No. _____

in the **Supreme Court of the United States**

**AARON ABADI,**

*Petitioner,*

**v.**

**JOSEPH R. BIDEN** et al,

*Respondents.*

On petition for writ of certiorari to review a decision by the U.S. SECOND CIRCUIT COURT OF APPEALS, affirming the UNITED STATES DISTRICT COURT for the Southern District of New York decision to dismiss the Complaint.

# APPENDIX

**Petitioner:**
Aaron Abadi (Pro se)
82 Nassau Street Apt 140
New York, NY 10038
Tel: 212-785-0370
Email: abadi.rne@gmail.com

## APPENDIX TABLE OF CONTENTS

S.D.N.Y.-N.Y.C.
23-cv-8440
Swain, C.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 8th day of November, two thousand twenty-four.

Present:

Susan L. Carney,
Joseph F. Bianco,
William J. Nardini,
*Circuit Judges.*

---

Aaron Abadi,

*Plaintiff-Appellant,*

v. 24-1951

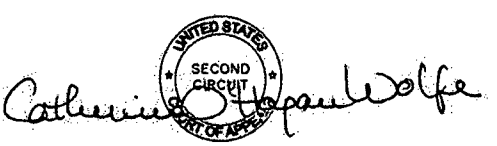
Joseph R. Biden, in his official capacity as President of the United States of America, et al.,

*Defendants-Appellees.*

---

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED and the appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

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



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON ABADI,

Plaintiff,

-against-

JOSEPH R. BIDEN; THE UNITED STATES OF AMERICA; MERRICK BRIAN GARLAND; UNITED STATES DEPARTMENT OF JUSTICE; ALEJANDRO MAYORKAS; UNITED STATES DEPARTMENT OF HOMELAND SECURITY; TROY MILLER; U.S. CUSTOMS AND BORDER PROTECTION; PATRICK J. LECHLEITNER; U.S. CITIZENSHIP AND IMMIGRATION SERVICES; UR M. JADDOU, PATRICK J. LECHLEITNER; THE CITY OF NEW YORK; ERIC ADAMS,

Defendants.

23-CV-8440 (LTS)

ORDER OF DISMISSAL

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff, who is appearing *pro se*, brings this action asserting claims about federal and local government policies on immigration. By order dated September 26, 2013, the Court granted Plaintiff's request to proceed *in forma pauperis* (IFP), that is, without prepayment of fees. For the reasons set forth below, the Court dismisses the complaint.

**STANDARD OF REVIEW**

The Court must dismiss an *in forma pauperis* complaint, or any portion of the complaint, that is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *see Livingston v. Adirondack Beverage Co.*, 141 F.3d 434, 437 (2d Cir. 1998). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction of the claims raised. *See* Fed. R. Civ. P. 12(h)(3).

While the law mandates dismissal on any of these grounds, the Court is obliged to construe *pro se* pleadings liberally, *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009), and interpret them to raise the "strongest [claims] that they *suggest*," *Triestman v. Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original). But the "special solicitude" in *pro se* cases, *id.* at 475 (citation omitted), has its limits – to state a claim, *pro se* pleadings still must comply with Rule 8 of the Federal Rules of Civil Procedure, which requires a complaint to make a short and plain statement showing that the pleader is entitled to relief.

Rule 8 requires a complaint to include enough facts to state a claim for relief "that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible if the plaintiff pleads enough factual detail to allow the Court to draw the inference that the defendant is liable for the alleged misconduct. In reviewing the complaint, the Court must accept all well-pleaded factual allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). But it does not have to accept as true "[t]hreadbare recitals of the elements of a cause of action," which are essentially just legal conclusions. *Twombly*, 550 U.S. at 555. After separating legal conclusions from well-pleaded factual allegations, the Court must determine whether those facts make it plausible – not merely possible – that the pleader is entitled to relief. *Id.*

**BACKGROUND**

Plaintiff challenges the federal government's decisions to end funding for a wall along the southwest border of the United States; terminate the Covid-era "wait in Mexico" policy (allowing aliens to be turned away at the border without considering their asylum claims); and enact the "Circumvention of Lawful Pathways," final rule. He sues the United States, President Joe Biden, several federal departments and agencies (Department of Homeland Security; Department of Justice; Customs and Border Protection; Citizenship and Immigration Services,

and Immigration and Customs Enforcement), and the heads of those agencies (respectively, Alejandro Mayorkas, Merrick Garland, Troy Miller, Ur Jaddou, and Patrick Lechleitner) – collectively "the Federal Defendants."

Plaintiff contends that the Federal Defendants have violated the U.S. Constitution, the Administrative Procedure Act (by exceeding statutory authority, engaging in arbitrary and capricious actions or failing to act, and promulgating rules without notice and comment), and the Immigration and Nationality Act (by failing to exclude aliens from the United States), and he seeks declaratory and injunctive relief. Specifically, Plaintiff asks the Court to "[h]old unlawful and set aside the Biden Administration's polic[ies]," enjoin the Federal Defendants from enforcing these policies, and compel the Federal Defendants to remove all immigrants who are illegally present in the City of New York. He also brings an application titled, "Emergency Preliminary Injunction Prohibiting The Government From Accepting Any More Illegal Aliens." (ECF 2.)

Plaintiff also challenges the New York City government's policies, which he characterizes as "inviting these illegal immigrants," and its handling of increased numbers of immigrants arriving in New York City. He brings claims against Mayor Eric Adams and the City of New York for "gross negligence." (ECF 1 at 43-44.) He seeks to enjoin New York City policies and seeks damages for "ruining the city where Plaintiff lives, and for causing Plaintiff severe anxiety and fear, and emotional distress." (ECF 1 at 53.)

## DISCUSSION

### A. Standing to Sue

Article III of the U.S. Constitution "confines the federal judicial power to the resolution of 'Cases' and 'Controversies.'" *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021). "For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake'

in the case—in other words, standing." *Id.* (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997)); *Altman v. Bedford Cent. Sch. Dist.*, 245 F.3d 49, 70 (2d Cir. 2001) ("[S]tanding doctrine evaluates a litigant's personal stake as of the outset of litigation.").

"[T]o establish standing, a plaintiff must show (i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant, and (iii) that the injury would likely be redressed by judicial relief." *Id.* "The party invoking federal jurisdiction bears the burden of establishing" each element of standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992).

"For an injury to be particularized, it must affect the plaintiff in a personal and individual way." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (citing *Lujan*, 504 U.S. at 560 n.1). In contrast, "when the asserted harm is a generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

Here, Plaintiff's alleged injury is that the City of New York is being "ruined" by immigrants who are allegedly bringing contagious illnesses, engaging in criminal activity, depleting New York City's coffers, and causing him stress and anxiety. These alleged injuries are not concrete and particularized. They have not affected Plaintiff "in a personal and individual way." *Lujan*, 504 U.S. at 560 n.1. Instead, such alleged injuries are generalized grievances that Plaintiff "suffers in some indefinite way in common with people generally." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 345 (2006). Plaintiff thus lacks standing to bring claims that he has been injured by federal and local policies on immigration.

**B. Political Question**

Plaintiff's claims also implicate the political question doctrine. *See, e.g., DaCosta v. Laird*, 471 F.2d 1146, 1152 n.10 (2d Cir. 1973) (holding that, unlike standing, which focuses on

the "nature of the party seeking a judgment," the political question doctrine "focuses on the nature of the issue presented to the court"). Although the political question doctrine and standing doctrine have different points of focus, they both "originate in Article III's 'case' or 'controversy' language[.]" *DaimlerChrysler Corp.*, 547 U.S. at 353. "[T]he political question doctrine is a function of the constitutional framework of separation of powers [and] is essentially a constitutional limitation on the courts. . . .[W]here adjudication would force the court to resolve political questions, the proper course for the courts is to dismiss." *767 Third Avenue Assoc. v. Consulate Gen. of Socialist Fed. Republic of Yugoslavia*, 218 F.3d 152, 164 (2d Cir. 2000) (quotation marks and citations omitted).

The Supreme Court has identified six independent tests for the existence of a non-justiciable political question:

> [i] a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [ii] a lack of judicially discoverable and manageable standards for resolving it; or [iii] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [iv] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of the government; or [v] an unusual need for unquestioning adherence to a political decision already made; or [vi] the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

*Vieth v. Jubelirer*, 541 U.S. 267, 277-78 (2004) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). The doctrine "excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986).

Here, Plaintiff challenges federal immigration policies and the alleged impact of increasing numbers of immigrants on him and others in the City of New York. The Supreme Court has explained that "the responsibility for regulating the relationship between the United

States and our alien visitors has been committed to the political branches of the Federal Government." *Mathews v. Diaz*, 426 U.S. 67, 81 (1976). "[O]ver no conceivable subject is the legislative power of Congress more complete[.]" *Fiallo v. Bell*, 430 U.S. 787, 792 (1977). "Though the Executive's discretion over the admission and exclusion of aliens is not boundless, there is but a narrow standard of [judicial] review of decisions made by the Congress or the President in the area of immigration and naturalization." *Ahmed v. Cissna*, 327 F. Supp. 3d 650, 662-63 (S.D.N.Y. 2018) (citations and quotations omitted), *aff'd*, 792 F. App'x 908 (2d Cir. 2020).

Plaintiff's claims against the Federal Defendants – which attack "the Biden Administration's misguided policies" – challenge policy choices and value determinations constitutionally committed to the Legislative and Executive Branches. Accordingly, in addition to the fact that Plaintiff lacks standing to assert any of the claims that he brings, his claims against the Federal Defendants are also within the political question doctrine and not subject to adjudication by the federal courts.

District courts generally grant a *pro se* plaintiff an opportunity to amend a complaint to cure its defects, but leave to amend is not required where it would be futile. *See Hill v. Curcione*, 657 F.3d 116, 123–24 (2d Cir. 2011); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988). Because the defects in Plaintiff's complaint cannot be cured with an amendment, the Court declines to grant Plaintiff leave to amend his complaint.

## CONCLUSION

The Court dismisses this action for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(h)(3). The Court denies Plaintiff's motion for a preliminary injunction as moot.

The Court certifies under 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. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962). Judgment shall enter.

SO ORDERED.

Dated: November 6, 2023
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AARON ABADI,

Plaintiff,

-against-

JOSEPH R. BIDEN, ET AL.,

Defendants.

23-CV-8440 (LTS)

ORDER

LAURA TAYLOR SWAIN, Chief United States District Judge:

Plaintiff filed this action *pro se* asserting claims about federal and local government policies relating to immigrants. On November 6, 2023, the Court dismissed the complaint for lack of standing and, as to some claims, on the ground that he raised nonjusticiable political questions. Plaintiff moved for reconsideration of the order of dismissal on November 13, 2023 (ECF 8), and on February 13, 2024, he submitted additional information about the Articles of Impeachment against the Secretary of the Department of Homeland Security (DHS), Alejandro N. Mayorkas (ECF 9).

The Court liberally construes these submissions as a motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure. After reviewing the arguments in Plaintiff's submission, the Court denies the motion.

**DISCUSSION**

A party who moves to alter or amend a judgment Rule 59(e) must demonstrate that the Court overlooked "controlling law or factual matters" that had been previously put before it. *R.F.M.A.S., Inc. v. Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). "Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court." *Range Road Music, Inc.*

*v. Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP v. Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206 (S.D.N.Y. 2009) ("A motion for reconsideration is not an invitation to parties to 'treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's ruling.'" (internal quotation and citations omitted)).

Plaintiff argues that the Biden administration is ignoring requirements that the temporary parole authority be used only on a case-by-case basis for "urgent humanitarian reasons or significant public benefit." (ECF 8 at 3.) Instead, guidance to border patrol agents claims broad prosecutorial discretion to "ignore the requirements of the immigration laws." (*Id.*)

Plaintiff contends that the Court erred in determining that he lacked standing because border policies have led to "a dangerous and unsafe situation" that is "happening to all New Yorkers, including Plaintiff. The fact that millions of people are also suffering the same way, does not take away from Plaintiff's standing if he suffers too." (*Id.* at 9-10.)

Plaintiff relies on *Uzuegbunam v. Preczewski*, 141 S. Ct. 792 (2021), in which the Supreme Court held that in order to demonstrate standing, a plaintiff must establish, among other things, that plaintiff seeks a remedy that redresses that injury. The Supreme Court concluded that an award of nominal damages, by itself, can redress a past injury. Here, the Court did not hold that Plaintiff lacked standing because he failed to seek a remedy that would redress his alleged injury. Instead, the Court held that Plaintiff failed to establish an injury-in-fact because the alleged harms he identified were generalized, abstract, and widely shared.[1] The Supreme Court's decision in *Uzuegbunam* thus does not require a different result.

---

[1] *See, e.g., Crist v. Comm'n on Presidential Debates*, 262 F.3d 193, 194 (2d Cir. 2001) ("[A] voter fails to present an injury-in-fact when the alleged harm is abstract and widely shared . . . ."); *Collins v. Merrill*, 2016 WL 7176651, at *2 (S.D.N.Y. Dec. 7, 2016) (finding that plaintiff

Plaintiff also seeks reconsideration of the Court's holding that his attack on "the Biden Administration's misguided policies" (such as ending funding for a wall along the southwest border of the United States and terminating the Covid-era "wait in Mexico" policy) challenged policy choices and value determinations constitutionally committed to the Legislative and Executive Branches and were not justiciable. (ECF 7 at 6.) Plaintiff argues in his reconsideration motion that "if there is clear Congressional legislation in effect, then the Court is the right place to go to get justice and the correct interpretation of the Congressional legislation." (ECF 8 at 15.) The political question doctrine was an additional basis for dismissing Plaintiff's claims covered by that doctrine; Plaintiff's motion does point to any claims that he has standing to pursue that were incorrectly dismissed under the political question doctrine. Because Plaintiff has failed to demonstrate that the Court overlooked any controlling decisions or factual matters that alter the result, the Court denies Plaintiff's motion under Rule 59(e).[2]

This action remains closed, and the Court therefore declines to reconsider the order denying emergency injunctive relief.

## CONCLUSION

Plaintiff's motion for reconsideration is denied, and the Clerk of Court is directed to terminate the motion (ECF 8).

---

lacked standing to challenge certification of the Electoral College vote where her complaint was "premised entirely on alleged injuries that [p]laintiff shares with the general voting population").

[2] Plaintiff has also objected to the Court's determination, relying on *Coppedge v. United States*, 369 U.S. 438, 444-45 (1962), denying *in forma pauperis* (IFP) status on appeal. The Court notes that even where the district court denies IFP status on appeal, a litigant can seek leave from the court of appeals to proceed IFP on appeal.

The Court certifies under 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. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: July 9, 2024
New York, New York

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
Chief United States District Judge