

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

ANTHONY WAYNE SWAIN  
WASHINGTON, JR ,

Plaintiff,

v.

Case No: 6:24-cv-1484-JSS-LHP

TRANSPORTATION AND  
SECURITY ADMINISTRATION,

Defendant

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**REPORT AND RECOMMENDATION**

**TO THE UNITED STATES DISTRICT COURT:**

This cause came on for consideration without oral argument on the following motion filed herein:

**MOTION: MOTION TO PROCEED *IN FORMA PAUPERIS***  
**(Doc. No. 2)**

**FILED: August 13, 2024**

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**THEREON it is RECOMMENDED that the motion be DENIED WITHOUT PREJUDICE.**

## I. BACKGROUND.

On August 13, 2024, Plaintiffs Anthony Wayne Swain Washington, Jr. (hereafter, “Washington”), and AW Washington Consulting LLC, both appearing *pro se*, filed a form Complaint for Interpleader and Declaratory Relief against Defendant Transportation and Security Administration (“TSA”), alleging that some of the TSA’s federal travel regulations violate Plaintiffs’ constitutional rights. Doc. No. 1. On September 4, 2024, the Court terminated AW Washington Consulting LLC as a plaintiff in this action for failure to obtain counsel pursuant to Local Rule 2.02(b)(2), and for failure to prosecute pursuant to Local Rule 3.10. Doc. No. 9; *see also* Doc. No. 4.

Since that time, Washington has filed a series of amended complaints, which have been stricken for failure to comply with Federal Rule of Civil Procedure 15(a). *See* Doc. Nos. 10–13, 15–16, 18, 20, 22–24. The operative pleading is an amended complaint filed on October 18, 2024. Doc. No. 14. The operative pleading confusingly lists both Washington and “Anthony Washington/AW Washington Consulting LLC” as Plaintiffs, and again asserts an interpleader action against the TSA. *Id.* However, because the Court previously dismissed AW Washington Consulting LLC from this action, *see* Doc. No. 9, because there is no indication from the docket that this corporate entity has obtained counsel, and because there is no pending motion for reconsideration (nor any order granting same), the undersigned

construes the amended complaint as asserted by Washington alone, and does not address further any allegations or statements with respect to AW Washington Consulting LLC. *See, e.g.*, Doc. No. 14, at 8.

In the amended complaint, Washington asserts violations of the First, Fourth, Fifth, Seventh, Eighth, Ninth, Fourteenth, and Twenty-First Amendments to the United States Constitution “as well as various State Constitutions.” Doc. No. 14, at 3. He appears to be challenging TSA regulations barring liquids exceeding 3.4 ounces, to include personal hygiene products which Washington claims pose no security threat, and forcing Washington to either dispose of the items or pay a checked bag fee. *Id.*, at 3, 6. In an attached “Statement of Claim,” Washington provides a lengthy and confusing narrative that at times challenges the dismissal of AW Washington Consulting LLC, discusses various constitutional provisions and “all 30 United Nations Declarations of Human Rights amendments,” lists various federal criminal statutes, and requests an “immediate injunction” against the TSA. *Id.*, at 8-11. Washington also includes directions for his burial and distribution of any proceeds from this action in the event he passes away before the litigation concludes. *Id.*, at 10-11.

In terms of damages, Washington requests the amount of loss for items being discarded, the cost of added baggage fees, and ten million in punitive damages. Doc. No. 14, at 4. Washington also requests that the TSA be restrained from

instituting any action against him to recover “the property,” and to discharge Washington from liability. *Id.*, at 6. He also seeks costs and attorneys’ fees. *Id.*, at 7. Washington also requests “diplomatic status to enter and exit any country the United States ha[s] a diplomatic agreement,” “access to all Central Intelligence Agency information to include all levels of security,” and “to be assigned as an official super elector of the electoral college to select the President of the United States.” *Id.*, at 10–11.

With his original complaint, Washington filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Doc. No. 2), which has been construed as a motion for leave to proceed *in forma pauperis*. The motion to proceed *in forma pauperis* has been referred to the undersigned, and the matter is ripe for review. For the reasons discussed below, the undersigned will recommend the Court deny without prejudice the motion to proceed *in forma pauperis* and dismiss the second amended complaint (Doc. No. 14) with leave to amend.

### **III. STANDARD OF REVIEW.**

The Court must conduct a two-step inquiry when a plaintiff files a complaint and seeks leave to proceed *in forma pauperis*. First, the Court must evaluate the plaintiff’s financial status and determine whether he or she is eligible to proceed *in forma pauperis*. 28 U.S.C. § 1915(a)(1). Second, the Court must review the complaint pursuant to § 1915(e)(2) and dismiss the complaint if the action is

frivolous or malicious, the complaint fails to state a claim on which relief may be granted, or the complaint seeks monetary relief against a defendant who is immune from such relief. *Id.* § 1915(e)(2)(B)(i)-(iii).<sup>1</sup> A complaint is frivolous within the meaning of § 1915(e)(2)(B) if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

To avoid dismissal for failure to state a claim upon which relief can be granted, the allegations must show plausibility. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” *Id.*

A *pro se* complaint should be construed leniently, but a court does not have “license . . . to rewrite an otherwise deficient pleading [by a *pro se* litigant] in order to sustain an action.” *GJR Invs. v. Cty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled on other grounds by Iqbal*, 556 U.S. 662. Moreover, a *pro se* litigant “is subject to the relevant law and rules of court, including the Federal Rules

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<sup>1</sup> The statute governing proceedings *in forma pauperis* references actions instituted by prisoners, *see* 28 U.S.C. § 1915, but has been interpreted to apply to all litigants requesting leave to proceed *in forma pauperis*. *Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1306 n.1 (11th Cir. 2004).

of Civil Procedure.” *Moon v. Newsome*, 863 F.2d 835, 837 (11th Cir.), *cert. denied*, 493 U.S. 863 (1989).

#### IV. ANALYSIS.

Upon review of Washington’s motion to proceed *in forma pauperis*, it appears that he may not qualify for pauper status. Doc. No. 2. *Cf. Martinez v. Kristi Kleaners, Inc.*, 364 F.3d 1305, 1307 (11th Cir. 2004) (the plaintiff must establish that “because of his poverty, he is unable to pay for the court fees and costs, and to support and provide necessities for himself and his dependents.”). Specifically, Washington states that he receives \$3,799.99 in monthly VA disability benefits and that he has \$3,550.00 in a checking or savings account.<sup>2</sup> Doc. No. 2, at 1–2. On the other hand, he lists monthly expenses totaling \$3,343.27 plus an unspecified amount on groceries, however of that amount \$500.00 a month is attributed to unspecified business expenses, and another \$800.00 a month is attributed to credit card expenses. *Id.*, at 2. Such expenses do not all appear “necessary ‘to support and provide necessities for [Plaintiff] and [her] dependents.’” *See Byrd v. Hiday & Ricke, P.A.*, No. 3:12-cv-551-J-99TJC-JRK, 2012 WL 13136917, at \*2 (M.D. Fla. Nov. 5, 2012), *report and recommendation adopted*, 2012 WL 13136911 (M.D. Fla. Dec. 3, 2012) (denying motion to proceed *in forma pauperis* under similar circumstances, and

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<sup>2</sup> In a separate action filed by Washington, he also indicates on an *in forma pauperis* motion that he owns \$5,278.14 in stocks. *See Washington v. Lakeside Villas Apartment*, No. 6:24-cv-1606-JSS-LHP, Doc. No. 2 (M.D. Fla. Sept. 4, 2024).

stating that “if the Court were to be concerned with ‘current cash flow status’ rather than the requirement of poverty, practically every case will become eligible for in forma pauperis status” (citations and quotation marks omitted)).

Nonetheless, given that Washington has filed a Short Form Application rather than a Long Form Application, and given the recommendation herein that the amended complaint be dismissed with leave to amend, the undersigned will further recommend that the Court permit Washington to renew his request to proceed *in forma pauperis* by filing a Long Form Application, assuming he can demonstrate qualification for pauper status, or to order payment of the filing fee with a second amended complaint. *Cf. Cole v. Williams*, No. 3:22-cv-440-MMH-JBT, 2022 WL 1212788, at \*1 & n.3 (M.D. Fla. Apr. 25, 2022) (conducting review under § 1915 even absent a motion to proceed *in forma pauperis*, and assuming that the plaintiff intended to proceed as a pauper).

Turning now to the substantive allegations of Washington’s amended complaint, the Federal Rules of Civil Procedure mandate that a pleading contain the following:

- (1) a short and plain statement of the grounds for the court’s jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and

(3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Fed. R. Civ. P. 8(a). The allegations must be simple, concise, and direct. Fed. R. Civ. P. 8(d)(1).

Here, Washington's complaint is not listed in numbered paragraphs limited to "a single set of circumstances" as required by the Rules. *See* Fed. R. Civ. P. 10(b). Moreover, Washington's amended complaint does not comply with the pleading requirements of Rule 8. Although Washington states that he is suing a federal agency for violations of eight (8) constitutional amendments, he wholly fails to allege any basis in fact that would give rise to any substantive claim under any of these amendments. Doc. No. 14. Beyond a few statements alleging certain sized liquids "should not be restricted from going through security check points while traveling," Washington makes no factual allegations that explain how the TSA specifically violated his constitutional rights or what factual circumstances give rise to Washington's claims against the TSA. *Id.*, at 6. Instead, Washington provides a rambling narrative that intersperses federal statutes and other legal authorities with argument. *Id.*, at 8-11. And though Washington contends that he is bringing an interpleader action against the TSA (*see id.*, at 3), he nowhere explains how his allegations constitute such an action. *See In re Mandalay Shore Co-op. Hous. Ass'n*, 21 F.3d 380, 383 (11th Cir. 1994) ("Interpleader is the means by which an innocent stakeholder, who typically claims no interest in an asset and does not know the



asset's rightful owner, avoids multiple liability by asking the court to determine the asset's rightful owner.").

Accordingly, Washington's form complaint is due to be dismissed pursuant to § 1915(e)(2)(B)(ii) for failure to comply with the federal pleading rules. *See, e.g., Wabe v. Regions Bank*, No. 8:22-cv-988-KKM-JSS, 2022 WL 2121493, at \*2 (M.D. Fla. May 3, 2022), *report and recommendation adopted*, 2022 WL 1617741 (M.D. Fla. May 23, 2022) (dismissing complaint pursuant to § 1915 where "Plaintiff's Complaint [did] not include a short and plain statement of the claim showing an entitlement to relief," and "the Complaint [was] devoid of any specific factual allegations to explain the harm caused"); *Vaughan v. Postal Emps.*, No. CIV.A. 14-0125-CG-B, 2014 WL 3540575, at \*3 (S.D. Ala. July 17, 2014) (dismissing complaint without prejudice under § 1915 review where plaintiff's complaint consisted of rambling allegations that did not give the defendant fair notice of the claims and the grounds upon which they rested).

In addition, the undersigned notes that Washington makes brief mention of claiming "all federal and state statutes concerning Tort litigation for compensatory relief." Doc. No. 14, at 11. In the event Washington is intending to assert a tort claim against the TSA, that claim also fails because the only mechanism for bringing tort claims against the United States is the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.* But FTCA claims "are only permitted against the United States,

not federal agencies,” and “constitutional claims are not cognizable under the FTCA.” *Nazer v. Fed. Bureau of Investigations*, No. 8:15-cv-2465-T-27JSS, 2015 WL 13741740, at \*3 (M.D. Fla. Nov. 17, 2015) (citing *FDIC v. Meyer*, 510 U.S. 471, 471 (1994)), *report and recommendation adopted sub nom. Nazer v. United States*, No. 8:15-CV-2465-T-27JSS, 2016 WL 632245 (M.D. Fla. Feb. 17, 2016). *See also Caldwell v. Klinker*, 646 F. App’x 842, 846 (11th Cir. 2016)<sup>3</sup> (per curiam) (“Because the FTCA was the exclusive remedy for [the plaintiff’s] tort claims for money damages . . . he could not have proceeded against the federal agencies or employees in their own names.”).

Further, Washington cites to several statutes in his “Statement of Claim” (Doc. No. 14, at 9–10), however these are criminal statutes which provide no private right of action for which Washington may request relief. *See, e.g., Sampson v. Rosario*, No. 6:24-CV-214-WWB-RMN, 2024 WL 982516, at \*2 (M.D. Fla. Mar. 1, 2024), *report and recommendation adopted*, No. 6:24-CV-214-JSS-RMN, 2024 WL 2874845 (M.D. Fla. Apr. 25, 2024) (18 U.S.C. §§ 241, 242 “are criminal statutes and do not give rise to a private cause of action.” (citing *Holt v. Baker*, 710 F. App’x 422, 424 (11th Cir. 2017))); *Winter v. R4 Grp., Inc.*, No. 612-CV-517-ORL-36KRS, 2012 WL

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<sup>3</sup> “Unpublished opinions are not controlling authority and are persuasive only insofar as their legal analysis warrants.” *Bonilla v. Baker Concrete Constr., Inc.*, 487 F.3d 1340, 1345 n.7 (11th Cir. 2007).

1988707, at \*2 (M.D. Fla. May 18, 2012), *report and recommendation adopted*, No. 6:12-CV-517-ORL-36, 2012 WL 1987097 (M.D. Fla. June 4, 2012) (18 U.S.C. §§ 241, 245 are criminal statutes such that “no private civil causes of action exists for violation of these provisions.”) (citing *Kelly v. Rockefeller*, 69 F. App’x 414, 415 (10th Cir. 2003)); *Brett v. Aaronson*, No. 6:08-CV-556-ORL-19KRS, 2008 WL 2704400, at \*1 (M.D. Fla. July 8, 2008) (18 U.S.C. § 246 “is a criminal provision that does not provide a private civil cause of action.”); *Johnson v. Thomas*, No. 4:12-CV-1899-KOB-JEO, 2015 WL 1512088, at \*3 & n.7 (N.D. Ala. Mar. 31, 2015) (dismissing plaintiff’s claims under 18 U.S.C. §§ 241–248 because “this court has no authority to act as a prosecutorial entity.”); *Wunderlich v. Conklin*, No. CV 122-025, 2022 WL 1548109, at \*3 (S.D. Ga. Apr. 21, 2022), *report and recommendation adopted*, No. CV 122-025, 2022 WL 1540212 (S.D. Ga. May 16, 2022) (“18 U.S.C. § 249 does not create a private right of action because it only generally provides for the protection of the general public and does not confer rights on a specific class of persons.”); *Grizzel v. N.C.*, No. 1:23CV335, 2024 WL 3257195, at \*2 (M.D.N.C. Feb. 1, 2024), *report and recommendation adopted*, Doc. No. 8 (M.D.N.C. Feb. 28, 2024) (plaintiff cannot bring claims under 18 U.S.C. §§ 241, 242, 245, and/or 250 because they “are federal criminal statutes, and private citizens cannot lodge federal criminal charges.”); *McBride v. Smith*, No. 3:14-CV-1246-J-34JRK, 2015 WL 4231634, at \*2 (M.D. Fla. July 10, 2015) (“[W]hile 18 U.S.C. § 2511 (the ‘Wiretap Act’) includes both a criminal component, see § 2511(4), and a

civil component, see § 2511(5), only the Federal Government is permitted to initiate a civil action under 18 U.S.C. § 2511(5)"); *Hicks v. Dep't of Soc. Servs.*, No. 2:07-CV-705-FTM-34SPC, 2008 WL 11492842, at \*3 (M.D. Fla. Sept. 2, 2008) ("Plaintiff cannot state a claim for the alleged violations of 18 U.S.C. § 1581, which provide for criminal liability for the acts of involuntary servitude or forced labor.").

Ordinarily, a *pro se* party should be given one opportunity to file an amended complaint. See *Sifford v. Ford*, 701 F. App'x 794, 796 (11th Cir. 2017) ("Generally, a district court must *sua sponte* provide a *pro se* plaintiff at least one opportunity to amend his complaint, even where the plaintiff did not request leave to amend." (citing *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002))). While Washington has filed several additional amended complaints, each of which have been stricken, this is the first time Washington's claims have been addressed on their merits, and it is at least possible that Washington may file an amended complaint that complies with relevant federal and Local rules and states a plausible claim for relief. Therefore, the undersigned will recommend that the Court provide Washington one opportunity to file an amended complaint, within a time specified by the Court. See *Escamilla v. Blackwood*, No. 6:17-cv-678-Orl-37TBS, 2017 WL 7311869, at \*3 (M.D. Fla. May 23, 2017), *report and recommendation adopted*, 2017 WL 7311848 (M.D. Fla. June 14, 2017) (permitting *pro se* party leave to amend

complaint one final time after an amended complaint was dismissed upon review pursuant to 28 U.S.C. § 1915); *Simms v. Juliano*, No. 6:23-CV-881-CEM-LHP, 2023 WL 11257270, at \*3 (M.D. Fla. July 5, 2023), *report and recommendation adopted*, No. 6:23-CV-881-CEM-LHP, 2023 WL 11257218 (M.D. Fla. Oct. 5, 2023) (denying motion to proceed *in forma pauperis* and dismissing complaint with leave to amend even though the *pro se* plaintiff had previously amended the complaint, where the court had not previously addressed the merits of the claims).

Should Washington be permitted leave to amend, Washington is cautioned that in an amended complaint, he must include factual allegations stating a plausible claim for relief, which requires him to “plead[] 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 (citation omitted). Therefore, in a second amended complaint, Washington must clearly allege the legal basis of the cause of action, whether a constitutional provision, treaty, statute, or common law. Washington must name as Defendants only those persons who are responsible for the alleged violations. Washington must allege in the body of the complaint, under a section entitled “Statement of Facts,” how each named Defendant participated in the activity that allegedly violated his rights. Washington must also allege some causal connection between each Defendant named and the injury he allegedly sustained. One generally cannot be held liable for the actions and/or

omissions of others, but can only be held responsible if he or she participated in the deprivation of a person's rights or directed such action and/or omission that resulted in such deprivation. Finally, Washington must allege specifically harm or injury by the actions and/or omissions of the Defendant(s).

Because Washington is currently proceeding without a lawyer, the undersigned directs his attention to the Court's website, <http://www.flmd.uscourts.gov>. On the Court's homepage, Washington can find basic information and resources for parties who are proceeding without a lawyer in a civil case by clicking on the "For Litigants" tab and then clicking on "Litigants without Lawyers."

#### V. RECOMMENDATION.

For the reasons stated herein, it is respectfully **RECOMMENDED** that the Court:

1. **DENY without prejudice** the motion to proceed *in forma pauperis* (Doc. No. 2);
2. **DISMISS** the amended complaint without prejudice (Doc. No. 14);
3. **PERMIT** Washington to file an amended complaint, within a time established by the Court, along with a renewed motion to proceed *in forma*

*pauperis*, by filing an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form).<sup>4</sup>

**NOTICE TO PARTIES**

A party has fourteen days from the date the Report and Recommendation is served to serve and file written objections to the Report and Recommendation's factual findings and legal conclusions. Failure to serve written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation.

11th Cir. R. 3-1.

Recommended in Orlando, Florida on November 22, 2024.

  
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LESLIE HOFFMAN PRICE  
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Presiding District Judge  
Counsel of Record  
Unrepresented Party  
Courtroom Deputy

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<sup>4</sup> The Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) is available on the Court's website, <https://www.flmd.uscourts.gov>, by selecting "For Litigants," and "Litigants Without Lawyers," and then selecting "Forms."