

App. A – Opinion of the United States Court of Appeals for the Third Circuit (June 24, 2025)

**NOT PRECEDENTIAL**

**UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT**

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No. 25-1523

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EMMANUEL FOLLY,  
Appellant

v.

CITY OF PHILADELPHIA; PHILADELPHIA POLICE DEPARTMENT; VILMA  
CUBIAS, ASSISTANT DISTRICT ATTORNEY, PHILADELPHIA DISTRICT  
ATTORNEY'S OFFICE; SYIBL MURPHY, ASSISTANT DISTRICT ATTORNEY,  
PHILADELPHIA DISTRICT ATTORNEY'S OFFICE

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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil Action No. 2:25-cv-00305)  
District Judge: Honorable Kai N. Scott

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
June 20, 2025  
Before: HARDIMAN, MATEY, and CHUNG, Circuit Judges  
(Opinion filed: June 24, 2025)

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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.

Emmanuel Folly appeals pro se from the District Court's order dismissing his complaint with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). For the reasons that follow, we will affirm.

I.

Folly filed a civil rights action against the City of Philadelphia ("City"), the Philadelphia Police Department ("PPD"), and Assistant District Attorneys Vilma Cubias and Sybil Murphy in January 2025. The incidents relevant to this complaint began in 2016 when the PPD's Special Victims Unit ("SVU") initiated an investigation of alleged child pornography possession and dissemination affiliated with a specific IP address. SVU traced the IP address to a residence in Philadelphia and, while executing a search warrant on the property, discovered that a PPD officer, later determined to be Folly, resided there. Approximately one year later, Folly was arrested and charged with possession of child pornography, 18 Pa. C.S. § 6312(d), and dissemination of child pornography, 18 Pa. C.S. § 6312(c). The PPD placed Folly on a 30-day suspension and subsequently dismissed him permanently, effective May 22, 2017. In January 2022, Folly was acquitted of all criminal charges. Nonetheless, the PPD did not reverse his dismissal. The Fraternal Order of Police filed a grievance contesting Folly's termination and requesting he be reinstated to his former position with the PPD. The matter proceeded to arbitration with the City and in January 2023, the arbitrator upheld Folly's termination decision and denied the grievance. Folly filed suit in the District Court two years later.

Folly's complaint alleges that the defendants subjected him to an unlawful search and seizure in violation of the Fourth Amendment and malicious prosecution in violation of the Fourteenth Amendment. He also challenges the arbitration decision denying his request for reinstatement with the PPD, claiming it was improperly based on biased proceedings and violated his due process rights. The District Court screened Folly's complaint pursuant to § 1915(e)(2), determined all claims therein were facially untimely, and dismissed it with prejudice for failure to state a claim upon which relief may be granted. This timely appeal followed.<sup>1</sup>

## II.

We have jurisdiction pursuant to 28 U.S.C. § 1291. We review a dismissal for failure to state a claim *de novo*, applying the standard articulated by Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555–57 (2007), and reiterated in Ashcroft v. Iqbal, 556 U.S. 662, 677–79 (2009). See Allah v. Seiverling, 229 F.3d 220, 223 (3d Cir. 2000) (explaining that when dismissing complaints for failure to state a claim under § 1915(e)(2)(B)(ii), the standard of review is the same as under Federal Rule of Civil Procedure 12(b)(6)).<sup>2</sup>

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<sup>1</sup> The City of Philadelphia and Philadelphia Police Department are not participating in the appeal.

<sup>2</sup> Although the running of the statute of limitations is ordinarily an affirmative defense, if that defense is apparent on the face of the complaint, a court may dismiss a time-barred complaint *sua sponte* under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim. See Jones v. Bock, 549 U.S. 199, 215 (2007).

We must also accept the facts alleged in the complaint as true and draw all reasonable inferences in Folly's favor. See Simko v. U.S. Steel Corp., 992 F.3d 198, 204 (3d Cir. 2021) (citing Connelly v. Lane Constr. Corp., 809 F.3d 780, 787 (3d Cir. 2016)). Although pro se pleadings must be held to "less stringent standards than formal pleadings drafted by lawyers," Haines v. Kerner, 404 U.S. 519, 520 (1972), "pro se litigants still must allege sufficient facts in their complaints to support a claim." Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013).

### III.

After our de novo review of the record, we agree that the District Court properly dismissed Folly's complaint as untimely. Folly does not challenge the determination that he untimely filed his complaint, and has therefore forfeited any such argument. See Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 146–47 (3d Cir. 2017). Nor is any error apparent to us. See generally Nguyen v. Pennsylvania, 906 F.3d 271, 273 (3d Cir. 2018) (explaining that § 1983 claims are subject to two-year statute of limitations); PG Publ'g, Inc. v. Newspaper Guild of Pittsburgh, 19 F.4th 308, 319 (3d Cir. 2021) (explaining that challenge to an arbitration award under the Federal Arbitration Act must be brought 90 days after the award is issued).

On appeal, Folly argues that his difficulties securing counsel entitle him to equitable tolling of the statute of limitations. However, this argument fails on the merits, as equitable tolling is appropriate only in limited circumstances. Difficulty obtaining counsel, or proceeding pro se, does not warrant the extraordinary remedy of tolling the

statute of limitations. See Ross v. Varano, 712 F.3d 784, 799–800 (3d Cir. 2013) (“The fact that a petitioner is proceeding pro se does not insulate him from the ‘reasonable diligence’ inquiry and his lack of legal knowledge or legal training does not alone justify equitable tolling.”) (citing Brown v. Shannon, 322 F.3d 768, 774 (3d Cir. 2003)); see also Socha v. Boughton, 763 F.3d 674, 685 (7th Cir. 2014).

Folly also claims that the District Court should have given him the opportunity to file an amended complaint so he could address the deficiencies in his original filing. However, the only amendment Folly seeks to present concerns his equitable-tolling argument, which we have already determined lacks merit. Therefore, we agree with the District Court that amendment of his complaint would have been futile. See Jablonski v. Pan Am. World Airways, Inc., 863 F.2d 289, 292 (3d Cir. 1988) (explaining that “[a]mendment of the complaint is futile if the amendment will not cure the deficiency in the original complaint or if the amended complaint cannot withstand a renewed motion to dismiss”).

Thus, we will affirm the District Court’s judgment.

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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No. 25-1523

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EMMANUEL FOLLY,  
Appellant

v.

CITY OF PHILADELPHIA; PHILADELPHIA POLICE DEPARTMENT; VILMA  
CUBIAS, ASSISTANT DISTRICT ATTORNEY, PHILADELPHIA DISTRICT  
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On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
(D.C. Civil Action No. 2:25-cv-00305)  
District Judge: Honorable Kai N. Scott

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Submitted Pursuant to Third Circuit LAR 34.1(a)  
June 20, 2025  
Before: HARDIMAN, MATEY, and CHUNG, Circuit Judges

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**JUDGMENT**

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This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on June 20, 2025. On consideration whereof, it is now hereby ORDERED and ADJUDGED by this Court that the judgment of the District Court entered March 18, 2025, be and the same is hereby affirmed. Costs will not be taxed.

All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit  
Clerk

Dated: June 24, 2025

App. B – Opinion of the United States District Court for the Eastern District of Pennsylvania

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

EMMANUEL FOLLY, :  
Plaintiff, :  
: v. : CIVIL ACTION NO. 25-CV-0305  
: :  
CITY OF PHILADELPHIA, *et al.*, :  
Defendants. :  
:

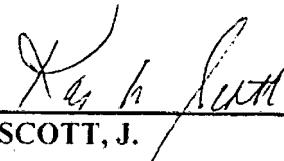
ORDER

AND NOW, this *18<sup>th</sup>* day of March, 2025, upon consideration of Plaintiff Emmanuel Folly's Complaint (ECF No. 2), Motion to Appoint Counsel (ECF No. 3), Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 6) and Motion for Default Judgment (ECF No. 7), it is

**ORDERED** that:

1. Leave to proceed *in forma pauperis* is **GRANTED** pursuant to 28 U.S.C. § 1915.
2. The Complaint is **DEEMED** filed.
3. The Complaint is **DISMISSED WITH PREJUDICE** for the reasons in the Court's Memorandum.
4. The Motion to Appoint Counsel is **DENIED**.
5. The Motion for Default Judgment is **DENIED**.
6. The Clerk of Court is **DIRECTED** to **CLOSE** this case.

BY THE COURT:

  
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KAIN N. SCOTT, J.

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

EMMANUEL FOLLY, :  
Plaintiff, :  
: :  
v. : : CIVIL ACTION NO. 25-CV-0305  
: :  
CITY OF PHILADELPHIA, *et al.*, :  
Defendants. :  
:

MEMORANDUM

SCOTT, J.

*MARCH 18, 2025*

*Pro Se* Plaintiff Emmanuel Folly brings this civil action pursuant to 42 U.S.C. § 1983, naming as Defendants the City of Philadelphia, the Philadelphia Police Department, and Assistant District Attorneys Vilma Cubas and Sybil Murphy. He also seeks leave to proceed *in forma pauperis*. For the following reasons, the Court will grant Folly's Motion for Leave to Proceed *In Forma Pauperis* (ECF No. 6) and dismiss his Complaint (ECF No. 2) on statutory screening.

**I. FACTUAL ALLEGATIONS<sup>1</sup>**

Folly was discharged from his position as a Philadelphia Police Officer on May 22, 2017.<sup>2</sup> (Arb. Op. at 2.) His dismissal came after an investigation "initiated by the Philadelphia

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<sup>1</sup> The following allegations are taken from the Complaint (ECF No. 2) and "matters of public record," of which this Court takes judicial notice. *See Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006). The Court adopts the pagination supplied by the CM/ECF docketing system.

<sup>2</sup> The Court takes judicial notice of the publicly available, redacted record of Folly's arbitration proceedings, upon which his claims rely. *See Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia*, AAA Case No. 01-17-003-1483 (Jan. 11, 2023) (Reilly, Arb.) (hereinafter "Arb. Op."), <https://www.phila.gov/media/20230217112402/FOP-Emmmanuel-Folly-discharge>

Police Department's Special Victims Unit (SVU) regarding alleged child pornography being "shared" on a peer-to-peer file sharing network that was linked to an IP address later "traced to 3346 N. 15th Street, Philadelphia, Pennsylvania, where Plaintiff resided." (Compl. at 9.) Police executed a search warrant at Folly's residence on November 17, 2016, and "seized electronic devices, including a laptop, desktop, and tablet." (*Id.*) Folly states that he was summoned to appear at the Police Department's Internal Affairs Division ("IAD") on April 25, 2017, where he "fully cooperated with law enforcement, providing passwords to his devices." (*Id.*) He was then "arrested on charges of possession and disseminati[on] of child pornography under 18 Pa. C.S. § 6312." (*Id.*) However, he was found not guilty of those charges following a criminal trial in January 2022. (*Id.*; *see also* Arb. Op. at 10, 14.)

The Fraternal Order of Police filed a grievance contesting Folly's discharge from his position as a police officer and, following the conclusion of the criminal trial, proceeded to arbitration with the City pursuant to a collective bargaining agreement, with hearings held in September and November 2022. (Arb. Op. at 10.) On January 11, 2023, the Arbitrator issued findings and an opinion, concluding that, despite the not-guilty verdict in the criminal trial, "the penalty of dismissal was warranted," and the City had just cause to discharge Folly, thus denying the grievance. (*Id.* at 21.)

Folly filed this action on January 17, 2025, alleging violations of his Fourth Amendment rights based on the search and seizure at his residence and his subsequent criminal prosecution, and violations of his Fourteenth Amendment right to due process based on the failure to reinstate him and purported bias in the arbitration proceedings. (Compl. at 10-22.) For relief, he seeks to

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FOP.pdf; *see also* Compl. at 14-22 (alleging due process violations and bias in the arbitration proceedings and citing arbitration case by number).

have this Court vacate the arbitration decision, reinstate him to his position as a police officer with backpay, grant him compensatory and punitive damages in an unspecified amount, and “investigative relief” ordering the “Pennsylvania Supreme Court Disciplinary Board [to] investigate the conduct” of the Assistant District Attorneys involved in his criminal and arbitration proceedings. (*Id.* at 22.)

## **II. STANDARD OF REVIEW**

The Court will grant Folly leave to proceed *in forma pauperis*. Accordingly, 28 U.S.C. § 1915(e)(2)(B)(ii) 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); *Talley v. Wetzel*, 15 F.4th 275, 286 n.7 (3d Cir. 2021). At the screening stage, the Court will accept the facts alleged in the *pro se* Complaint as true, draw all reasonable inferences in Folly’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) (cleaned up), *abrogation on other grounds recognized by Fisher v. Hollingsworth*, 115 F.4th 197 (3d Cir. 2024). Conclusory allegations do not suffice. *Iqbal*, 556 U.S. at 678. As Folly 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

All of Folly's claims are facially untimely. A statute of limitations is an affirmative defense that normally must be raised in an answer to the complaint. *See Fed. R. Civ. P. 8(c)*. “[A] complaint does not fail to state a claim simply because it omits facts that would defeat a statute of limitations defense.” *Schmidt v. Skolas*, 770 F.3d 241, 248 (3d Cir. 2014). Nonetheless, a court may evaluate the statute of limitations for purposes of a dismissal at the pleading stage, “but only if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.” *Robinson v. Johnson*, 313 F.3d 128, 135 (3d Cir. 2002) (internal quotation marks and citations omitted).

Folly's claims under the Fourth Amendment—for unreasonable search and seizure at his home in November 2016 and malicious prosecution in his criminal case that concluded in January 2022—are subject to a two-year statute of limitations. *See Kach v. Hose*, 589 F.3d 626, 634 (3d Cir. 2009) (explaining that the statute of limitations for § 1983 claims is governed by the personal injury tort law of the state where the cause of action arose and that Pennsylvania has a two-year statute of limitations for personal injury actions); *see also Dique v. N.J. State Police*, 603 F.3d 181, 185 (3d Cir. 2010). A claim accrues “when a plaintiff has a complete and present cause of action, that is, when [she] can file suit and obtain relief.” *Dique*, 603 F.3d at 185 (quotations omitted). In general, this means that the statute of limitations will start running at the time the plaintiff “knew or should have known of the injury upon which [her] action is based.” *Sameric Corp. of Del., Inc. v. City of Phila.*, 142 F.3d 582, 599 (3d Cir. 1998); *see also Montanez v. Sec'y Pa. Dep't of Corr.*, 773 F.3d 472, 480 (3d Cir. 2014).

Folly's claims related to the search at his home accrued on the date of the search on November 17, 2016, because that is when he knew or should have known of the basis for his

Fourth Amendment claim. *See Nguyen v. Pennsylvania*, 906 F.3d 271, 273 (3d Cir. 2018) (illegal search claims accrue at “the moment of the search”). But he did not bring this action until over eight years later, so the time-bar appears on the face of his Complaint. His claim for malicious prosecution accrued at the time that his criminal trial concluded in a not guilty verdict in January 2022.<sup>3</sup> *See Coello v. DiLeo*, 43 F.4th 346, 354-55 (3d Cir. 2022) (“A § 1983 claim sounding in malicious prosecution accrues when ‘the prosecution terminate[s] without a conviction.’” (quoting *Thompson v. Clark*, 596 U.S. 36, 47 (2022))). Thus, his malicious prosecution claim—brought three years after the conclusion of his criminal proceedings—is untimely by one year and therefore barred by the statute of limitations.

Folly’s remaining two claims seek to vacate the decision in arbitration proceedings based on purported bias and other due process violations. As an initial matter, it is unclear whether Folly’s request to vacate the arbitration award has been brought in the procedurally appropriate form. *See PG Publ’g, Inc. v. Newspaper Guild of Pittsburgh*, 19 F.4th 308, 311-13 (3d Cir. 2021) (distinguishing requests to vacate arbitration awards based on the Labor Management Relations Act (“LMRA”), 29 U.S.C. § 185(a) (covering certain union workers), which must be

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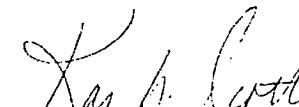
<sup>3</sup> Folly’s claims of bias and due process violations are based largely on the assertion that the “arbitrator’s opinion implies that the Plaintiff remains guilty, despite the acquittal.” (ECF No. 2 at 9). Folly’s Complaint does not include the date on which his trial ended, nor is his criminal docket publicly available, but the arbitrator’s opinion discussed the trial and its outcome (*see, e.g.*, Arb. Op. at 10,14), and Folly’s claims expressly rely upon the arbitrator’s opinion. Accordingly, the Court takes judicial notice of the date of acquittal as the arbitrator reported it. *See Schmidt v. Skolas*, 770 F.3d 241, 249 (3d Cir. 2014) (noting that, when considering dismissal at the pleading stage, a court may take judicial notice of a “document *integral to or explicitly relied upon in the complaint*” (quoting *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997)); *cf. City of Pittsburgh v. W. Penn Power Co.*, 147 F.3d 256, 259 (3d Cir. 1998) (“[A] court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document. Otherwise, a plaintiff with a legally deficient claim could survive a motion to dismiss simply by failing to attach a dispositive document on which it relied.” (quoting *Pension Benefit Guar. Corp. v. White Consol. Industries*, 998 F.2d 1192, 1196 (3rd Cir. 1993))).

brought as civil actions, from those based on the Federal Arbitration Act (“FAA”), 9 U.S.C. § 10, which must be brought as motions in summary proceedings, and noting that the two frameworks “produce distinct types of proceedings, prescribe different legal standards, and provide separate limitations periods”): *see also* Compl. at 15, 19 (citing provisions of the FAA). However, the Court need not reach the issue of the appropriate form of action because, under either framework, Folly’s action is untimely. The arbitration concluded in January 2023, but Folly did not bring this action until two years later. The limitations period to bring a challenge to an arbitration award under the LMRA is 30 days, and under the FAA is 90 days. *See id.* at 314-15. Folly’s Complaint was filed well beyond either limitations period, so his action is untimely.

#### IV. CONCLUSION

For the above reasons, the Court will grant Folly leave to proceed *in forma pauperis* and dismiss his Complaint for failure to state a claim.<sup>4</sup> Folly cannot cure the defects in his Complaint, so he will not be granted leave to amend. An appropriate order will be docketed separately.

BY THE COURT:



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KAI SCOTT, Jr.

<sup>4</sup> Folly’s Motion to Appoint Counsel (ECF No. 3) will be denied. *See Tabron v. Grace*, 6 F.3d 147, 155 (3d Cir. 1993) (before exercising discretion to appoint counsel “the district court must consider as a threshold matter the merits of the plaintiff’s claim”). His Motion for Default Judgment (ECF No. 7) will be denied as moot.

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