

II. APPLICABLE LEGAL STANDARDS ON INITIAL REVIEW

The court is required to review prisoner and in forma pauperis complaints seeking relief against a governmental entity or an officer or employee of a governmental entity to determine whether summary dismissal is appropriate. See [28 U.S.C. §§ 1915\(e\)](#) and [1915A](#). The court must dismiss a complaint or any portion thereof that states a frivolous or malicious claim, that fails to state a claim upon which relief may be granted, or that seeks monetary relief from a defendant who is immune from such relief. [28 U.S.C. § 1915\(e\)\(2\)\(B\)](#); [28 U.S.C. § 1915A](#).

A pro se plaintiff must set forth enough factual allegations to “nudge[] their claims across the line from conceivable to plausible,” or “their complaint must be dismissed” for failing to state a claim upon which relief can be granted. [Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 569-70 \(2007\)](#); see also [Ashcroft v. Iqbal, 129 S. Ct. 1937, 1950 \(2009\)](#) (“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”). Regardless of whether a plaintiff is represented or is appearing pro se, the plaintiff’s complaint must allege specific facts sufficient to state a claim. See [Martin v. Sargent, 780 F.2d 1334, 1337 \(8th Cir. 1985\)](#). However, a pro se plaintiff’s allegations must be construed liberally. [Burke v. North Dakota Dep’t of Corr. & Rehab., 294 F.3d 1043, 1043-44 \(8th Cir. 2002\)](#) (citations omitted).

Liberally construed, Plaintiff here alleges federal constitutional claims. To state a claim under [42 U.S.C. § 1983](#), a plaintiff must allege a violation of rights protected by the United States Constitution or created by federal statute and also must show that the

alleged deprivation was caused by conduct of a person acting under color of state law. [West v. Atkins, 487 U.S. 42, 48 \(1988\)](#); [Buckley v. Barlow, 997 F.2d 494, 495 \(8th Cir. 1993\)](#).

III. DISCUSSION OF CLAIMS

Liberal construed, Plaintiff alleges Defendant improperly held him, because he was entitled to be released while awaiting trial after posting bond. The abstention doctrine of [Younger v. Harris, 401 U.S. 37, 59 \(1971\)](#), provides that federal courts should abstain from hearing cases when there is an ongoing state judicial proceeding that implicates important state interests, and when that proceeding affords an adequate opportunity to raise the federal questions presented. See [Norwood v. Dickey, 409 F.3d 901, 903 \(8th Cir. 2005\)](#); see also [Herrera v. Safir, 17 F. App'x 41, 42 \(2d Cir. 2001\)](#) (holding that the plaintiff's claim to enjoin his criminal prosecution was barred by *Younger* because his state court criminal trial was pending, providing the opportunity to raise his constitutional claims where there was no showing of prosecutorial or judicial bad faith).

Here, it is clear that Plaintiff has ongoing state-court matters in both Nebraska and Iowa. There is no question that he may raise his claims relating to his posted bond and release pending his trial in those ongoing state-court proceedings. Additionally, Plaintiff may also raise any complaints regarding Defendant keeping him six days too long in his state-court proceedings. Plaintiff has not alleged that the state court proceeding will not provide him with an adequate opportunity to raise his federal claims and this court will therefore abstain from hearing any of Plaintiff's claims that relate to his ongoing state court proceeding.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Complaint (Filing No. [1](#)) is dismissed without prejudice to reassertion in the proper forum.
2. A separate judgment will be entered in accordance with this Memorandum and Order.
3. Plaintiff's Motion to Appoint Counsel (Filing No. [11](#)) is denied as moot.

DATED this 1st day of December, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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