

## **APPENDIX A**

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

**FILED**  
Apr 10, 2025  
KELLY L. STEPHENS, Clerk

No. 24-5877

ZACHARY C. CROUCH,

Plaintiff-Appellant,

v.

INTERNAL REVENUE SERVICE,

Defendant-Appellee.

Before: SUTTON, Chief Judge; BOGGS and SILER, Circuit Judges.

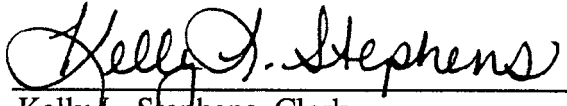
**JUDGMENT**

On Appeal from the United States District Court  
for the Eastern District of Tennessee at Knoxville.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the order of the district court is AFFIRMED.

**ENTERED BY ORDER OF THE COURT**

  
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Kelly L. Stephens, Clerk

**NOT RECOMMENDED FOR PUBLICATION**

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ON APPEAL FROM THE UNITED  
STATES DISTRICT COURT FOR  
THE EASTERN DISTRICT OF  
TENNESSEE

ORDER

Before: SUTTON, Chief Judge; BOGGS and SILER, Circuit Judges.

Zachary C. Crouch, proceeding pro se, appeals the district court's order dismissing his complaint against the Internal Revenue Service (IRS). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we affirm.

Crouch sued the IRS, alleging that he paid federal income taxes in 2023 and should have received a refund of \$1202.42. Instead, he received a refund of only \$178.14, and he sued to recover the difference. Crouch moved for leave to proceed in forma pauperis (IFP). A magistrate judge granted leave to proceed IFP but recommended dismissing Crouch's complaint under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A, for failure to state a claim upon which relief could be granted. Specifically, the magistrate judge found that Crouch failed to allege that he complied with 26 U.S.C. § 7422(a), which requires a taxpayer to file an administrative claim with the Secretary of the Treasury before filing a lawsuit seeking a refund or credit. The magistrate judge warned Crouch that he had 14 days to file objections to the report and recommendation and that his failure to do would result in a waiver of appellate review. Crouch did not object to the report

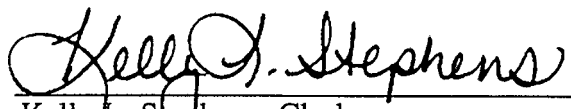
and recommendation, and the district court, noting the lack of timely objections, adopted the report and recommendation and dismissed Crouch's complaint.

On appeal, Crouch argues that the district court erred by granting the IRS sovereign immunity. We review the district court's dismissal de novo. *Hill v. Lappin*, 630 F.3d 468, 470 (6th Cir. 2010).

A party who does not file timely and specific objections to a magistrate judge's report and recommendation, after being advised to do so, forfeits the right to appeal. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *Berkshire v. Dahl*, 928 F.3d 520, 530-31 (6th Cir. 2019); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Although the failure to object may be excused "in the interests of justice," *Thomas*, 474 U.S. at 155, Crouch offers no reason to excuse the forfeiture—his appellate brief does not address his failure to object to the report and recommendation. And even if we were to excuse *that* forfeiture, Crouch does not contest the district court's finding that he failed to comply with § 7422(a), which would deprive the district court of jurisdiction to consider his claim. *See* 26 U.S.C. § 7422(a); *Thomas v. United States*, 166 F.3d 825, 828-29 (6th Cir. 1999). Instead, Crouch's appellate brief focuses solely on the propriety of granting sovereign immunity to the defendant, which the district court did not do. Crouch's failure to challenge the § 7422(a) finding on appeal forfeits appellate review of that dispositive finding. *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 522 (6th Cir. 2019) (noting that "an appellant forfeits an argument that he fails to raise in his opening brief"); *see also Geboy v. Brigano*, 489 F.3d 752, 766-67 (6th Cir. 2007) (applying the forfeiture principle to pro se litigants).

We therefore **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

  
Kelly L. Stephens, Clerk

## **APPENDIX B**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

ZACHARY C. COUCH,

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

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No.: 3:24-CV-143-TAV-DCP

**ORDER**

This civil matter is before the Court on a Report and Recommendation (“R&R”) entered by United States Magistrate Judge Debra C. Poplin on July 30, 2024 [Doc. 8]. In the R&R, the magistrate judge recommends that the Court dismiss plaintiff’s complaint. There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as waived. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(d), 72(b).

After careful review of the matter, the Court agrees with the magistrate judge’s recommendations. Accordingly, the Court **ACCEPTS and ADOPTS** in full the R&R [Doc. 8] pursuant to 28 U.S.C. § 636(b)(1). Accordingly, it is hereby **ORDERED** that plaintiff’s case is **DISMISSED**. The Clerk is **DIRECTED** to **CLOSE** this case.

ENTER:

s/ Thomas A. Varlan  
UNITED STATES DISTRICT JUDGE

## **APPENDIX C**

ZACHARY CROUCH,  
Plaintiff,  
v.  
INTERNAL REVENUE SERVICE,  
Defendant.

This case is before the undersigned pursuant to 28 U.S.C. § 636(b) and the Rules of this Court his on Application to Proceed In Forma Pauperis With Supporting Documentation (“Application”) [Doc. 1] and on Plaintiff’s Complaint [Doc. 2]. For the reasons more fully stated below, the undersigned **GRANTS** Plaintiff’s Application [**Doc. 1**] and **RECOMMENDS** that the District Judge **DISMISS** Plaintiff’s Complaint [**Doc. 2**].

Plaintiff has filed an Application [Doc. 1] with the required detailing of his financial condition. Section 1915 allows a litigant to commence a civil or criminal action in federal court without paying the administrative costs of the lawsuit. *Denton v. Hernandez*, 504 U.S. 25, 27 (1992). The Court’s review of an application to proceed without paying the administrative costs of the lawsuit is normally based solely on the affidavit of indigence. *See Gibson v. R.G. Smith Co.*, 915 F.2d 260, 262–63 (6th Cir. 1990) (observing that “the filing of a complaint is conditioned solely upon a person’s demonstration of poverty in his affidavit and the question of frivolousness is taken up thereafter”). To proceed without paying the administrative costs, the plaintiff must



show by affidavit the inability to pay court fees and costs—it is a threshold requirement. 28 U.S.C. § 1915(a)(1). One need not be absolutely destitute, however, to enjoy the benefit of proceeding in the manner of a pauper, or in forma pauperis. *Adkins v. E. I. DuPont de Nemours & Co., Inc.*, 335 U.S. 331, 342 (1948). An affidavit to proceed without paying the administrative costs is sufficient if it states that the plaintiff cannot, because of poverty, afford to pay for the costs of litigation and still pay for the necessities of life. *Id.* at 339.

The Court finds the Application is sufficient to demonstrate that Plaintiff has no income and no assets. Considering Plaintiff's Application, it appears to the Court that his economic status is such that he cannot afford to pay for the costs of litigation and still pay for the necessities of life. The Court will allow Plaintiff to proceed in the manner of a pauper. The Court **DIRECTS** the Clerk to file the Complaint in this case without payment of costs or fees. The Clerk **SHALL NOT**, however, issue process at this time.

## **II. RECOMMENDATION AFTER SCREENING OF THE COMPLAINT**

Under the Prison Litigation Reform Act, district courts must screen prisoner complaints and shall, at any time, sua sponte dismiss any claims that are frivolous or malicious, fail to state a claim for relief, or are against a defendant who is immune. 28 U.S.C. §§ 1915(e)(2)(B) and 1915(A); *Benson v. O'Brian*, 179 F.3d 1014, 1015–16 (6th Cir. 1999).<sup>1</sup> The dismissal standard articulated by the Supreme Court in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), “governs dismissals for failure state a claim under [28 U.S.C. §§ 1915(e)(2)(B) and 1915A] because the relevant statutory language tracks the language

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<sup>1</sup> Despite the reference to prisoners, 28 U.S.C. § 1915 requires the Court to screen complaints filed by non-prisoners seeking in forma pauperis status. *McGore v. Wrigglesworth*, 114 F.3d 601, 608 (6th Cir. 1997) (“Unlike prisoner cases, complaints by non-prisoners are not subject to screening process required by § 1915A. However, the district court must still screen the complaint under § 1915(e)(2).”), *overruled on other grounds*, *Jones v. Brock*, 549 U.S. 199 (2007).

in Rule 12(b)(6).” *Hill v. Lappin*, 630 F.3d 468, 470–71 (6th Cir. 2010). Thus, to survive an initial review under the PLRA, a complaint “must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). In addition to the above screening measures, “a court has an independent obligation to dismiss a case ‘[i]f the court determines at any time that it lacks subject-matter jurisdiction . . .’” *Ellis Warren v. Dep’t of Treasury*, No. 15-CV-11367, 2015 WL 5166008, at \*1 (E.D. Mich. May 6, 2015) (alterations in original) (citing Fed. R. Civ. P. 12(h)(3)), *report and recommendation adopted*, No. 15-CV-11367, 2015 WL 4545995 (E.D. Mich. July 28, 2015). Courts liberally construe pro se pleadings filed in civil rights cases and hold them to a less stringent standard than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

**A. Summary of the Allegations**

Plaintiff alleges that in 2023, he paid taxes to the Internal Revenue Service (“IRS”) [Doc. 2 p. 2]. He was entitled to a refund in the amount of \$1,202.42 [*Id.*]. The amount credited to his bank account, however, was only \$178.14 [*Id.*]. “The difference was said to be given to the [Tennessee] Department of Human Services for a debt that Plaintiff does not owe” [*Id.*]. He alleges theft and seeks \$1,024.28 in damages” [*Id.*].

**B. Screening of the Complaint**

Federal courts are courts of limited jurisdiction, possessing “only that power authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (citations omitted). District courts have jurisdiction over “[a]ny civil action or claim against the United States for the recovery of any internal-revenue tax revenue tax alleged to have been erroneously assessed or collected.” *Warren*, 2015 WL 5166008, at \*2 (quoting 28 U.S.C. § 1346(a)(1)). Prior to filing a lawsuit, however, the plaintiff must comply with 26 U.S.C. § 7422(a).

*Id.*; *Whatley v. IRS*, No. 3:19-CV-12, 2019 WL 545013, at \*2 (E.D. Tenn. Jan. 22, 2019), *report and recommendation adopted*, No. 3:19-CV-12, 2019 WL 539005 (E.D. Tenn. Feb. 11, 2019).

This statute provides:

No suit or proceeding shall be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Secretary, according to the provisions of law in that regard, and the regulations of the Secretary established in pursuance thereof.

26 U.S.C. § 7422(a). This statute “forms a ‘jurisdictional prerequisite to bringing suit.’” *Warren*, 2015 WL 5166008, at \*2 (quoting *Comm’r v. Lundy*, 516 U.S. 235, 240 (1996), *superseded by statute on other grounds as recognized in Healer v. Comm’r*, 115 T.C. 316, 320, 2000 WL 1520333 (2000)). If a plaintiff has not complied with § 7422(a), a suit alleging that the plaintiff is entitled to a refund must be dismissed for lack of jurisdiction. *Id.*

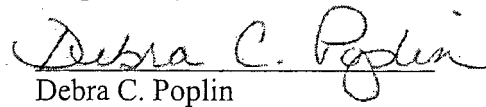
Here, Plaintiff filed his action on March 27, 2024, alleging that he is entitled to a refund based on his 2023 taxes [Doc. 2 p. 2]. There are no allegations included in the Complaint that he complied with 26 U.S.C. § 7422(a). *See Whatley*, 2019 WL 545013, at \*3 (“Ultimately, Plaintiff has failed to demonstrate that he exhausted his administrative remedies before filing this action. Therefore, as Plaintiff has not alleged that he properly submitted a claim to the IRS regarding the disputed tax return, the undersigned finds that this Court lacks jurisdiction over his Complaint.”); *Warren*, 2015 WL 5166008, at \*4 (recommending dismissal of the plaintiff’s complaint because “it [did] not allege that [the p]laintiff filed the necessary refund claims with the Secretary”). And here, given that Plaintiff’s allegations relate to his 2023 taxes, “it seems nearly impossible that even a properly filed refund claim would have passed the six month period in which the Secretary can review it.” *Warren*, 2015 WL 5166008, at \*4 (citing 26 U.S.C. § 6532(a)). The Court has

considered whether Plaintiff should be given leave to amend his Complaint, but the undersigned declines to do so here because an amendment will not cure the deficiency.

### III. CONCLUSION

For the reasons explained above, the undersigned **GRANTS** Plaintiff's Application to Proceed In Forma Pauperis With Supporting Documentation [Doc. 1]<sup>2</sup> and **RECOMMENDS**<sup>3</sup> that the District Judge **DISMISS** Plaintiff's Complaint [Doc. 2].

Respectfully submitted,

  
Debra C. Poplin  
United States Magistrate Judge

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<sup>2</sup> This matter is to be presented to the District Judge pursuant to this Report and Recommendation under the authority of *Gibson v. R.G. Smith Co.*, 915 F.2d 260, 263 (6th Cir. 1990), wherein the Court of Appeals states that such matters proceed automatically to a district judge for examination of the complaint after a magistrate judge has granted the petition to proceed without prepayment of costs.

<sup>3</sup> Any objections to this Report and Recommendation must be served and filed within fourteen (14) days after service of a copy of this recommended disposition on the objecting party. Fed. R. Civ. P. 72(b)(2). Such objections must conform to the requirements of Federal Rule of Civil Procedure 72(b). Failure to file objections within the time specified waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 153-54 (1985). "[T]he district court need not provide *de novo* review where objections [to the Report and Recommendation] are '[f]rivolous, conclusive or general.'" *Mira v. Marshall*, 806 F.2d 636, 637 (6th Cir. 1986) (quoting *Nettles v. Wainwright*, 677 F.2d 404, 410 n.8 (5th Cir. 1982)). Only specific objections are reserved for appellate review. *Smith v. Detroit Fed. of Tchrs.*, 829 F.2d 1370, 1373 (6th Cir. 1987).

## CERTIFICATE OF COMPLIANCE

In accordance with United States Supreme Court Rule 33.2(b), the total number of pages in this petition for writ of certiorari, exclusive of the Title/Cover page, Question(s) Presented, List of Parties, Related Cases, Table of Contents, Index of Appendices, Table of Authorities Sited, Opinions Below, Appendix, this Certificate of Compliance, and Proof of Service, is 11. This page count is based upon the word processing system used to prepare this petition. This submission does not exceed the page-count limit imposed by Rule 33.2(b).

A handwritten signature in cursive script, appearing to read "Zach Crouch", is written over a horizontal line.

ZACHARY CROUCH

Petitioner