

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

ROLLY O'DELL KINNELL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 16-4187-DDC
	)	
COURTS, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**REPORT AND RECOMMENDATION**

Plaintiff Rolly O'Dell Kinnell, proceeding *pro se* and *in forma pauperis*, has filed the above-captioned case. For the reasons stated below, the magistrate judge recommends the district judge dismiss this action as frivolous and for failure to state a claim upon which relief may be granted.

**I. Background**

On December 19, 2016, plaintiff filed a complaint in the District of Kansas against multiple defendants. Plaintiff has used this district's form complaint for *pro se* litigants, and he has attached additional materials to the complaint as well. The case caption lists as defendants "All state and federal [illegible]," and "DOJ."<sup>1</sup> In the section of the form asking for the full names of defendants, plaintiff lists, "ALL subhuman judges and clerks" and "Defense by counsel for [illegible]."<sup>2</sup> The form complaint states that this case arises under "Article 3, Section [illegible]" and under "US Code, Title [illegible], Section 28[illegible]."<sup>3</sup> Plaintiff also lists 28

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<sup>1</sup> Compl. at 1, ECF No. 1.

<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.*

U.S.C. § 2288-[illegible]” and “18 U.S.C. [illegible].”<sup>4</sup> In the section of the form asking for a short and plain statement of his claim, plaintiff states, “ALL court clerks-judges are subhuman.”<sup>5</sup> The relief plaintiff seeks includes, “Three panel proof of not being freak [illegible] subhumans,” and “Recall ypoll [or ‘y’all] all voted for Benedict Arnold Trump.”<sup>6</sup>

Plaintiff has attached to his complaint a copy of his state identification card and his member card issued by the U.S. Department of Veterans Affairs. The page containing the copies of these IDs also contains a receipt from Baker Printing Copy Services and citations to 28 U.S.C. § 454 and 28 U.S.C. § 1331.<sup>7</sup> Plaintiff has also attached a letter from an attorney informing plaintiff that he could not represent plaintiff,<sup>8</sup> a copy of a fax directed to U.S. Representative Lynn Jenkins,<sup>9</sup> this district’s webpage listing clerk’s office fees,<sup>10</sup> copies of faxes and attempted faxes directed to the U.S. Office of the Assistant Secretary of Civil Rights,<sup>11</sup> a copy of the text of 21 U.S.C. § 1983,<sup>12</sup> the Wikipedia page for the electoral college,<sup>13</sup> a document titled “USDA Nondiscrimination Statement,” which appears to be produced by the U.S. Department of

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *See* Attachment, at 1, ECF No. 1-1.

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> *Id.* at 7, 12-14.

<sup>12</sup> *Id.* at 9.

<sup>13</sup> *Id.* at 10

Agriculture,<sup>14</sup> a copy of a webpage about the national debt,<sup>15</sup> and the 2016 Shawnee County Real Estate Statement for All Brands Vacuum Repair Center, Inc.<sup>16</sup>

Included among the attachments are two documents titled, “In the State U.S. District Court is filed to Arrest the Enslavement of Elections; No.”<sup>17</sup> The documents reference,

Abuse under rights to nullify the November 8, 2016 election clear proof Hillary is evidential fact support election recall by Trump or (1) (2) Both including U.S. Attorney General, (3) (b) (A) (B) (C) (3) (4) Allow cops to gun down as did upon Obama to Bin Laden and witnessed to bloody terrorist. Via Obama.<sup>18</sup>

The documents also reference various provisions of the federal criminal code. Plaintiff mentions: “excluded my rights to represent those not allowed to vote” and “Declare rights to collect for wrongful denial to proceed In Forma Pauperis; upon clear racketeering violation injunction to void laws to destroy civil rights laws by freaks acting defense counsel via anti pro se secret laws[.]” The documents further state, “Question freak born to dilute the constitutional rights of civil rights laws. Are these humans under global postal gang Czar due to admission of facts time sent to Loretta Lynch – right to recall 28 U.S.C. 1983-85CD (2)(3) 86-873; Merr. (Lynch Banking) Use of Slave Sales.” The documents cite various other federal statutes, mention a recall election, and make various allegations regarding President Donald Trump.

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<sup>14</sup> *Id.* at 11.

<sup>15</sup> *Id.* at 16.

<sup>16</sup> *Id.* at 17.

<sup>17</sup> *Id.* at 2, 6.

<sup>18</sup> *Id.*

## II. Discussion

When a plaintiff proceeds *in forma pauperis*, the court may review the complaint under 28 U.S.C. 1915(e)(2). That section authorizes the court to dismiss the case if the court determines that the action “(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.”<sup>19</sup> In this case, the undersigned recommends dismissal of this action as frivolous and because plaintiff’s complaint fails to state a claim upon which relief may be granted.

### A. Dismissal as Frivolous

A complaint is frivolous under § 1915 when it lacks an arguable basis in either law or in fact.<sup>20</sup> “Examples of frivolous claims are those based on an indisputably meritless legal theory, such as a claim asserting infringement of a legal interest which clearly does not exist[.]”<sup>21</sup> A complaint lacks an arguable basis in fact when factual contentions are clearly baseless.<sup>22</sup> Claims based on “fantastic or delusional scenarios” are examples of baseless factual allegations.<sup>23</sup>

Plaintiff’s complaint and the attachments thereto contain fantastical factual allegations, and plaintiff has failed to set forth any cognizable legal claim that would arise from the factual allegations pled. Plaintiff references topics such as subhuman judges and clerks, secret laws, the president, racketeering, Osama Bin Laden, “a global postal gang Czar,” and various elected officials. He has attached to his complaint a variety of documents, many of which do not appear

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<sup>19</sup> 28 U.S.C. § 1915(e)(2)(B)(ii)–(iii).

<sup>20</sup> *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

<sup>21</sup> *Burnett v. Miller*, 631 Fed. App’x 591, 604 (10th Cir. 2015) (internal quotations omitted) (quoting *Neitzke*, 490 U.S. 327-28).

<sup>22</sup> *Shabazz v. Askins*, 980 F.2d 1333, 1334 (10th Cir. 1994).

<sup>23</sup> *Neitzke*, 490 U.S. at 328.

related to his factual allegations. The factual allegations often appear in fragment sentences and contain illegible words, making it difficult to decipher the nature of these allegations and claims. The relief plaintiff seeks includes a “three panel proof of not being freak [illegible] subhumans” and “Recall ypoll [or ‘y’all] voted for Benedict Donald Trump.”<sup>24</sup> The court is entirely unclear as to what claims plaintiff is attempting to bring, and regardless, there are not recognized legal claims that would provide for the relief plaintiff seeks.

### **B. Dismissal for Failure to State a Claim**

The court uses the Fed. R. Civ. P. 12(b)(6) motion-to-dismiss standard to determine whether dismissal under Section 1915(e)(2)(B)(ii) is appropriate.<sup>25</sup> Fed. R. Civ. P. 8(a) prescribes the pleading requirements to state a claim for relief and requires “a short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>26</sup> The court liberally construes *pro se* parties’ pleadings and will accept as true all well-pleaded facts, drawing all reasonable inferences in plaintiff’s favor.<sup>27</sup> However, plaintiff still bears the burden of alleging sufficient facts upon which a recognized legal claim could be based. The court cannot assume the responsibility of serving as plaintiff’s attorney in constructing arguments or scouring the record

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<sup>24</sup> Compl. at 3, ECF No. 1.

<sup>25</sup> *Washington v. Washington*, No. 14-1215-EFM-KGG, 2014 WL 4059788, at \*3 (D. Kan. Aug. 15, 2015).

<sup>26</sup> Fed. R. Civ. P. 8(a)(2).

<sup>27</sup> *Washington*, 2014 WL 4059788, at \*3.

for a possible cause of action.<sup>28</sup> The plaintiff “must allege sufficient facts to state a claim which is plausible—rather than merely conceivable—on its face.”<sup>29</sup>

As an initial matter, the court is unclear whether plaintiff has intended for the documents titled “In the State U.S. District Court is filed to Arrest the Enslavement of Elections; No.”<sup>30</sup> to be considered part of the complaint. In any event, neither the complaint itself nor the attachments state a claim to relief that is plausible on its face. For one, even liberally construing the documents, they lack any coherent factual allegations for which this court could grant relief. Neither the complaint nor the attachments contain the requisite short and plain statement of named defendants, allegations, or possible relief this court has jurisdiction to grant.<sup>31</sup>

Moreover, the court is unsure who the plaintiff seeks to name as defendants. He lists “All subhuman judges and clerks” in the Civil Complaint form, but Lynne[sic] Jenkins, Attorney General Lynch, Hillary Clinton, and President-Elect Trump are all mentioned in the attachment.<sup>32</sup> Additionally, plaintiff lists several provisions of the United States Code which do not create a private right of action or are inapplicable to the entities the court believes plaintiff has attempted to name as defendants.<sup>33</sup> For example, plaintiff cites several provisions of the

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<sup>28</sup> *Yarbury v. Martin, Pringle, Oliver, Wallace, & Bauer LLP*, No. 15-1171-MLB, 2015 WL 5032510, at \*2 (D. Kan. Aug. 11, 2015) (quoting *Mays v. Wyandotte Cnty. Sheriff's Dep't*, 419 F. App'x 794, 796 (10th Cir. 2011)) (internal quotations omitted).

<sup>29</sup> *Id.* (quoting *Fisher v. Lynch*, 531 F. Supp. 2d 1253, 1260 (D. Kan. 2008) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007))).

<sup>30</sup> *See* Attachment at 2, 6, ECF No. 1-1.

<sup>31</sup> *See id.*

<sup>32</sup> *Id.*

<sup>33</sup> *See id.*

criminal code, a provision of Indian law, and portions of the judiciary code.<sup>34</sup> None of these provisions give rise to any claims the plaintiff could have against any of the entities or individuals he references in his complaint and the attachments.

However, plaintiff mentions in passing 42 U.S.C. § 1983, which creates a civil remedy for violations of constitutional rights by those acting under state authority.<sup>35</sup> Nevertheless, the text surrounding plaintiff's citation to § 1983 provides no named defendants and fails to allege any facts supporting a violation of plaintiff's rights. It states, “. . . 25U.S.C.2201 col declare rights to recall election in state denied by vote for Hillary 28-U.S.C.2283-42U.S.C. 1983 AC State conviction.”<sup>36</sup> In attempting to understand what the plaintiff seeks, this court can only speculate the plaintiff alleges a violation of his civil voting rights and a desire to recall the 2016 Presidential election. Plaintiff has previously filed a case attempting to recall the 2012 presidential election, among other things. In dismissing that claim, the court informed plaintiff that it lacked jurisdiction to hear a claim and that plaintiff lacked standing to assert claims under 28 U.S.C. § 1344.<sup>37</sup> Similarly, 42 U.S.C. § 1983 provides no jurisdiction for this court to recall a presidential election, nor does plaintiff allege any facts suggesting his voting rights were violated.

For these reasons, the magistrate judge recommends the district judge dismiss this action as frivolous and because plaintiff fails to state a claim upon which relief may be granted.

Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, plaintiff shall have fourteen (14) days

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<sup>34</sup> *Id.* Some examples of the cited provisions are 18 U.S.C. § 241, 25 U.S.C. § 2201, and 28 U.S.C. § 2283, none of which create a private right of action. *See id.*

<sup>35</sup> *Id.*; *See* 42 U.S.C. 1983.

<sup>36</sup> Attachment, at 2, ECF No. 1-1.

<sup>37</sup> *Kinnell v. Obama*, No. 13-4066-JAR-DJW, 2014 WL 896619, at \*1 (D. Kan. Mar. 6, 2014)

after service of a copy of this Report and Recommendation to file any written objections. A party must file any objections within the fourteen-day period if that party wants to have appellate review of the proposed findings of fact, conclusions of law, or recommended disposition. If no objections are timely filed, no appellate review will be allowed by any court.

**IT IS SO ORDERED.**

Dated February 10, 2017, at Topeka, Kansas.

s/ K. Gary Sebelius  
K. Gary Sebelius  
U.S. Magistrate Judge