

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

XUEBO CUI,

No. 3:23-cv-00717-HZ

Plaintiff,

OPINION & ORDER

v.

UNITED STATES IMMIGRATION  
& CUSTOMS ENFORCEMENT,  
PORTLAND, OREGON,

Defendant.

Xuebo Cui  
777 Commercial St NE  
Salem, OR 97301

*Pro se*

HERNÁNDEZ, District Judge:

Pro se Plaintiff Xuebo Cui brings this action against the United States Immigration & Customs Enforcement office in Portland, Oregon (“ICE Portland”). Plaintiff moves to proceed *in forma pauperis* (“IFP”). ECF 2. Because Plaintiff has no appreciable income or assets, the Court

grants the motion. However, for the reasons explained below, the Court dismisses the Complaint with prejudice.

## STANDARDS

A complaint filed *in forma pauperis* may be dismissed at any time, including before service of process, if the court determines that:

(B) the action or appeal-

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

28 U.S.C. § 1915(e)(2); *see also Neitzke v. Williams*, 490 U.S. 319, 324 (1989) (*sua sponte* dismissals under section 1915 “spare prospective defendants the inconvenience and expense of answering” complaints that are “frivolous, malicious, or repetitive”); *Lopez v. Smith*, 203 F.3d 1122, 1126 n.7 (9th Cir. 2000) (section 1915(e) applies to all *in forma pauperis* complaints, not just those filed by inmates). A complaint is frivolous where it “lacks an arguable basis either in law or in fact.” *Neitzke*, 490 U.S. at 325; *Jackson v. State of Ariz.*, 885 F.2d 639, 640 (9th Cir. 1989). A complaint fails to state a claim when it does not contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that defendants violated plaintiff’s constitutional rights. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 556 U.S. at 678.

As the Ninth Circuit has instructed, however, courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A *pro se* complaint ““must be held to less stringent standards than formal pleadings drafted by lawyers.”” *Id.* (quoting

*Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)). A pro se litigant will be given leave to amend his or her complaint unless it is clear that the deficiencies of the complaint cannot be cured by amendment. *Lopez*, 203 F.3d at 1130-31.

## DISCUSSION

Plaintiff's Complaint must be dismissed because it does not establish subject matter jurisdiction. The Complaint does not adequately allege a federal question and fails to show that Plaintiff has Article III standing. Plaintiff seeks relief in which he has no judicially cognizable interest, so the Complaint is frivolous. Because amendment would be futile, the Court dismisses the Complaint with prejudice.

### I. Allegations in the Complaint

The Complaint indicates that the basis for subject matter jurisdiction is a federal question. Compl. 3. Plaintiff states that "Exercising the First Amendment Right" is the basis of his claim, and explains that "the inadequate border protection and customs law enforcement jeopardised the local social order and public safety in Portland and Salem cities of Oregon. My civil rights are jeopardised while I living in these areas." *Id.* In providing a statement of his claim, Plaintiff reiterates this statement, adding, "My civil rights are jeopardised by potential illegal immigrants surge during the year 2022-2023 pandemic period." *Id.* at 4. Plaintiff further explains that he "moved to Hillsboro, Oregon in April 2022" in search of work, but experienced "a lot of trouble, and even life threats" due to "the disorder of the society, losing basic law enforcement, irregular proceedings of court procedures etc." *Id.* at 6. Plaintiff goes on to state, "I understood this situation as a consequence of the COVID pandemic and the United States internal conflicts induced by different groups of people." *Id.* Plaintiff also states, "These issues exposed a fundamental problem of the United States immigration system[.]" *Id.*

Plaintiff describes several incidents surrounding his living situation in Oregon. He alleges that after he moved to Hillsboro, Oregon, he experienced shockwave and electromagnetic attacks beginning in May 2022. *Id.* at 8. He alleges that he reported these incidents to the police. *Id.* He alleges that someone trespassed in his apartment. *Id.* Plaintiff also describes “conflicts with neighbors” occurring in September 2022, for which he was arrested. *Id.* at 10. He alleges that after he lost income, he was evicted from his home in October 2022. *Id.* at 6. He went to a shelter in downtown Portland but was removed without “a reasonable explanation.” *Id.* He states, “As I understand, it could be for the purpose of reducing the time for illegal immigrants to leave the city. But I was clearly a well documented immigrant legally residing in the U.S. then the identity of the attacker became a problem resulting from our broken legal immigration system.” *Id.* Plaintiff alleges that he moved to Salem, Oregon, on May 5, 2023, and sees “very few residents living in the neighborhoods nor shopping in grocery stores.” *Id.*

Finally, Plaintiff details the progress of his application for asylum before United States Citizenship and Immigration Services and the Immigration Court. *Id.* at 8-9. He alleges that he was arrested after arguing with an administrator of the Immigration Court and was sent to the hospital for an irregular heartbeat. *Id.* at 9. Plaintiff attaches another document discussing the housing-related incidents and his asylum application. *Id.* at 12-13. He also attaches a document from the internet discussing high blood pressure. *Id.* at 14-23.

Plaintiff states, “I decided to sue the ICE Portland Oregon office for its irresponsibility and poor border enforcement performance during the past year and the resulted lost [sic] on my part.” *Id.* at 7. Describing the relief he seeks, Plaintiff states, “ICE Portland Oregon need to improve border protection law enforcement performance.” *Id.* at 5. The Complaint seeks no other relief.

## II. Subject Matter Jurisdiction

The Complaint fails to establish that the Court has subject matter jurisdiction over this case. Therefore, it must be dismissed. [Fed. R. Civ. P. 12\(h\)\(3\)](#) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”). The Complaint does not adequately allege a federal question and does not establish Article III standing.

### A. Federal Question

The Complaint does not adequately allege a federal question. While Plaintiff mentions the First Amendment, nothing in the Complaint explains how Plaintiff’s First Amendment rights are at risk due to the actions of Defendant. Plaintiff provides only vague, conclusory allegations that his civil rights are at risk. He does not plead facts showing that he has a claim “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. As pleaded, the Complaint fails to establish subject matter jurisdiction.

### B. Article III Standing

The Complaint also fails to establish Article III standing. “[L]ack of Article III standing requires dismissal for lack of subject matter jurisdiction under [Federal Rule of Civil Procedure 12\(b\)\(1\)](#).” *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011) (emphasis omitted). A district court may dismiss a complaint filed by a pro se plaintiff seeking to proceed *in forma pauperis* where the complaint does not establish Article III standing. *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th Cir. 1998), *as amended* (Sept. 9, 1998) (district court did not err in denying pro se plaintiff’s motion to proceed IFP where he lacked standing).

Article III of the Constitution limits the subject matter jurisdiction of federal courts to “Cases” and “Controversies.” U.S. Const. art. III, § 2, cl. 1. “[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III.” *Lujan v. Defenders of*

*Wildlife*, 504 U.S. 555, 560 (1992). A plaintiff must show three elements to establish standing. First is “an injury in fact,” i.e., “an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.” *Id.* at 560 (quotation marks and citations omitted). Second, that injury must be “fairly traceable to the challenged action of the defendant,” and not “the result of the independent action of some third party not before the court.” *Id.* (quotation marks and alternations omitted). Third, “it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Id.* at 561 (internal quotations omitted). “The party invoking federal jurisdiction bears the burden of establishing these elements.” *Id.* (citations omitted).

Some of the injuries Plaintiff alleges, such as a harm to the social order in the cities of Portland and Salem, are not concrete or particularized. *See* Compl. 4, 6. To the extent that Plaintiff does allege concrete and particularized injuries, he does not adequately allege that Defendant caused his injuries or that granting him the relief he seeks would redress those injuries. Plaintiff alleges that he was evicted from his housing and then removed from a shelter. *Id.* at 6. He also alleges that he experienced shockwave and electromagnetic wave attacks. *Id.* at 8. Those injuries are concrete and particularized. But Plaintiff does not adequately allege that Defendant caused those injuries. Rather, he suggests that Defendant’s inadequate enforcement of the nation’s immigration laws contributed to a situation in which these incidents could occur. This causal connection is too speculative to establish standing. *See Ecological Rts. Found. v. Pac. Lumber Co.*, 230 F.3d 1141, 1152 (9th Cir. 2000) (“[T]he causal connection put forward for standing purposes cannot be too speculative, or rely on conjecture about the behavior of other parties[.]”); *Minetti*, 152 F.3d at 1115 (district court correctly concluded that plaintiff lacked standing where he alleged that corporate defendants’ fraudulent acts affecting members of the

public “somehow indirectly affected his employment opportunities”). And the Complaint does not establish redressability because stricter enforcement of the nation’s immigration laws would not significantly increase the likelihood that Plaintiff would obtain employment or housing or be free from attacks. See *Novak v. United States*, 795 F.3d 1012, 1019-20 (9th Cir. 2015).


Finally, Plaintiff has no judicially cognizable interest in the enforcement of the nation’s immigration laws against other individuals. *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883, 897 (1984) (holding that employer had no judicially cognizable interest in the enforcement of the immigration laws against undocumented employees) (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). The Complaint lacks an arguable basis in law and is therefore frivolous. Because no set of facts could establish Plaintiff’s right to the relief he seeks, amendment of the Complaint would be futile. The Court will dismiss the Complaint with prejudice.

#### CONCLUSION

The Court GRANTS Plaintiff’s application for leave to proceed IFP [2]. Plaintiff’s Complaint [1] is dismissed with prejudice.

IT IS SO ORDERED.

DATED: June 7, 2023.

  
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MARCOS A. HERNANDEZ  
United States District Judge