

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHNNY LYNCH,

Plaintiff,

-against-

P. BHARARA, *et al.*,

Defendants.

19-CV-3572 (CM)

ORDER TO AMEND

COLLEEN McMAHON, Chief United States District Judge:

Plaintiff, currently incarcerated in the Green Haven Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his rights under federal law. By order dated June 20, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis* ("IFP").¹ For the reasons set forth below, the Court grants Plaintiff leave to file an amended complaint within sixty days of the date of this order.

STANDARD OF REVIEW

The Court must dismiss a complaint, or portion thereof, that is frivolous or malicious, fails to state a claim upon 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), 1915A(b); *see Abbas v. Dixon*, 480 F.3d 636, 639 (2d Cir. 2007). The Court must also dismiss a complaint when the Court lacks subject matter jurisdiction. *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,"

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed IFP. *See* 28 U.S.C. § 1915(b)(1).

Triestman v. Fed. Bureau of Prisons, 470 F.3d 471, 474 (2d Cir. 2006) (internal quotation marks and citations omitted) (emphasis in original).

Rule 8 of the Federal Rules of Civil Procedure requires a complaint to make a short and plain statement showing that the pleader is entitled to relief. A complaint states a claim for relief if the claim is plausible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). To review a complaint for plausibility, the Court accepts all well-pleaded factual allegations as true and draws all reasonable inferences in the pleader’s favor. *Iqbal*, 556 U.S. at 678-79 (citing *Twombly*, 550 U.S. at 555). But the Court need not accept “[t]hreadbare recitals of the elements of a cause of action,” which are essentially legal conclusions. *Id.* at 678 (citing *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 brings this action under 42 U.S.C. § 1983, ultimately seeking to challenge his transfer from federal to state custody. Most of his complaint, however, describes his attempts to obtain information about his transfer through filing a number of Freedom of Information Act (“FOIA”) requests. He sues former U.S. Attorney Preet Bharara, Assistant U.S. Attorney Nola Heller, U.S. Marshal J. Guccione, the U.S. District Court for the Southern District of New York, the State of New York, former Bronx District Attorney Robert Johnson, the U.S. Bureau of Prisons, D. Schriro, Commissioner of Department of Correction, R.N.D.C. Warden E. Bailey, A.M.K.C. Warden R. Cripps, the G.E.O. Detention Facility, and Anthony Ricco. The following allegations are taken from Plaintiff’s complaint.

A. Plaintiff's transfer between state and federal custody

On November 13, 2009, Plaintiff was arrested and committed to the custody of Bronx County for prosecution by the Bronx County District Attorney's Office ("Bronx DA") in the New York Supreme Court, Bronx County. On June 14, 2010, Plaintiff was "confiscated" by federal agents and taken to the Manhattan headquarters of the Federal Bureau of Investigation ("FBI"), where he was questioned by Assistant United States Attorney Nola Heller ("AUSA Heller"). Plaintiff's attorney, Defendant Anthony Ricco, arrived shortly after the questioning began. Plaintiff alleges "by information and belief" that the Bronx DA "was not notified or aware of [his] confiscation and interrogation at that time." (Compl. at 3.) Plaintiff was returned to Rikers Island on the same day. Plaintiff alleges that, on November 9, 2010, he was again "confiscated" by federal agents and taken to FBI headquarters, where he was questioned by AUSA Heller. He was returned to Rikers Island on the same day.

On March 17, 2011, Plaintiff was convicted in the Bronx County Supreme Court on the charge for which he had been indicted. He alleges that, "[d]uring the March 17, 2011 conviction," the court informed him that he would be transferred to federal custody "pursuant to said federal charges" and that the state court will direct that its sentence run concurrently to any federal sentence. (*Id.* at 4.) Plaintiff alleges that he was never informed by the court, his attorney Ricco, or the Bronx DA that he would have to testify against anyone or that the concurrent sentences "were dependent upon [his] participation or self-incrimination." (*Id.*) Plaintiff was placed in federal custody and transferred to the G.E.O. Facility, a private detention facility contracted by the FBI.

Around June 1, 2011, Plaintiff discharged Ricco as his attorney for allegedly lying to him and deceiving him about the ramifications of his plea deal. Plaintiff alleges that Ricco informed the Bronx County Supreme Court and AUSA Heller that Plaintiff wished to breach the state plea

agreement and return to state custody for sentencing. Plaintiff maintains that he did not want to return to state custody, but rather wanted to remain in federal custody and proceed on the federal charges.

On July 1, 2011, Plaintiff was transferred back to Rikers Island, and on July 15, 2011, the Bronx DA informed the Bronx County Supreme Court that it considered Plaintiff in breach of the plea agreement and recommended a sentence of 25 years to life in prison. On September 12, 2012, the Bronx County Supreme Court sentenced Plaintiff to a term of incarceration of 25 years to life.

B. Plaintiff's FOIA requests

Plaintiff's complaint describes FOIA requests that he submitted to various federal agencies between May 2016 and July 2018, and in which he sought documents containing information about his transfer. Plaintiff's complaint is unclear as to how many separate FOIA requests he sent and how each request was ultimately resolved. It appears Plaintiff sent FOIA requests to the U.S. Marshals Service, Federal Bureau of Prisons ("BOP"), the Federal Bureau of Investigation ("FBI"), the U.S. Attorney's Office for the Southern District of New York ("U.S. Attorney's Office"), and the U.S. District Court for the Southern District of New York ("SDNY").

The Marshals Service ultimately produced nine pages of documents in response to Plaintiff's request. (*Id.* at 8-9, 47.) The BOP informed Plaintiff that the records he requested were not in its possession, *id.* at 8, 45, and the FBI indicated that it was "unable to identify mail file records" in response to his request and asked Plaintiff for additional information, *id.* at 7, 43. The U.S. Attorney's Office forwarded his request to the Marshals Service. *See id.* at 9-10, 60. Plaintiff appealed the U.S. Attorney's Office's decision to forward his request to the Marshals

Service and the DOJ's Office of Information Policy affirmed the U.S. Attorney's Office's decision. (*Id.* at 62.)

Plaintiff also describes receiving a response from the DOJ, indicating that his request was for records that were maintained by "another component of DOJ" and determining his request to be "misdirected." (*Id.* at 8.) It is unclear whether Plaintiff sent a separate FOIA request to DOJ or if DOJ was responding on behalf of another agency under its jurisdiction.

C. Legal claims and relief sought

Plaintiff asserts a wide array of legal claims, including that Defendants violated his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments when they transferred him "from state to federal custody and from federal to state custody devoid," and conspired to violate his rights under the Fifth, Sixth, and Fourteenth Amendments "in their collective efforts to illegally transfer Plaintiff and holding him in several sovereign prosecutorial jurisdictions under the false pretense of prosecuting him in both." (*Id.* at 23.) Plaintiff also asserts claims for intentional infliction of emotional distress, denial of equal protection, gross negligence, negligent infliction of physical, emotional, and mental distress, and loss of consortium. (*Id.* at 23-24.) He seeks money damages and injunctive relief, including an order prohibiting Defendants "from utilizing, in any way, any information alleged to have been collected or provided by Plaintiff throughout the course of his unconstitutional transfers between sovereigns." (*Id.* at 25.)

DISCUSSION

A. Claims against U.S. Attorney Bharara, AUSA Heller, and Bronx District Attorney Johnson

Prosecutors are immune from civil suits for damages for acts committed within the scope of their official duties where the challenged activities are not investigative in nature but, rather, are "intimately associated with the judicial phase of the criminal process." *Simon v. City of New*

York, 727 F.3d 167, 171 (2d Cir. 2013) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); *see also Buckley v. Fitzsimmons*, 509 U.S. 259 (1993) (holding that absolute immunity is analyzed under “functional approach” that “looks to the nature of the function performed, not the identity of the actor who performed it”). In addition, prosecutors are absolutely immune from suit for acts that may be administrative obligations but are “directly connected with the conduct of a trial.” *Van de Kamp v. Goldstein*, 555 U.S. 335, 344 (2009).

Any claims that Plaintiff makes claims against U.S. Attorney Bharara, AUSA Heller, and Bronx District Attorney Johnson² are based on actions within the scope of their official duties and associated with the conduct of a trial. Therefore, these claims are dismissed because they seek monetary relief against a defendant who is immune from suit and as frivolous. 28 U.S.C. § 1915(e)(2)(b)(i), (iii); *see Collazo v. Pagano*, 656 F. 3d 131, 134 (2d Cir. 2011) (holding that claim against prosecutor is frivolous if it arises from conduct that is “intimately associated with the judicial phase of the criminal process”).

Even if Plaintiff’s allegations can be construed as asserting that AUSA Heller was acting as an investigator when she questioned him at FBI Headquarters, and is therefore only entitled to qualified immunity, *see Simon v. City of New York*, 727 F.3d 167, 174 (2d Cir. 2013), Plaintiff fails to assert constitutional violations that arose as a result of this questioning. The Court therefore dismisses any of Plaintiff’s claims against AUSA Heller related to her questioning of him for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

² To state a claim under 42 U.S.C. § 1983, a plaintiff must allege facts showing the defendants’ direct and personal involvement in the alleged constitutional deprivation. *See Spavone v. N.Y. State Dep’t of Corr. Serv.*, 719 F.3d 127, 135 (2d Cir. 2013) (citing *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995)). The Court notes that Plaintiff has failed to allege any facts showing how Bharara and Johnson were directly and personally involved in violating his federal constitutional rights.

B. Claims against Ricco

A claim for relief under § 1983 must allege facts showing that each defendant acted under the color of a state “statute, ordinance, regulation, custom or usage.” 42 U.S.C. § 1983. Private parties are therefore not generally liable under the statute. *Sykes v. Bank of America*, 723 F.3d 399, 406 (2d Cir. 2013) (citing *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass’n*, 531 U.S. 288, 295 (2001)); *see also Ciambriello v. Cnty. of Nassau*, 292 F.3d 307, 323 (2d Cir. 2002) (“[T]he United States Constitution regulates only the Government, not private parties.”). Absent special circumstances suggesting concerted action between an attorney and a state representative, *see Nicholas v. Goord*, 430 F.3d 652, 656 n.7 (2d Cir. 2005) (citing *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 152 (1970)), the representation of a defendant by private counsel in state criminal proceedings does not constitute the degree of state involvement or interference necessary to establish a claim under § 1983, regardless of whether that attorney is privately retained, court-appointed, or employed as a public defender. *See Bourdon v. Loughren*, 386 F.3d 88, 90 (2d Cir. 2004) (citing *Polk Cnty. v. Dodson*, 454 U.S. 312, 324-25 (1981)); *see also Schnabel v. Abramson*, 232 F.3d 83, 87 (2d Cir. 2000) (holding that legal aid organization ordinarily is not a state actor for purposes of § 1983). As Ricco is a private party who does not work for any state or other government body, Plaintiff has not stated a claim against this defendant under § 1983. 28 U.S.C. § 1915(e)(2)(B)(ii).

C. Claims against the SDNY

The doctrine of sovereign immunity bars federal courts from hearing all suits against the federal government, including suits against its courts, except where sovereign immunity has been waived. *United States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)); *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 510 (2d Cir. 1994) (“Because an action against a federal agency or federal officers in their official capacities

is essentially a suit against the United States, such suits are . . . barred under the doctrine of sovereign immunity, unless such immunity is waived.”). Sovereign immunity is not waived for these claims.

Moreover, to the extent Plaintiff seeks to assert claims against individual judges, they are absolutely immune from suit for damages for any actions taken within the scope of their judicial responsibilities. *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Generally, “acts arising out of, or related to, individual cases before the judge are considered judicial in nature.” *Bliven v. Hunt*, 579 F.3d 204, 210 (2d Cir. 2009). “Even allegations of bad faith or malice cannot overcome judicial immunity.” *Id.* (citations omitted). This is because “[w]ithout insulation from liability, judges would be subject to harassment and intimidation” *Young v. Selsky*, 41 F.3d 47, 51 (2d Cir. 1994). In addition, as amended in 1996, § 1983 provides that “in any action brought against a judicial officer for an act or omission taken in such officer’s judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.” 42 U.S.C. § 1983. The Court therefore dismisses Plaintiff’s claims against the SDNY. *See* 28 U.S.C. § 1915(e)(2)(B)(ii), (iii).

D. Claims against the State of New York

“[A]s a general rule, state governments may not be sued in federal court unless they have waived their Eleventh Amendment immunity, or unless Congress has abrogated the states’ Eleventh Amendment immunity” *Gollomp v. Spitzer*, 568 F.3d 355, 366 (2d Cir. 2009). “The immunity recognized by the Eleventh Amendment extends beyond the states themselves to state agents and state instrumentalities that are, effectively, arms of a state.” *Id.* New York has not waived its Eleventh Amendment immunity to suit in federal court, and Congress did not abrogate the states’ immunity in enacting 42 U.S.C. § 1983. *See Trotman v. Palisades Interstate Park Comm’n*, 557 F.2d 35, 40 (2d Cir. 1977). The Eleventh Amendment does not bar suits seeking

prospective injunctive relief against state officials allegedly acting in violation of federal law. *See Ex Parte Young*, 209 U.S. 123, 150-59 (1908).

Plaintiff does not assert any facts suggesting that New York State or any of its officials were personally and directly involved in violating his rights. In any event, Plaintiff cannot sue the State of New York in federal court for money damages, and he does not seek injunctive relief against a New York State official. Plaintiff's § 1983 claims against the State of New York are therefore barred by the Eleventh Amendment and are dismissed. 28 U.S.C. § 1915(e)(2)(B)(ii), (iii).

E. Claims against J. Guccione, D. Schriro, Warden E. Bailey, Warden R. Cripps, and G.E.O Detention Facility

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege facts showing the defendants' direct and personal involvement in the alleged constitutional deprivation. *See Spavone v. N.Y. State Dep't of Corr. Serv.*, 719 F.3d 127, 135 (2d Cir. 2013) (citing *Colon v. Coughlin*, 58 F.3d 865, 873 (2d Cir. 1995)). A defendant may not be held liable under § 1983 solely because that defendant employs or supervises a person who violated the plaintiff's rights. *See Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Government officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*."). An individual defendant can be personally involved in a § 1983 violation if:

- (1) the defendant participated directly in the alleged constitutional violation,
- (2) the defendant, after being informed of the violation through a report or appeal, failed to remedy the wrong,
- (3) the defendant created a policy or custom under which unconstitutional practices occurred, or allowed the continuance of such a policy or custom,
- (4) the defendant was grossly negligent in supervising subordinates who committed the wrongful acts, or
- (5) the defendant exhibited deliberate indifference to the rights of [the plaintiff] by failing to act on information indicating that unconstitutional acts were occurring.

Colon, 58 F.3d at 873.³

Plaintiff does not allege any facts showing how these Defendants were personally involved in the events underlying his claims. Plaintiff's claims are therefore dismissed for failure to state a claim on which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B)(ii).

F. Claims under FOIA

The FOIA gives members of the public a right to access some information from federal executive agencies. Federal courts have jurisdiction to enforce this right if a requester can show that “an agency has (1) ‘improperly;’ (2) ‘withheld;’ (3) ‘agency records.’” *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136, 150 (1980) (quoting 5 U.S.C. § 552(a)(4)(B)). The “[FOIA] authorizes suit against federal agencies, not against individuals.” *Times Newspapers of Great Britain, Inc. v. CIA*, 539 F. Supp. 678, 685 (S.D.N.Y.1982) (internal quotation marks omitted); *Mamarella v. Cnty. of Westchester*, 898 F. Supp. 236, 237 (S.D.N.Y.1995) (“[T]he plain language of [the FOIA] provides that only ‘agencies’ are subject to the FOIA . . . the statute[] do[es] not create a cause of action against individuals.”).

Under the FOIA, an applicant must exhaust administrative remedies by completing the administrative appeal process before seeking judicial review. 5 U.S.C. § 552(a)(6)(A)(i), (ii); *see Sloman v. U. S. Dep’t of Justice*, 832 F. Supp. 63, 65-66 (S.D.N.Y. 1993); *Sterling Drug Inc., v. Harris*, 488 F. Supp. 1019, 1023 (S.D.N.Y. 1980). The exhaustion requirement allows the targeted agency to correct its own errors to obviate unnecessary judicial review. *See McKart v.*

³“Although the Supreme Court’s decision in [*Ashcroft v. Iqbal*, 556 U.S. 662 (2009)] may have heightened the requirements for showing a supervisor’s personal involvement with respect to certain constitutional violations,” the Second Circuit has not yet examined that issue. *Grullon v. City of New Haven*, 720 F.3d 133, 139 (2d Cir. 2013).

United States, 395 U.S. 185, 193-94 (1969). The FOIA establishes a relatively simple administrative process:

Each agency, upon any request for records . . . shall--(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of – (I) such determination and the reasons therefor[.]

§ 552(a)(6)(A)(i)-(ii); *see* 28 C.F.R. § 16.6(b), (c). If the request is denied, the requester may appeal the adverse determination to the head of the agency within 90 days.

§ 552(a)(6)(A)(iii)(aa). While “[e]xhaustion of administrative remedies is normally required as a precondition to suit under the FOIA,” *McKevitt v. Mueller*, 689 F. Supp. 2d 661, 667 (S.D.N.Y. 2010), if an agency fails to comply with the applicable time limits, a requester is deemed to have exhausted his administrative remedies, § 552(a)(6)(C)(i).

While Plaintiff alleges making numerous FOIA requests to multiple agencies, he does not appear to allege facts necessary to state a FOIA enforcement claim. Nor does he indicate that he has exhausted administrative remedies. In any event, Plaintiff’s complaint fails to comply with Rule 8’s requirement of a short and plain statement showing that he is entitled to relief.

In light of Plaintiff’s *pro se* status, the Court grants him leave to file an amended complaint that includes a short and plain statement of facts indicating that a federal agency has improperly withheld agency records in violation of the FOIA.

G. Plaintiff’s request to proceed anonymously

On July 11, 2019, more than two months after he filed the complaint, Plaintiff filed a motion to proceed anonymously. (ECF No. 6.) Rule 10(a) of the Federal Rules of Civil Procedure provides that “[t]he title of [a] complaint must name all the parties.” “This requirement . . . serves the vital purpose of facilitating public scrutiny of judicial proceedings and therefore cannot be set aside lightly.” *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 188-89

(2d Cir. 2008). Courts have, however, permitted parties to proceed anonymously under limited circumstances. In deciding whether to permit a party to proceed anonymously, the United States Court of Appeals for the Second Circuit has articulated a nonexhaustive list of ten factors that courts should consider:

(1) whether the litigation involves matters that are highly sensitive and of a personal nature; (2) whether identification poses a risk of retaliatory physical or mental harm to the party seeking to proceed anonymously or even more critically, to innocent non-parties; (3) whether identification presents other harms and the likely severity of those harms, including whether the injury litigated against would be incurred as a result of the disclosure of plaintiff's identity; (4) whether the plaintiff is particularly vulnerable to the possible harms of disclosure, particularly in light of his age; (5) whether the suit is challenging the actions of the government or that of private parties; (6) whether the defendant is prejudiced by allowing the plaintiff to press his claims anonymously, whether the nature of that prejudice (if any) differs at any particular stage of the litigation, and whether any prejudice can be mitigated by the district court; (7) whether the plaintiff's identity has thus far been kept confidential; (8) whether the public's interest in the litigation is furthered by requiring the plaintiff to disclose his identity; (9) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants' identities; and (10) whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff.

Id. at 190 (alterations, ellipses, quotation marks, and citations omitted).

While Plaintiff may be able to assert arguments under some of the factors, the cat is already out of the bag. By initiating this action in a United States District Court, Plaintiff has made his name a matter of public record. Moreover, he is alleging that government officials have violated his rights and are unlawfully withholding public records. Such allegations are a matter of public concern. The Court concludes that the circumstances here are not sufficiently extraordinary to outweigh the presumption in favor of public access. The Court therefore denies

Plaintiff's motion to proceed anonymously and directs the Clerk of Court to terminate the motion.⁴

LEAVE TO AMEND

Plaintiff is granted leave to amend his complaint to detail his claims. In the statement of claim, Plaintiff must provide a short and plain statement of the relevant facts supporting each claim against each defendant named in the amended complaint. Plaintiff is also directed to provide the addresses for any named defendants. To the greatest extent possible, Plaintiff's amended complaint must:

- a) give the names and titles of all relevant persons;
- b) describe all relevant events, stating the facts that support Plaintiff's case including what each defendant did or failed to do;
- c) give the dates and times of each relevant event or, if not known, the approximate date and time of each relevant event;
- d) give the location where each relevant event occurred;
- e) describe how each defendant's acts or omissions violated Plaintiff's rights and describe the injuries Plaintiff suffered; and
- f) state what relief Plaintiff seeks from the Court, such as money damages, injunctive relief, or declaratory relief.

Essentially, the body of Plaintiff's amended complaint must tell the Court: who violated his federally protected rights; what facts show that his federally protected rights were violated; when such violation occurred; where such violation occurred; and why Plaintiff is entitled to relief. Because Plaintiff's amended complaint will completely replace, not supplement, the original complaint, any facts or claims that Plaintiff wishes to maintain must be included in the amended complaint.

⁴ If, during the course of the litigation, Plaintiff believes that a specific document or court filing may include sensitive information, he may request to file the document under seal.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, and note service on the docket.

The Court dismisses Plaintiff's claims against Preet Bharara, Nola Heller, and Robert Johnson pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), (ii), (iii).

The Court dismisses Plaintiff's claims against Anthony Ricco for failure to state a claim on which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court dismisses Plaintiff's claims against the SDNY as barred under the doctrine of sovereign immunity. 28 U.S.C. § 1915(e)(2)(B)(ii), (iii).

The Court dismisses Plaintiff's claims against the State of New York as barred by the Eleventh Amendment. 28 U.S.C. § 1915(e)(2)(B)(ii), (iii).

The Court dismisses Plaintiff's claims against J. Guccione, D. Schriro, E. Bailey, R. Cripps, and the G.E.O Detention Facility for failure to state a claim on which relief can be granted. 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court denies Plaintiff's motion to proceed anonymously without prejudice to refile at a later time.

Plaintiff is granted leave to file an amended complaint detailing his FOIA claims that complies with the standards set forth above. Plaintiff must submit the amended complaint to this Court's Pro Se Intake Unit within sixty days of the date of this order, caption the document as an "Amended Complaint," and label the document with docket number 19-CV-3572 (CM). An Amended Civil Rights Complaint form is attached to this order. No summons will issue at this time. If Plaintiff fails to comply within the time allowed, and he cannot show good cause to excuse such failure, the Court will dismiss the complaint for failure to state a claim upon which relief may be granted.

The Clerk of Court is directed to docket this as a “written opinion” within the meaning of Section 205(a)(5) of the E-Government Act of 2002.

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 IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: August 21, 2019
New York, New York



COLLEEN McMAHON
Chief United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

**AMENDED
COMPLAINT**

under the Civil Rights Act,
42 U.S.C. § 1983

Jury Trial: Yes No
(check one)

___ Civ. _____ ()

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

I. Parties in this complaint:

A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff's Name _____
ID# _____
Current Institution _____
Address _____

B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 2 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 3 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Who did
what?

Defendant No. 4 Name _____ Shield # _____
Where Currently Employed _____
Address _____

Defendant No. 5 Name _____ Shield # _____
Where Currently Employed _____
Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur?

B. Where in the institution did the events giving rise to your claim(s) occur?

C. What date and approximate time did the events giving rise to your claim(s) occur?

D. Facts: _____

What
happened
to you?

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ____ No ____ Do Not Know ____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ____ No ____ Do Not Know ____

If YES, which claim(s)?

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ____ No ____

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ____ No ____

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

1. Which claim(s) in this complaint did you grieve?

2. What was the result, if any?

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process.

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here:

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any:

G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). _____

On these claims

VI. Previous lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No ____

B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____
Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

____ 3. Docket or Index number _____

____ 4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____
If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On other claims

C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ____ No ____

D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____
Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

____ 3. Docket or Index number _____

____ 4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____
 If NO, give the approximate date of disposition _____
7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this ____ day of _____, 20__.

Signature of Plaintiff _____
 Inmate Number _____
 Institution Address _____

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this ____ day of _____, 20__, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: _____