

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN DOE - PETIONER

VS.

MARK GLASS,
FLORIDA DEPARTMENT OF LAW ENFORCEMENT - RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO
US APPEALS COURT FOR THE ELEVENTH CIRCUIT
PETIONER APPENDIX

JOHN DOE

BOX 21

DAHLEN, ND, 58224

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 24-11185-G

JOHN DOE,

Plaintiff - Appellant,

versus

COMMISSIONER FLORIDA DEPARTMENT OF LAW ENFORCEMENT,

Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Florida

ORDER: Pursuant to the 11th Cir. R. 42-1(b), this appeal is DISMISSED for want of prosecution because the appellant John Doe has failed to pay the filing and docketing fees to the district court within the time fixed by the rules; Motion is MOOT [10444490-2], Motion is MOOT [10444495-2], Motion is MOOT [10442350-2].

Effective April 23, 2025.

DAVID J. SMITH
Clerk of Court of the United States Court
of Appeals for the Eleventh Circuit

FOR THE COURT - BY DIRECTION

APP-A

(41)

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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April 23, 2025

Clerk - Northern District of Florida
U.S. District Court
111 N ADAMS ST
—TALLAHASSEE, FL 32301

Appeal Number: 24-11185-G

Case Style: John Doe v. Commissioner Florida Department of Law Enforcement
District Court Docket No: 4:23-cv-00321-MW-MAF

The enclosed copy of the Clerk's Order of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4.

Any pending motions are now rendered moot in light of the attached order.

Clerk's Office Phone Numbers

General Information: 404-335-6100	Attorney Admissions: 404-335-6122
Case Administration: 404-335-6135	Capital Cases: 404-335-6200
CM/ECF Help Desk: 404-335-6125	Cases Set for Oral Argument: 404-335-6141

Enclosure(s)

DIS-2 Letter and Entry of Dismissal

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

JOHN DOE,

Plaintiff,

v.

Case No.: 4:23cv321-MW/MAF

MARK GLASS, Commissioner,
Florida Department of Law
Enforcement,

Defendant.

**ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION**

This Court has considered, without hearing, the Magistrate Judge's Report and Recommendation. ECF No. 16. The Magistrate Judge recommends dismissal for failure to prosecute and failure to comply with Court Orders. The Magistrate Judge gave Plaintiff additional time to file objections, but none have been filed as of the date of this Order. This Court has independently verified that neither the Magistrate Judge's report and recommendation nor his Order granting an extension to file objections have been returned as undeliverable. Accordingly, upon

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(43)

consideration, no objections having been filed by the parties,

IT IS ORDERED:

The report and recommendation, ECF No. 16, is **accepted and adopted** as this Court's opinion. The Clerk shall enter judgment stating, "Plaintiff's claims are **DISMISSED** for failure to prosecute and failure to comply with Court Orders." The Clerk shall close the file.

SO ORDERED on February 20, 2024.

s/Mark E. Walker
Chief United States District Judge

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**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

JOHN DOE,

Plaintiff,

vs.

Case No. 4:23cv321-MW-MAF

**MARK GLASS, COMMISSIONER,
FLORIDA DEPARTMENT OF
LAW ENFORCEMENT,**

Defendant.

ORDER

This case has been initiated by the Plaintiff, proceeding pro se.

Plaintiff has submitted a complaint, supported by 20 attachments, and a request to proceed in this case under the pseudonym, John Doe. ECF No.

1. Filed simultaneously with that request is Plaintiff's motion for leave to proceed in forma pauperis, ECF No. 2.

Plaintiff's in forma pauperis motion has been reviewed, ECF No. 2, and sufficiently demonstrates that he is not incarcerated, not employed, and receives SSA disability. Because it appears that Plaintiff lacks the resources to pay the filing fee, the motion is granted.

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Plaintiff's complaint and included request to proceed as a "John Doe" plaintiff is more problematic. ECF No. 1. Plaintiff makes a vague assertion that his identity should remain confidential based on "the nature of the complaint" and the fact that the case "involves confidential records." *Id.* at 1. It would appear that the confidential records Plaintiff seeks to shield from "public access" are records he has voluntarily attached to his complaint. Attachments to a complaint are not necessary. Indeed, all relevant facts supporting a complaint must be stated within the body of the complaint and not included in over 50 pages of attachments.

Plaintiff also makes an unsupported claim that "slander[,] libel, and deformation [sic] of character were inflicted on" him. *Id.* at 7. That vague and conclusory assertion is insufficient to demonstrate the need to proceed under a pseudonym. Plaintiff has not provided a sufficient legal basis to seal any attachments (a necessary step to prevent public access) or to proceed anonymously.

"Federal Rule of Civil Procedure 10(a) requires that 'every pleading' in federal court 'must name all the parties.'" Fed. R. Civ. P. 10(a) (quoted in Doe v. Neverson, 820 F. App'x 984, 986 (11th Cir. 2020)). "Although this creates a 'strong presumption in favor of parties proceeding in their own

names ... the rule is not absolute.” Neverson, 820 F. App’x at 986 (quoting Plaintiff B v. Francis, 631 F.3d 1310, 1315 (11th Cir. 2011)). In considering Plaintiff’s request to proceed anonymously in this case, his privacy right must be weighed against “the ‘customary and constitutionally-embedded presumption of openness in judicial proceedings.’” Plaintiff B, 631 F.3d at 1315-16 (citations omitted).

Lawsuits are public events. A plaintiff should be permitted to proceed anonymously only in those exceptional cases involving matters of a highly sensitive and personal nature, real danger of physical harm, or where the injury litigated against would be incurred as a result of the disclosure of the plaintiff’s identity. The risk that a plaintiff may suffer some embarrassment is not enough.

Doe v. Frank, 951 F.2d 320, 324 (11th Cir. 1992). Plaintiff has not demonstrated that this is such an exceptional case. Instead, it appears that Plaintiff seeks to avoid further embarrassment. Legally, that is not enough.

The Court must consider the “totality-of-the-circumstances” in resolving a request to proceed under a pseudonym. In re Chiquita Brands Int’l Inc., 965 F.3d 1238, 1247, n.5 (11th Cir. 2020).

The Eleventh Circuit Court of Appeals has identified several factors that may be considered in this evaluation: (1) whether plaintiffs seeking anonymity are challenging governmental

activity; (2) whether they will be required to disclose information of the utmost intimacy; (3) whether plaintiffs will be compelled to admit their intention to engage in illegal conduct and thus risk criminal prosecution; (4) whether the plaintiffs were minors; (5) whether they were threatened with violence or physical harm by proceeding in their own names and; (6) whether their anonymity posed a unique threat of fundamental unfairness to the defendant.

Doe v. Garland, 341 F.R.D. 116, 117–18 (S.D. Ga. 2021) (citing to Francis, 631 F.3d at 1316). Other considerations include whether the plaintiff is a minor, whether he has been threatened with violence or physical harm, or whether the disclosure of a person's name would pose "a unique threat of fundamental unfairness." Francis, 631 F.3d at 1316; Neverson, 820 F. App'x at 986-87. In general, anonymity requests based on privacy interests are generally granted in cases that involve "abortion, mental illness, personal safety, homosexuality, transsexuality and illegitimate or abandoned children in welfare cases." Doe v. Family Dollar Stores, Inc., No. 1:07-cv-1262, 2007 WL 9706836, at *2 (N.D. Ga. Oct. 17, 2007) (quotation omitted) (quoted in Garland, 341 F.R.D. at 117). The reason is based on "the social stigma attached to the plaintiff's disclosure" which sufficiently overcomes "the presumption of openness in court proceedings." Neverson, 820 F. App'x at 988 (quoting Frank, 951 F.2d at 324).

The totality of the circumstances do not reveal this is an exceptional case such that Plaintiff should be permitted to proceed as "John Doe." Plaintiff's privacy interest is not based on any of the previously recognized issues. This case concerns an arrest and request for expungement. The fact of one's arrest three years ago is already a matter of public information. See ECF No. 1 at 16. Plaintiff is not a minor, but an adult, and it appears that a criminal complaint was filed against him in the Eighteenth Judicial Circuit, in and for Brevard County, Florida, but the State filed a "Notice of No Information" on June 30, 2020. *Id.* There is no need to permit Plaintiff to proceed anonymously in this Court where the underlying matters have been publicly accessible information for three years. Although Plaintiff is seeking to challenge a governmental activity, the use of Plaintiff's legal name does not "disclose information of the utmost intimacy." Further, Plaintiff is not required to admit illegal conduct which could subject him to another criminal prosecution, nor has Plaintiff shown that he is threatened with violence or physical harm.

In this case, it would not be fundamentally unfair to require Plaintiff to prosecute this case in his legal name. Plaintiff's privacy concerns do not override the "customary practice of disclosing the" parties' identities. Doe

v. Sheely, 781 F. App'x 972, 973 (11th Cir. 2019). The Eleventh Circuit has repeatedly said that "personal embarrassment" alone is not enough for leave to proceed anonymously." Frank, 951 F.2d at 324 (quoted in Sheely, 781 F. App'x at 974). Plaintiff has presented nothing more and his request for leave to proceed with a pseudonym is denied.

Plaintiff is advised that to go forward in this case, he must file an "amended complaint" in his legal name no later than **August 31, 2023**. The amended complaint must be filed on the form used in this Court which will better guide its organization. Moreover, Plaintiff must set forth all factual allegations in short, numbered paragraphs as is required by Federal Rule of Civil Procedure 10(b).

Another reason that Plaintiff must file an amended complaint is because he did not sign the initial complaint. Plaintiff stated that the "signing of this complaint is to be excluded from the public record," ECF No. 1 at 8, and then he omitted his signature. That does not comply with the Federal Rules of Civil Procedure. Rule 11 requires all documents filed to include the personal signature of a pro se party. Fed. R. Civ. P. 11(a). The Rule also requires a court to "strike an unsigned paper unless the omission is promptly corrected after being called to the . . . party's

attention." *Id.* Plaintiff's initial complaint is a legal nullity because it is not signed and no further action will be taken on it.

In issuing this Order, it has not gone unnoticed that this is not the first case Plaintiff filed in this Court. Judicial notice is taken that Plaintiff previously filed case number 4:22cv241-AW-MAF one year ago on July 5, 2022. Plaintiff also sought to proceed with a pseudonym in that case and his request was rejected. See ECF No. 6 of that case. Plaintiff is well aware of this Court's ruling on pseudonyms. Because the guiding law of the Eleventh Circuit Court of Appeals has not changed, neither has this Court's ruling. In light of this ruling, if Plaintiff no longer desires to continue this case, Plaintiff must file a notice of voluntary dismissal by the same deadline.

Plaintiff's complaint has also been reviewed.¹ ECF No. 1. Essentially, Plaintiff complains that he was wrongfully arrested by the Broward County Sheriff's Department, not advised of the charges, not read his Miranda Rights, and was told he was "being detained" when, in fact, he

¹ Notably, Plaintiff's complaint lists his name as John Doe. ECF No. 1 at 1. Documents attached to the complaint generally redact Plaintiff's name, *id.* at 1-63, with the exception of one letter to the Clerk of this Court. *Id.* at 64. Plaintiff's in forma pauperis motion listed John Doe in the case caption, but otherwise provided Plaintiff's name. ECF No. 2 at 1-2.

was arrested, harassed, and suffered retaliation. *Id.* at 1-2. Ultimately, the "charges were dropped," and Plaintiff filed a request with the Defendant, FDLE, to have an "automatic expunction" of the arrest record. *Id.* at 3-4. Plaintiff alleges that his constitutional rights have been violated by FDLE by requiring that Plaintiff "file, process, and complete" certain forms and pay a fee to expunge the "false arrest" and "series of illegal preceedings [sic]." *Id.* at 3.

Plaintiff is suing the Commissioner of the Florida Department of Law Enforcement [FDLE]. It appears that he is suing the Defendant in his official capacity since the complaint challenges the fact that FDLE requires a person to make certain filings and go through a "process," including the payment of fees, to have an expungement. ECF No. 1 at 3-4. Plaintiff contends it is unconstitutional for FDLE to not grant "automatic expunction." *Id.* at 4. As relief, Plaintiff wants to remedy that situation and "have the expunction process be automatioc [sic]," and he also seeks compensatory and punitive damages. *Id.* at 7.

To the degree Plaintiff seeks monetary damages from the Defendant in his official capacity, he is advised that the Defendant will have Eleventh Amendment immunity. Absent limited exceptions, the State of Florida and

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its agencies are immune from suit in this Court by force of the Eleventh Amendment. Carr v. City of Florence, Ala., 916 F.2d 1521, 1524 (11th Cir. 1990); *see also* Kentucky v. Graham, 473 U.S. 159, 169, 105 S.Ct. 3099, 3107, 87 L.Ed.2d 114 (1985) (reiterating that “absent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court.”). That “bar remains in effect when State officials are sued for damages in their official capacity.” Kentucky, 473 U.S. at 169, 105 S.Ct. at 3107; *see also* Odebrecht Const., Inc. v. Secretary, Fla. Dep’t of Transp., 715 F.3d 1268, 1289 (11th Cir. 2013) (same).

The first two exceptions to Eleventh Amendment immunity are through waivers of sovereign immunity. *See Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238, 105 S. Ct. 3142, 87 L. Ed. 2d 171 (1985); Gamble v. Florida Dep’t of Health and Rehab. Servs., 779 F.2d 1509 (11th Cir. 1986). Waiver may be either by the State or Congress may override a state’s immunity pursuant to its power under § 5 of the Fourteenth Amendment. Florida Prepaid Postsecondary Educ. Expense Bd. v. College Sav. Bank, 527 U.S. 627, 119 S. Ct. 2199, 2205-06, 144 L. Ed. 2d 575 (1999); Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 55, 116 S. Ct.

1114, 1124, 134 L. Ed. 2d 252 (1996) (concluding "that the type of relief sought is irrelevant to whether Congress has power to abrogate States' immunity."). "But absent waiver or valid abrogation, federal courts may not entertain a private person's suit against a State." Virginia Office for Prot. & Advocacy v. Stewart, 563 U.S. 247, 254, 131 S. Ct. 1632, 1638, 179 L. Ed. 2d 675 (2011). Congress did not abrogate a state's immunity when enacting § 1983, Quern v. Jordan, 440 U.S. 332, 99 S.Ct. 1139, 59 L. Ed. 2d 358 (1979); Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L. Ed. 2d 662 (1974), nor has Florida waived its immunity and consented to suit in federal court under § 1983. Gamble, 779 F.2d at 1520.

A third exception is through Ex parte Young, 209 U.S. 123, 28 S.Ct. 441, 52 L. Ed. 714 (1908). Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261, 269, 117 S.Ct. 2028, 138 L. Ed. 2d 438 (1997) (reaffirming that prospective relief may be sought against a state official in federal court). Sandoval v. Hagan, 197 F.3d 484, 492 (11th Cir. 1999) (citing Summit Med. Assoc. v. Pryor, 180 F.3d 1326, 1336-38 (11th Cir. 1999)). The Ex parte Young exception holds that a state official who enforces state law which conflicts with the superior authority of the federal Constitution is "stripped of his official or representative character and is subjected in his

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person to the consequences of his individual conduct." Stewart, 563 U.S. at 254, 131 S. Ct. at 1638. Determining whether this exception applies requires answering a "straightforward inquiry into whether [the] complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective." 563 U.S. at 255, 131 S. Ct. at 1639 (citations omitted).

Here, Plaintiff includes a request for prospective injunctive relief under Ex Parte Young as well as a request for monetary damages. However, Plaintiff does not provide factual allegations which reveal he is engaged in an ongoing dispute. Plaintiff must clarify whether or not he has already had his arrest expunged. If so, Plaintiff must explain how and why he believes he will be a participant in a future request for expungement such that he has standing to challenge the process. ECF No. 1. If Plaintiff concedes that the Defendant is sued in his official capacity solely for past constitutional violations, and he seeks monetary damages for that past injury, Plaintiff should consider voluntarily dismissing this case as it will be barred by the Eleventh Amendment.

Accordingly, it is

ORDERED:

1. Plaintiff's motion for leave to proceed in forma pauperis, ECF No.

2, is **GRANTED**. Plaintiff is not required to pay the filing fee for this case.

2. Plaintiff's request to proceed under a pseudonym as included

within the complaint, ECF No. 1 at 1; see *also* ECF No. 1-1, is **DENIED**.

3. The Clerk of Court shall provide Plaintiff with a civil rights

complaint for use by non-prisoners.

4. Plaintiff shall have until **August 31, 2023**, in which to file an

amended complaint, on the court form, which must include Plaintiff's true

legal name in the case caption and include his original signature in the

signature block.

5. **Failure to comply with this Court Order may result in a recommendation of dismissal of this action.**

6. If Plaintiff no longer desires to pursue this litigation, he must file a notice of voluntary dismissal by the August 31, 2023, deadline.

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7. The Clerk of Court shall return this file upon receipt of Plaintiff's amended complaint, or no later than August 31, 2023.

DONE AND ORDERED on August 3, 2023.

S/ Martin A. Fitzpatrick
MARTIN A. FITZPATRICK
UNITED STATES MAGISTRATE JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**