

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

LAMAR CHAMBERS, et al.,	:	
Plaintiffs,	:	Case No. 3:13cv00279
vs.	:	District Judge Walter Herbert Rice Chief Magistrate Judge Sharon L. Ovington
WEST CARROLLTON POLICE DEPARTMENT,	:	
Defendant.	:	

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**ORDER**

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Plaintiff Lamar Chambers brings this case *pro se* challenging the search of his home by officers from the West Carrollton, Ohio Police Department and the allegedly false affidavit submitted by Detective Bell to obtain the search warrant for his home. Plaintiff also alleges, in part, that the officers who entered his home made rude comments, implied that he was selling Khat, threw his daughter to the ground, handcuffed her, and interrogated her.

The Court previously granted Plaintiff's Application to Proceed *in forma pauperis* under 28 U.S.C. §1915. This case is presently before the Court for a *sua sponte* review to determine whether Plaintiff's 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 named defendant who is immune from such relief. If the Complaint suffers from one or more of these deficiencies, it must be dismissed under 28 U.S.C.

§1915(e)(2)(B).

*Sua sponte* review under § 1915(e)(2)(B) determines whether the Complaint, or any portion of it, should be dismissed because it is frivolous, malicious, or fails to state a claim upon which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B), 1915A(b). If the Complaint raises a claim with an arguable or rational basis in fact or law, it is neither frivolous nor malicious and it may not be dismissed *sua sponte*. *Brand v. Motley*, 526 F.3d 921, 923–24 (6th Cir.2008); *see Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir.1990). A Complaint has no arguable factual basis when its allegations are “fantastic or delusional.” *Brand*, 526 F.3d at 923 (quoting *Neitzke v. Williams*, 490 U.S. 319, 327–28, 109 S.Ct. 1827, (1989)); *see Lawler*, 898 F.2d at 1199. A Complaint has no arguable legal basis when it presents “indisputably meritless” legal theories—for example, when the defendant is immune from suit or when the plaintiff claims a violation of a legal interest which clearly does not exist. *See Neitzke*, 490 U.S. at 327–28; *see also Brand*, 526 F.3d at 923. The main issue thus presented by a *sua sponte* review at this early stage of the case is “whether [the] complaint makes an arguable legal claim and is based on rational facts.” *Brand*, 526 F.3d at 923–24 (citing *Lawler*, 898 F.2d at 1198).

Plaintiff’s Complaint in the instant case does not raise fantastic or delusional facts; it is instead describes a series of alleged events and circumstances grounded on rationally based reality. *See Brand v. Motley*, 526 F.3d 921, 923 (6th Cir. 2008); *see also Jones v. Schmaker*, 1999 WL 1252870 at \*1 (6th Cir. 1999) (“Examples of claims lacking rational facts include a prisoner’s assertion that Robin Hood and his Merry Men deprived prisoners

of their access to mail or that a genie granted a warden's wish to deny prisoners any access to legal texts." (citing *Lawler*, 898 F.2d at 1198-99)).

Plaintiff alleges that Detective Bell of the West Carrollton, Ohio Police Department knowingly or with reckless disregard made false statements in an application to obtain a search warrant for the purpose of conducting "a controlled raid (sting) ..." at Plaintiff's home. (Doc. #2, PageID at 16). Plaintiff claims that Detective Bell and other police "SWAT" officers entered and searched his home without probable cause, carrying guns and assault rifles and wearing bullet proof vests. The officers allegedly made rude comments and implied that Plaintiff was selling Khat. Plaintiff further alleges that the officers threw his daughter to the ground, handcuffed her, and interrogated her. Detective Bell and the officers allegedly told Plaintiff's daughter that they would un-cuff her, if she could give them any information pertaining to her father.

According to Plaintiff, the officers told him that he had been under surveillance for many months. Plaintiff asserts that no facts supported such surveillance. He further states that "you can't go into people's homes with willful or unlawful conduct and conduct searches without probable cause. W. Carrollton Police Department tore through my home like a tornado even breaking my bedroom furniture, it was very unjust." (Doc. #2, PageID at 18).

Additionally, if Plaintiff's factual allegations are fully credited and liberally construed in his favor, *see Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011), the Complaint is sufficient to avoid *sua sponte* dismissal at this initial stage by making an

arguable legal claim based on rational facts. *See Brand*, 526 F.3d at 923–24. For example, Plaintiff’s allegations, when liberally construed in his favor, give rise to a claim that his rights under the Fourth and Fourteenth Amendments have been violated. *See, e.g., Hartzler v. Licking Cnty. Humane Soc.*, 740 F.Supp. 470, 474 (S.D. Ohio 1990) (Graham, D.J.) (“A law officer who obtains an invalid search warrant by making material false statements in the warrant affidavit, either knowingly or in reckless disregard for the truth, is liable under 42 U.S.C. § 1983.”).

Accordingly, Plaintiff’s Complaint is not subject to *sua sponte* dismissal under 28 U.S.C. §1915(e)(2)(B).

**IT IS THEREFORE ORDERED THAT:**

1. Given Plaintiff’s *in forma pauperis* status, he is entitled to have service of process made by the United States Marshal (USM). To avail himself of such service, Plaintiff must properly prepare and submit to the Clerk of Court the summons form and the USM Form 285 for each defendant. Although Plaintiff has prepared a summons (Doc. #1, PageID at 12), he has yet to prepare and submit to the Clerk of Court the required USM Form 285. Upon receipt of this material from the Clerk of Court, the United States Marshal is **ORDERED** to make service of process in this case under Fed. R. Civ. P. 4(c)(3). All costs of service shall be advanced by the United States.
2. Plaintiff must serve the defendant(s) – or their attorney in the event an attorney’s appearance is entered in the record – with a copy of every 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 and verifying that Plaintiff mailed a true and correct copy of any document to defendant(s) or their attorney. Any paper received by a District Judge or Magistrate Judge that has not been filed with the Clerk of Court or that fails to include a certificate of service will be disregarded by the Court.

3. Plaintiff must inform the Clerk of Court promptly of any changes of address which he has during the pendency of this lawsuit. Failure to do so may result in dismissal of his case for failure to prosecute.

August 27, 2013

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s/Sharon L. Ovington  
Sharon L. Ovington  
Chief United States Magistrate Judge