks various remedies that are not related to any of the claims he raised below—for example, he seeks an order reorganizing the New York State Unified Court System. He points to no authority that would permit such relief, even assuming he had a meritorious claim.

IV. Prejudice

Although Karupaiyan's claims against the State of New York fail, the district court erred by dismissing them with prejudice. The district court correctly dismissed these claims because New York is entitled to state sovereign immunity and has not waived that immunity. *See Karupaiyan*, 2023 WL 9020011, at *2. The "constitutional principle of sovereign immunity" poses "a bar to federal jurisdiction over suits against nonconsenting States." *Alden v. Maine*, 527 U.S. 706, 730 (1999). "When subject matter jurisdiction is lacking, 'the district court lacks the power to adjudicate the merits of the case,' and accordingly 'Article III deprives federal

courts of the power to dismiss the case with prejudice.'" *Green v. Dep't of Educ. of City of N.Y.*, 16 F.4th 1070, 1074 (2d Cir. 2021) (quoting *Carter v. HealthPort Techs., LLC*, 822 F.3d 47, 54–55 (2d Cir. 2016)). Therefore, because the district court lacked jurisdiction over the claims against the State of New York, it was erroneous to dismiss those claims with prejudice rather than without prejudice. The district court likewise erred by dismissing with prejudice Karupaiyan's landlord-tenant claims—other than those under the Fair Housing Act or 42 U.S.C. § 1981—pursuant to Federal Rule of Civil Procedure 12(h)(3). *See Karupaiyan*, 2023 WL 9020011, at *5. Because Rule 12(h)(3) provides for dismissal for lack of subject matter jurisdiction, such a dismissal must be without prejudice. *See Green*, 16 F.4th at 1074. We therefore remand with instructions for the district court to modify its judgment to dismiss these claims without prejudice. *See Russo v. United States*, No. 22-1869, 2024 WL 726884, at *2 (2d Cir. Feb. 22, 2024).

We have considered Karupaiyan's remaining arguments and find them unpersuasive. Accordingly, we **AFFIRM** the judgment of the district court in part, **VACATE** the judgment insofar as the district court dismissed with prejudice claims over which it lacked subject matter jurisdiction, and **REMAND** for the district court to amend its judgment to dismiss these claims without prejudice.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk
/s/*Catherine O'Hagan Wolfe, Clerk*
Under seal of USCA2

2. USCA2'S ORDER DENIED FOR 2ND AMEND THE BRIEF. JAN 08 2024

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 8th day of January, two thousand twenty-four

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Palani Karupaiyan, Plaintiff - Appellant,

v.

State of New York, City of New York, New York City Police Department, (NYPD), John Does Police Officers of NYPD, Fredrick Dsouza, Pravin Pandey, Raja Pandey, ADAR Management Corp., Defendants - Appellees.

Appellant, pro se, moves for leave to file an amended brief.

IT IS HEREBY ORDERED that the motion is DENIED without prejudice to renewal. Any renewed motion must explain what changes Appellant has made to the amended brief.

For the Court:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe,
Under Seal of USCA2.

3. US DISTRICT COURT EDNY'S SUA SPONTE DISMISSAL OF COMPLAINT – SEP 08 2023

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Docket # 23-CV-5424 (AMD) (LB)

PALANI KARUPAIYAN,

—Plaintiff,

– against –

STATE OF NEW YORK, NEW YORK CITY OF NY, NEW YORK CITY POLICE DEPT. (NYPD), JOHN DOES-POLICE OFFICERS OF NYPD, FREDERICK DSOUZA, PRAVIN PANDEY, RAJA RANDEY, and ADAR MANAGEMENT CORP.,

—Defendants.

MEMORANDUM AND ORDER

The plaintiff, proceeding *pro se*, brings this action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1981 and 1983, the Fair Housing Act, the Americans with Disabilities Act, and related state and federal laws. The plaintiff alleges several claims that arise out of housing disputes and his arrest. On July 26, 2023, the Court granted the plaintiff's request to proceed *in forma pauperis*

pursuant to 28 U.S.C. § 1915. For the reasons that follow, the plaintiff's complaint is dismissed, but the plaintiff may amend his complaint within thirty days of this Order.

BACKGROUND

The plaintiff brings this case against the State of New York, the City of New York, the New York City Police Department ("NYPD"), John Doe NYPD officers, Frederick Dsouza, a private individual who allegedly squatted in the plaintiff's apartment, Pravin and Raja Pandey, co-leaseholders of the apartment, and Adar Management Corp., the apartment's owner. The plaintiff alleges that he and Pravin Pandey shared an apartment in Brooklyn. (ECF No. 1 ¶ 28.) The plaintiff lived in the bedroom, and Pandey lived in the living room. (*Id.*) Pandey also allowed Frederick Dsouza to squat in the living room. (*Id.*) According to the plaintiff, Dsouza repeatedly verbally abused him and physically assaulted him at least once because of his ethnicity. (*Id.* ¶¶ 42, 45.) Pandey was allegedly aware of the situation, and he also shouted racial slurs at the plaintiff. (*Id.* ¶¶ 56, 93.) After one particularly heated interaction, Dsouza called the police and had the plaintiff arrested. (*Id.* ¶¶ 58–64, 91.) The arresting officer (and possibly other officers at the precinct) similarly discriminated against the plaintiff: they held him on false charges and refused to give him diabetes medicine. (*Id.* ¶¶ 62–73.)

The plaintiff describes several other rental disputes. For example, the plaintiff claims that Pravin Pandey, who only eats vegetarian food because of his religion, would not allow the plaintiff to cook eggs or other non-vegetarian food, even though the plaintiff needed to eat non-vegetarian food because of his diabetes. (*Id.* ¶¶ 92–94.) The plaintiff also alleges that Pandey and Adar Management forced him to sleep on a bug-

infested mattress and refused his requests to hire a pest control service to treat the apartment. (*Id.* ¶¶ 83–89.) Finally, the plaintiff alleges that he had no money for rent because he had to file multiple lawsuits against the defendants, and that Pandey unlawfully evicted him. (*Id.* ¶¶ 95, 96, 99.) Moreover, Pandey refused to let him back into the apartment to pick up his personal belongings, including a debit card, a digital camera and medication. (*Id.* ¶¶ 101, 106–09.) The plaintiff requests injunctive relief and monetary damages. He also asks the Court to put some of the defendants in prison and "to restructure the NY State courts into 3-tier which is similar to federal courts structure/hierarchy." (*Id.* at 24–25.)

STANDARD OF REVIEW

To avoid dismissal, 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 "detailed factual allegations" are not required, a complaint that includes only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555; Fed. R. Civ. P. 8. Because the plaintiff is proceeding *pro se*, I construe his complaint liberally and evaluate it by "less stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation omitted), to raise "the strongest arguments" that it suggests, *Fowlkes v. Ironworkers Local 40*, 790 F.3d 378, 387 (2d Cir. 2015) (cleaned up). Nevertheless, a district court may *sua sponte*

dismiss an *in forma pauperis* action if 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." 28 U.S.C. § 1915(e)(2)(B). The Court must also dismiss any claims over which it lacks subject matter jurisdiction. *See Henderson v. Shinseki,* 562 U.S. 428, 434 (2011) ("federal courts have an independent obligation to ensure that they do not exceed the scope of their jurisdiction, and therefore they must raise and decide jurisdictional questions that the parties either overlook or elect not to press").

DISCUSSION

I. Claims Against the State of New York

State governments are immune from suits in federal court under the Eleventh Amendment to the U.S. Constitution "unless they have waived their . . . immunity, or unless Congress has abrogated" that immunity. *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). "It is settled law, however, that Congress did not abrogate state sovereign immunity by enacting Section 1983." *Rivera v. Evans*, No. 13-CV-6341, 2014 WL 4695803, at *10 n.3 (S.D.N.Y. Sept. 3, 2014) (citing *Quern v. Jordan,* 440 U.S. 332, 340–42 (1979)). "Nor has New York State waived its immunity with respect to Section 1983 claims" or any other claims the plaintiff alleges. *Id.* (citing *Trotman v. Palisades Interstate Park Comm'n,* 557 F.2d 35, 38–40 (2d Cir. 1977)). Therefore, the plaintiff's claims against New York State are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii). The dismissal is with prejudice, which means that the plaintiff may not re-file claims against New York State arising out of this incident.

II. Claims Against the NYPD

The New York City Charter provides that "[a]ll actions and proceedings for the recovery of penalties for the violation of any law shall be brought in the name of the City of New York and not in that of any agency, except where otherwise provided by law." N.Y.C. Charter ch. 17 § 396. Because the NYPD is an agency of the City of New York, it is not a suable entity. *See Johnson v. Dobry*, 660 F. App'x 69, 72 (2d Cir. 2016) (citing N.Y.C. Charter ch. 17 § 396); *Jenkins v. City of New York*, 478 F.3d 76, 93 n.19 (2d Cir. 2007). Accordingly, all claims against the NYPD are also dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

III. Claims Against Raja Pandey and Adar Management

The plaintiff makes no allegations against Raja Pandey and only mentions Adar Management once, alleging that it refused to contact pest control services. To state a claim in federal court, a plaintiff must explain how each defendant caused him harm; he may not simply "group" defendants together. *Amiron Dev. Corp. v. Sytner*, No. 12-CV-3036, 2013 WL 1332725, at *5 (E.D.N.Y. Mar. 29, 2013). Accordingly, all claims against Raja Pandey and Adar Management are dismissed without prejudice. That means that the plaintiff may amend his complaint to include specific facts about what these defendants did wrong.

IV. Claims Against New York City, NYPD Officers, Frederick Dsouza and Pravin Pandey

A. False Arrest and False Imprisonment

Federal courts look to state law when considering § 1983 claims for false arrest and false imprisonment. *See Guan v. City of New York*, 37 F.4th 797, 804 (2d Cir. 2022). Because New York does not distinguish between claims for false arrest and false

imprisonment, I treat these as one claim. *See Liranzo v. United States*, 690 F.3d 78, 91 n.13 (2d Cir. 2012). Section 1983 claims for false arrest are subject to a three-year statute of limitations. *Livingston v. Mejia*, No. 20-CV-2009, 2022 WL 976808, at *4 (S.D.N.Y. Mar. 31, 2022) (citation omitted). Because the plaintiff does not state the date of his arrest, I cannot determine whether his claim is timely. This claim is therefore dismissed without prejudice. If the plaintiff wishes to amend this claim, he must establish that he was arrested within the last three years. If the plaintiff was arrested earlier than that, he can ask the Court to toll the statute of limitations. However, the Court may only toll the statute of limitations in "rare and exceptional circumstances," if a plaintiff can demonstrate that he was prevented from filing timely and "acted with reasonable diligence throughout the period he [seeks] to toll." *Jones v. City of New York*, 846 F. App'x 22, 24 (2d Cir. 2021) (quoting *Walker v. Jastremski*, 430 F.3d 560, 564 (2d Cir. 2005)).

Moreover, § 1983 only applies to persons "acting under color of state law." *Matusick v. Erie Cnty. Water Auth.*, 757 F.3d 31, 55 (2d Cir. 2014) (quoting 42 U.S.C. § 1983). That means § 1983 "constrains only state conduct, not the 'acts of private persons or entities.'" *Hooda v. Brookhaven Nat'l Lab.*, 659 F. Supp. 2d 382, 393 (E.D.N.Y. 2009) (quoting *Rendell-Baker v. Kohn*, 457 U.S. 830, 837 (1982)). I thus interpret the plaintiff to bring false arrest claims only against individual police officers and the City of New York[3]. To the extent the plaintiff also wishes to hold

[3] To state a claim against the City of New York under federal law, the plaintiff must demonstrate "(1) an official [municipal] policy or custom that (2) cause[d] the plaintiff to be subjected to (3) a denial of a constitutional right." *Torraco v. Port Auth. of N.Y. & N.J.*, 615 F.3d 129, 140 (2d

Frederick Dsouza and Pravin Pandey—or any other private defendant—liable for false arrest, he must show that they were acting under the color of law. "[M]erely filing a complaint with the police, reporting a crime, requesting criminal investigation of a person, or seeking a restraining order, even if the complaint or report is deliberately false, does not give rise to a claim against the complainant for a civil rights violation." *Vazquez v. Combs*, No. 04-CV-4189, 2004 WL 2404224, at *4 (S.D.N.Y. Oct. 22, 2004). Rather, the private actor must take "a more active role" and jointly engage in action with the police officers. *Carrillos v. Inc. Vill. of Hempstead*, 87 F. Supp. 3d 357, 371 (E.D.N.Y. 2015). Accordingly, if the plaintiff wishes to hold the private defendants liable, he must amend his complaint to demonstrate that they can be considered state actors.

B. Malicious Prosecution Claim

In order to prove a 42 U.S.C. § 1983 claim for malicious prosecution, a plaintiff must prove "(1) the initiation or continuation of a criminal proceeding against plaintiff; (2) termination of the proceeding in plaintiff's favor; (3) lack of probable cause for commencing the proceeding;

Moreover, there is also a three-year statute of limitations for § 1983 malicious prosecution claims, which begins to run when the prosecution terminates in the plaintiff's favor. *Murphy v. Lynn*, 53 F.3d 547, 548 (2d Cir. 1995); *Spak v. Phillips*, 857 F.3d 458, 462

Cir. 2010) (quoting *Wray v. City of New York*, 490 F.3d 189, 195 (2d Cir. 2007)). Under New York law, however, "municipalities can be liable for the actions of police officers on false arrest claims under a theory of *respondeat superior*" or vicarious liability. *Triolo v. Nassau Cnty.*, 24 F.4th 98, 110–11 (2d Cir. 2022) (collecting cases).

(2d Cir. 2017). If the prosecution terminated in the plaintiff's favor, he must allege when that happened.

C. Obstruction of Justice

The plaintiff brings claims against some of the defendants for obstruction of justice. However, there is no private right of action for violations of the criminal statutes concerning obstruction of justice, 18 U.S.C. §§ 1501 *et seq*. That means that a private individual like the plaintiff may not invoke these provisions to obtain damages; they "may be enforced only by the Department of Justice." *Langella v. United States*, 01-CV-11583, 2002 WL 1218524 at *4 (S.D.N.Y. June 5, 2002), *aff'd*, 67 F. App'x 659 (2d Cir. 2003) (summary order). The plaintiff's claims for obstruction of justice are thus dismissed with prejudice.

D. The Federal Fair Housing Act

The Federal Fair Housing Act "broadly prohibits discrimination in housing." *Gladstone Realtors v. Vill. of Bellwood*, 441 U.S. 91, 93 (1979). Section 3604(a) prohibits person from "refus[ing] to sell or rent . . . or otherwise make unavailable or deny, a dwelling to any person and (4) actual malice as a motivation for the defendant's actions." *Dettelis v. Sharbaugh*, 919 F.3d 161, 163–64 (2d Cir. 2019). The plaintiff does not provide sufficient facts about his arrest—for example, what reason police officers gave for arresting him or whether the proceedings terminated in his favor. His claim for malicious prosecution is thus dismissed without prejudice; the plaintiff may amend his allegations to state additional facts to satisfy all

four prongs of the *Dettelis* test. because of race, color, religion, sex, familial status, or national origin." 42 U.S.C. § 3604(a). Section 3604(b) forbids discrimination "against any person in the terms, conditions, or privileges of sale or rental of a dwelling,

or in the provision of services or facilities" for any of those same reasons. *Id.* § 3604(b). And Section 3604(f), which was added in the Fair Housing Amendments Act of 1988, proscribes discrimination "in the sale or rental, or . . . otherwise make unavailable or deny, a dwelling to any buyer or renter because of" a disability. *Id.* § 3604(f)(1), (2).

The plaintiff claims that Pravin Pandey discriminated against him when he prevented him from cooking eggs and other non-vegetarian meals, which the plaintiff needed to help manage his diabetes. First, the plaintiff must state under which section(s) he wishes to proceed. That is, he must clarify whether he makes a claim based on his ethnicity or based on his disability.

Second, the plaintiff must allege sufficient facts to "permit the conclusion that the complained-of conduct occurred because of discriminatory animus." *Logan v. Matveevskii*, 175 F. Supp. 3d 209, 226 (S.D.N.Y. 2016) (citation omitted). On the facts currently pleaded, it appears just as likely that the defendant prohibited the plaintiff from cooking non-vegetarian meals because of the defendant's own religion and not because he intended to discriminate against the plaintiff. While the plaintiff claims that the defendant "allowed other people to cook/eat non-veg food in the apartment" (ECF No. 1 ¶ 94), that allegation is too vague and requires more detail.

Finally, if the plaintiff wishes to proceed under § 3604(a) or (f), he must establish that the defendant made the apartment "effectively unavailable to him." *Gilead Cmty. Servs., Inc. v. Town of Cromwell*, 432 F. Supp. 3d 46, 72 (D. Conn. 2019) (citation omitted). Without additional facts, it is not clear that being unable to cook certain food satisfies this standard. The plaintiff's Fair Housing Act claims are accordingly dismissed without prejudice.

E. Americans with Disabilities Act

The Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq*, prohibits discrimination by public entities based on disability. *Quad Enterprises Co., LLC v. Town of Southold*, 369 F. App'x 202, 205 (2d Cir. 2010). To the extent the plaintiff wishes to hold private defendants like Pravin Pandey liable, his claims must be dismissed with prejudice.

F. Section 1981 Claims

Section 1981 protects the equal right of "'all persons within the jurisdiction of the United States' to 'make and enforce contracts' without respect to race." *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 474–75 (2006) (cleaned up) (quoting 42 U.S.C. § 1981(a)). "The statute currently defines 'make and enforce contracts' to 'include the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.'" *Id.* (cleaned up) (quoting § 1981(b)). To allege a § 1981 claim, a plaintiff must therefore establish that he had a contractual relationship with a defendant. The plaintiff does not allege which defendant—Pravin Pandey, Raja Pandey or Adar Management—leased him the room, so his § 1981 claim is dismissed without prejudice.

G. Other Landlord-Tenant Claims

"[F]ederal courts, unlike state courts, have no jurisdiction over landlord-tenant matters." *Cain v. Rambert*, No. 13-CV-5807, 2014 WL 2440596, at *3 (E.D.N.Y. May 30, 2014) (collecting cases); *see also Bey v. Jones*, No. 19-CV-2577, 2019 WL 2028703, at *2 (E.D.N.Y May 8, 2019). Therefore, all of the plaintiff's landlord-tenant claims besides the allegations under the Fair Housing Act and § 1981 are dismissed with prejudice under Federal Rule of Civil Procedure 12(h)(3).

V. Claims About Restructuring New York's Judicial System

This Court has no jurisdiction over how New York structures its courts or elects its judges. The plaintiff's claims related to this issue are dismissed with prejudice.

LEAVE TO AMEND

The Court will allow the plaintiff thirty days to amend his complaint. The plaintiff may not re-allege any claims that are dismissed with prejudice. Additionally, he may only re-plead claims that are dismissed without prejudice if he can cure the deficiencies discussed in this Order. The plaintiff must provide all the relevant dates and facts identified above. He must also explain separately how each defendant harmed him. However, if the plaintiff does not know the names of individual police officers, he may identify them as John or Jane Doe and provide descriptive information about the officers and their place of employment. For example: Police Officer John Doe of the [Number] Precinct.

The amended complaint must be captioned as "Amended Complaint" and bear the docket number assigned to this case: 23-CV-5424 (AMD) (LB). The amended complaint will completely replace the original complaint, so the plaintiff must include all the allegations in the amended complaint.

The plaintiff may wish to consult the City Bar Justice Center's Federal Pro Se Legal Assistance Project at (212) 382-4729 for free, limited-scope legal assistance.

CONCLUSION

The plaintiff's complaint is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) and Federal Rule of Civil Procedure 12(h)(3). The plaintiff may amend his

complaint within thirty days of this Order as discussed above. No summons will issue at this time. If the plaintiff does not file an amended complaint within thirty days or does not cure the deficiencies discussed above, this action will be dismissed with prejudice.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/s/ ANN M. DONNELLY
ANN M. DONNELLY
United States District Judge

Dated: Brooklyn, New York
September 8, 2023

4. DIST COURT DISMISSED THE COMPLAINT WITHOUT PREJUDICE AFTER MANDATE. JUN 05 2024.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Docket# 23-CV-5424 (AMD) (LB)

PALANI KARUPAIYAN,

Plaintiff,

– against –
STATE OF NEW YORK; NEW YORK CITY OF NY; NEW YORK CITY POLICE DEPT. (NYPD); JOHN DOES-POLICE OFFICERS OF NYPD; FREDERICK DSOUZA; PRAVIN PANDEY; RAJA RANDEY; ADAR MANAGEMENT CORP,

Defendants.

ORDER

ANN M. DONNELLY, United States District Judge:

The plaintiff, proceeding *pro se*, filed this action under the Fourth and Fourteenth Amendments, 42 U.S.C. §§ 1981 and 1983, the Fair Housing Act, the Americans with Disabilities Act, and related state and federal laws, in connection with housing disputes and an alleged false arrest. (ECF No. 1.)

On September 8, 2023, the Court *sua sponte* dismissed the plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B) and Federal Rule of Civil Procedure 12(h)(3) and granted him leave to amend

within 30 days of the order. (ECF No. 8.) On September 11, 2023, instead of filing an amended complaint, the plaintiff appealed to the United States Court of Appeals for the Second Circuit. (ECF No. 11.)

On September 13, 2023, the plaintiff filed a motion "for Writ of Mandamus." (ECF No. 9.) On October 12, 2023, the Court construed the plaintiff's motion as a motion to reconsider or vacate the September 8, 2023 order, denied the motion, and granted the plaintiff one final opportunity to amend his complaint within 30 days of the order. (ECF No. 13.)

On October 16, 2023, the plaintiff filed a motion seeking a 90-day extension to file an amended complaint. (ECF No. 14.) On October 19, 2023, Magistrate Judge Lois Bloom granted the motion in part, granting him a 30-day extension of time to file an amended complaint, directing him to file by November 20, 2023. (ECF No. 15.) Judge Bloom warned the plaintiff again that if he did not file an amended complaint as directed, the case would be dismissed. (*Id.*) To date, the plaintiff has not filed an amended complaint.

By Summary Order dated May 15, 2024, the Circuit disposed of the plaintiff's appeal, affirming the dismissal, but vacating the judgment insofar as the Court dismissed with prejudice claims over which it lacked subject matter jurisdiction, and remanded for the Court to amend its judgment to dismiss these claims without prejudice. (ECF No. 17.)

Accordingly, the Clerk of Court is directed to enter judgment dismissing the plaintiff's complaint for lack of subject matter jurisdiction without prejudice, and to close the case.

The Clerk of Court is directed to send electronic notification of this Order to the plaintiff, in addition

to mailing a copy of the order to the plaintiff's last known address.

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 the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/S/ANN M. DONNELLY
ANN M. DONNELLY
United States District Judge
Dated: Brooklyn, New York
June 5, 2024