

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

MICHAEL BORDERS EL BEY,

Plaintiff,

DECISION & ORDER

-VS-

17-CV-6565-CJS

JOHN DOE #31 *et al.*,

Defendants.

INTRODUCTION

Siragusa, J. Plaintiff *pro se* has filed what he styles as a petition for a writ of habeas corpus, as well as a memorandum. Because his filings raise the question of whether this is a “sovereign citizen” claim, the Court addresses it *sua sponte* in accordance with the inherent right to control its docket. For the reasons stated below, the complaint is dismissed without prejudice to refile within 30 days.

FACTUAL BACKGROUND

On August 14, 2017, Plaintiff filed a handwritten paper titled, “Notice of Removal Based on Diversity of Citizenship, Writ of Habeas Corpus According to 28 U.S.C. § 1331.” Notice, ECF No. 1. The first portion of the filing, which the Court transcribes here only with great difficulty due to the small, cramped writing, and nonsensical stream of consciousness, states as follows:

I am claimant Michael Borders El Bay (creditor) and Heir here in the land of the Moors In Proprio Persona (sui juris) Ex Rel [MICHAEL V. BORDERS] 14th Amendment Person as Corporation = via Fraudulent Construct/Birth Certificate which is an fraudulent cesta que (vie) Trust created by hospitals and Foreign State Corporations to Escheat via Hypothecation

= through the use of fraudulent constructs: SSN #, drivers license, marriage license, certificate of title, mortgages, credit cards etc. The claimant who is an sovereign Aboriginal Indigenous Moorish American National (Natural Flesh and Blood Being not lost at sea/lost vessel according to Admiralty Law/14th Amendment & fraudulent Corpse = the man of the straw/[MICHAEL V BORDERS] name in all caps/Corporation which is in violation of the Treaty of Peace and Friendship 1787-1836-1985 (last Ratified by U.S. Federal Corporation (28 USC 3002 15(A) President Reagan which is an amity and Commerce contract between the Moroccan/American Empire 1787-1836 and the subordinate union states/United States Republic which was converted into the Federal Corporation/ "Democracy" without the Authority to do so via the Act of 1871 coup d'état and the above listed criminals are also in violation of the Rights of Indigenous People Act signed by U.S. President Barack Obama 2010-2011 as a measure to help with the Decolonization Act 1960. with the hope of uplifting fallen "Humanity" those who are branded Black, Negro, Colored, Indian and African-American who have been held in "Peonage" since 1492/1492. Therefore the claimant comes now an submit this Habeas Corpus for special proceeding according to Article III, Sec II and Article VI of the United States Republic Constitution 1789 for redress as follows:

1. On June 14, 2017 the Michael Borders El Bay was arbitrarily Arrested/Human Trafficking by the City of Buffalo Corporation Mercenaries (commercial) After the claimant Michael Borders El Bay Made his Status and Estate known during false arrest and prior on Numerous false arrest and on Affidavit of Truth's and Affidavit of Facts, And the Foreign Commercial Mercenaries (those who deem themselves Police) continued to force their corporation statues, codes and ordinances on the claimant through force of arms (threat, duress and coercion) which is a violation of the Treaty Contract at Article 6 of the United States Republic Constitution, in violation of the Right of Indigenous People's Act, in violation of 18 USC 241, 242, in violation of 18 USC 1341 (Fraud), in violation the "Clearfield Doctrine" in violation of their commander in Chief Pope Francis Civil Order-2014 and Motu Proprio September 2013 for all said violators are part of the Roman Curia, and who are in violation of Human Trafficking, Extortion [sic] and Exploiting the claimant Michael Borders El Bay, therefore the claimant demand 5 million in federal notes for compensatory damages and 5 million federal notes/private commercial papers in you of lawful Money punitive damage per each Violator/Person - in their private and corporate capacity.

2. On June 15, 2017 at approx. 9:45 AM havin [sic] been detained/Human Trafficked overnight in the Foreign City of Buffalo Corporation Jail the claimant was Human Trafficked to the Foreign Buffalo City Commercial Court in violation According to Treaty of Amity and Commerce contract and According to Federal U.S. Corporation Rules: 27 CFR 72.11 = all U.S. civil and crimes are Contractual Agreements, the claimant made a Special [sic] Appearance confronting my honor Diane Y. Wray where he the claimant placing his Status and Estate on the record along with a Challenge of Jurisdiction that was not heard by the Fictitious Commercial Court, but instead the claimant's challenge of Jurisdiction was constantly interrupted, interfered [sic] with by a team of practiced criminals, with the sole purpose of doctrine up the records (especially the Foreign Court reported). The Foreign Commercial Court then proceeded where they did not have authority or Jurisdiction to do so and scheduled another Foreign Fictitious Commercial Court date for June 20, 2017 at approx. 9:30 AM. also in violation of slander. . . .

3. The claimant Michael Borders El Bey asserts that on June 15, 2017, he was detained/ Human Trafficked at the Erie County Sheriff/Commercial Mercenary Holding Center Corporation. Therefore, Timothy B. Howard and all above Mercenaries [Deputies] are in violation of Article 3, Section 1 and Article 6 of the United States Republican Constitution 1789. Contract law/uniform commercial codes, 9th Amendment (right to contract), 27 C.F.R. 72.11, 4th and 5th Amendment, State of New York Corporation Const. 5th Amendment, Human Trafficking, Extortion, Exploitation, Pope Francis Civil Order-2014 Motu Proprio....

Plaintiff has not paid the filing fee, nor has he requested to proceed *in forma pauperis*.

Subsequently, he mailed to the Court additional papers similar to the one filed in this case

STANDARDS OF LAW

Inherent Right to Dismiss Frivolous Complaints

A district court of the United States has the inherent authority to dismiss a frivolous complaint *sua sponte* “even when the plaintiff has paid the required filing fee.”

Fitzgerald v. First East Seventh Street Tenants Corp., 221 F.3d 362, 364 (2d Cir. 2000).

“[A] complaint, containing as it does both factual allegations and legal conclusions, is

frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

“[A] court may dismiss a claim as factually frivolous only if the facts alleged are clearly baseless, * * * a category encompassing allegations that are fanciful, * * *, fantastic, * * * and delusional * * *.” *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (quotations and citations omitted). “[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.” *Denton*, 504 U.S. at 33. A court may also dismiss a claim as frivolous “if it is based on an ‘indisputably meritless legal theory.’ ” *Montero v. Travis*, 171 F.3d 757, 759–60 (2d Cir.1999) (quoting *Neitzke*, 490 U.S. at 327).

Requirements of a Cognizable Claim

In order to state a cognizable claim:

Federal Rule of Civil Procedure 8(a)(2) requires only a short and plain statement of the claim showing that the pleader is entitled to relief, in order to give the defendant fair notice of what the claim is and the grounds upon which it rests. While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a Plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact).

Id. at 1964-65 (citations and internal quotations omitted). *See also, ATSI Communications, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) (“To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations

sufficient ‘to raise a right to relief above the speculative level.’”) (quoting *Bell Atl. Corp. v. Twombly*) (footnote omitted); *Iqbal v. Hasty*, 490 F.3d 143 (2d Cir. 2007) (Indicating that *Bell Atl. Corp. v. Twombly* adopted “a flexible ‘plausibility standard,’ which obliges a pleader to amplify a claim with some factual allegations in those contexts where such amplification is needed to render the claim plausible[.]” as opposed to merely conceivable.).

When applying this standard, a district court must accept the allegations contained in the complaint as true and draw all reasonable inferences in favor of the proponent of the complaint. *Burnette v. Carothers*, 192 F.3d 52, 56 (1999), *cert. denied*, 531 U.S. 1052 (2000). On the other hand, “[c]onclusory allegations of the legal status of the defendants’ acts need not be accepted as true for the purposes of ruling on a motion to dismiss.” *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1092 (2d Cir. 1995)(citing *In re American Express Co. Shareholder Litig.*, 39 F.3d 395, 400-01 n. 3 (2d Cir.1994)).

Constitutional Torts

Plaintiff appears to allege, in part, that the defendants have committed constitutional torts against them. The Constitution has no built-in enforcement mechanism. Therefore, in order to bring a Constitutional action against state actors under the Constitution, a plaintiff must meet the requirements of 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff must allege (1) that the challenged conduct was attributable at least in part to a person acting under color of state law, and (2) that such conduct

deprived plaintiff of a right, privilege, or immunity secured by the Constitution or laws of the United States. *Dwares v. City of New York*, 985 F.2d 94, 98 (2d Cir. 1993).

ANALYSIS

Plaintiff's filings make little sense. He appears to be attempting to allege false imprisonment, but his papers contain strings of incoherent phrases with little or no meaning either independently, or taken together. He references "Moorish Americans" and uses "El Bey" after his name. The District of New Jersey compiled a comprehensive history of Moorish claims in the federal courts in *Moorish Sci. Temple of Am. 4th & 5th Generation v. Superior Court of New Jersey*, No. CIV.A. 11-7418 RBK, 2012 WL 123405, at *1 (D.N.J. Jan. 12, 2012). The solution adopted by that court is one that the Court will apply here. First, the Court determines that the current filings in this case, and the subsequently-mailed papers in the same format containing similar strings of incoherent phrases, are frivolous. Second, as Plaintiff has neither paid the filing fee, nor requested poor person status, his frivolous complaint, ECF No. 1, is dismissed without prejudice. Third, the Court directs the Clerk to return the undocketed papers to Plaintiff, along with a copy of this Decision and Order.

CONCLUSION

For the reasons stated above, Plaintiff's complaint in this case is frivolous and is dismissed without prejudice to filing a cognizable complaint. Further, the Clerk is to return his subsequently mailed papers containing similar frivolous matters without filing them in this, or any other case now in the Court. Finally, the Clerk will mail to Plaintiff a form civil rights complaint and form motion for poor person status, which Plaintiff may

file within 30 days of the date of this Decision and Order. **Should Plaintiff fail to file any new complaint within 30 days of the date of this Decision and Order, then the dismissal will ripen into “with prejudice.”**

The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from the Order and Judgment of entered herein would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is hereby denied. *Coppedge v. United States*, 369 U.S. 438 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

IT IS SO ORDERED.

Dated: September 7, 2017
Rochester, New York

ENTER: /s/ Charles J. Siragusa
CHARLES J. SIRAGUSA
United States District Judge