UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MOHAMMAD-MUAWYEH MOHAMMAD-YAHYA DWEIDARY,
Plaintiff,

vs

CITY OF CINCINNATI, et al.,
Defendants.

Case No. 1:13-cv-911

Black, J.
Litkovitz, M.J.

ORDER AND REPORT AND RECOMMENDATION

Plaintiff, a resident of Cincinnati, Ohio, has filed a *pro se* civil complaint. By separate Order issued this date, plaintiff has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. This matter is before the Court for a *sua sponte* review of the complaint to determine whether the complaint, or any portion of it, should be dismissed because it is frivolous, 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. *See* 28 U.S.C. § 1915(e)(2)(B).

Congress has authorized federal courts to dismiss an *in forma pauperis* complaint if satisfied that the action is frivolous or malicious. *Denton v. Hernandez,* 504 U.S. 25, 31 (1992); *see also* 28 U.S.C. § 1915(e)(2)(B)(i). A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams,* 490 U.S. 319, 328-29 (1989); *see also Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable legal basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke,* 490 U.S. at 327. An action has no arguable factual basis when the allegations are delusional or rise to the level of the irrational or "wholly incredible." *Denton,* 504 U.S. at 32; *Lawler,* 898 F.2d at

1199. The Court need not accept as true factual allegations that are "fantastic or delusional" in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

Congress has also authorized the *sua sponte* dismissal of complaints which fail to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915 (e)(2)(B)(ii). Although a plaintiff's *pro se* complaint must be "liberally construed" and "held to less stringent standards than formal pleadings drafted by lawyers," the complaint must "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (quoting *Estelle v. Gamble,* 429 U.S. 97, 106 (1976), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and quotation omitted)). The complaint "must contain 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) (quoting *Twombly*, 550 U.S. at 570); *see also Hill*, 630 F.3d at 470-71 ("dismissal standard articulated in *Iqbal* and *Twombly* governs dismissals for failure to state a claim" under §§ 1915(e)(2)(B)(ii) and 1915A(b)(1)).

"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." *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). The Court must accept all well-pleaded factual allegations as true, but need not "accept as true a legal conclusion couched as a factual allegation." *Twombly*, 550 U.S. at 555 (quoting *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). Although a complaint need not contain "detailed factual allegations," it must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). A pleading that offers "labels and conclusions" or "a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555.

Nor does a complaint suffice if it tenders "naked assertion[s]" devoid of "further factual enhancement." *Id.* at 557.

Plaintiff, a Syrian who has lived in the United States since 1971, has filed this action against the City of Cincinnati and the Cincinnati office of the Immigration and Naturalization Service (INS). (*See* Doc. 1, Complaint, pp. 2, 3). Plaintiff alleges that he came to the United States on a "student visa" to attend Portland State University in Portland, Oregon, where he received a Master's Degree in Economics in 1973. (*Id.*, p. 3). He then moved to Cincinnati and, in 1973-1974, attended the University of Cincinnati, where he received another Master's Degree in Economics. (*Id.*). Plaintiff states that he became a "permanent resident" of the United States on June 5, 1973. (*Id.*).

Although the handwritten complaint is rambling, plaintiff essentially alleges that although he is entitled as a "permanent resident" to work in this country and has been "looking for the right job" since the summer of 1974, he has been "discriminat[ed] against" wherever he has applied for a job. (*Id.*). Plaintiff also alleges that the INS has failed to act on his application for United States citizenship. (*Id.*). Plaintiff states that he submitted an application for citizenship "right after the date of 07-05-78," and that although he waited for two years for the INS to act on his application, he never received a "positive answer" from the INS in response to his numerous inquiries about the status of the application. (*Id.*, p. 5). Plaintiff further alleges that some years later, he submitted another application for United States citizenship with the INS, "took the Nationalization Interview," and received "a pre-typed form stat[ing] that [he] ha[d] passed the Nationalization Interview on 03/19/01." (*Id.*, pp. 5, 7). Plaintiff claims that the INS has yet to schedule an appointment so that he can be sworn in as a United States citizen and contends that the 40-year "pending" status of his citizenship application is "unfair" and has

deprived him of employment opportunities. (*Id.*, p. 7). As relief, plaintiff requests that a Certified Public Accountant be appointed "to account for all the salaries" that plaintiff has "missed (lost)" since the "summer of 1974" and that he be awarded damages for the injuries he and his children have suffered as a result of his "long period of unemployment." (*Id.*, p. 4).

At this stage in the proceedings, without the benefit of briefing by the parties to this action, the undersigned concludes that plaintiff's claim against the INS based on its failure to act on his applications for United States citizenship, which have allegedly been pending since 1978, is deserving of further development and may proceed at this juncture. *See* 28 U.S.C. § 1915(e)(2)(B).

However, it is **RECOMMENDED** that the City of Cincinnati be dismissed as a defendant because plaintiff has alleged no facts indicating that the city or any of its officers or employees was involved in any way in the processing of plaintiff's application for United States citizenship or the alleged denial of employment opportunities to plaintiff. Plaintiff's only factual allegation purportedly involving the city is that he receives a monthly social security check in the amount of $272. (*See* Doc. 1, Complaint, p. 5). That allegation fails to suggest, as plaintiff has suggested, that the City of Cincinnati participated in any way in the alleged wrongdoings that have resulted in the loss of employment opportunities for him. Plaintiff's general assertion that the "City of Cincinnati is responsible to secure jobs for all the residents of the city and [to] discriminate against no one" is simply insufficient to state an actionable claim of discrimination by the municipality or any of its officers or employees against plaintiff.

Indeed, the complaint fails to state a claim upon which relief may be granted to the extent that plaintiff seeks to assert a claim of discrimination against the INS stemming from his failure to obtain any employment these past several years. Plaintiff has alleged that two jobs he was

offered years ago, in 1978 and 1990, required that he be a United States citizen. (*Id.*, p. 11). However, he has also stated that he has "permanent resident" status, which entitles him to work in the United States. (*See id.*, p. 3). In the absence of any allegations indicating that plaintiff has been unable to obtain any employment due to the INS's alleged failure to act on his application for United States citizenship, and in the absence of any allegations that the INS directly participated in a specific decision to deny employment to plaintiff on the basis of his national origin, plaintiff has failed to state a claim of employment discrimination against the INS.

IT IS THEREFORE RECOMMENDED THAT:

The City of Cincinnati be **DISMISSED** as a defendant and that plaintiff's claim of employment discrimination be **DISMISSED** on the ground that plaintiff has failed to state a claim upon which relief may be granted. *See* 28 U.S.C. § 1915(e)(2)(B).

IT IS THEREFORE ORDERED THAT:

1. The United States Marshal shall serve a copy of the complaint, summons, the separate Order issued this date granting prisoner *in forma pauperis* status, and this Order and Report and Recommendation upon the INS to the extent that plaintiff has been allowed to proceed on a claim against the INS. All costs of service shall be advanced by the United States.

2. Plaintiff shall serve upon the defendants or, if appearance has been entered by counsel, upon the defendants' attorney(s), a copy of every further pleading or other document submitted for consideration by the Court. Plaintiff shall include with the original paper to be filed with the Clerk of Court a certificate stating the date a true and correct copy of any document was mailed to defendants or their counsel. Any paper received by a district judge or

magistrate judge which has not been filed with the clerk or which fails to include a certificate of service will be disregarded by the Court.

3. Plaintiff shall inform the Court promptly of any changes in his address which may occur during the pendency of this lawsuit.

Date: 12/20/13

Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation ("R&R") within **FOURTEEN (14) DAYS** after being served with a copy thereof. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent's objections within **FOURTEEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn,* 474 U.S. 140 (1985); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

cbc