

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

RANDALL S. WATERS,

Plaintiff,

v.

CASE NO. 24-3012-JWL

ROBERT D. NAYLOR,

Defendant.

MEMORANDUM AND ORDER
TO SHOW CAUSE

Plaintiff Randall S. Waters is hereby required to show good cause, in writing to the undersigned, why this action should not be dismissed due to the deficiencies in Plaintiff's Complaint that are discussed herein. Plaintiff is provisionally granted leave to proceed in forma pauperis.

I. Nature of the Matter before the Court

Plaintiff brings this pro se civil rights action under 42 U.S.C. § 1983. Plaintiff is detained at the Seward County Jail ("SCJ") in Liberal, Kansas.

Plaintiff's claims relate to his state criminal proceedings. Plaintiff asserts that the defendant, Robert Naylor, and Naylor's 13-year-old daughter set up him because Naylor wanted to take over the estate of Plaintiff's mother. (Doc. 5-1, at 9; Doc. 5-2, at 5.) Plaintiff claims that he did not rape the alleged victim, but instead she raped him when he was passed out. (Doc. 5, at 5.) He asserts that there are photographs on his phone, which law enforcement has, that support his contention. He also mentions that he is handicapped and has been detained for 25 months

without going to court. (Doc. 5-2, at 5.) Plaintiff names only Robert D. Naylor as a defendant and does not state what relief he seeks. (Doc. 5, at 6.)

II. Statutory Screening of Prisoner Complaints

The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised claims that are legally frivolous or malicious, that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1)–(2).

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted); *Northington v. Jackson*, 973 F.2d 1518, 1523 (10th Cir. 1992). A court liberally construes a pro se complaint and applies “less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007). In addition, the court accepts all well-pleaded allegations in the complaint as true. *Anderson v. Blake*, 469 F.3d 910, 913 (10th Cir. 2006). On the other hand, “when the allegations in a complaint, however true, could not raise a claim of entitlement to relief,” dismissal is appropriate. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

A pro se litigant’s “conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based.” *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to relief’ requires “more than labels and conclusions, and a formulaic recitation of the elements of a

cause of action.” *Twombly*, 550 U.S. at 555 (citations omitted). The complaint’s “factual allegations must be enough to raise a right to relief above the speculative level” and “to state a claim to relief that is plausible on its face.” *Id.* at 555, 570.

The Tenth Circuit Court of Appeals has explained “that, to state a claim in federal court, a complaint must explain what each defendant did to [the *pro se* plaintiff]; when the defendant did it; how the defendant’s action harmed [the plaintiff]; and, what specific legal right the plaintiff believes the defendant violated.” *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007). The court “will not supply additional factual allegations to round out a plaintiff’s complaint or construct a legal theory on a plaintiff’s behalf.” *Whitney v. New Mexico*, 113 F.3d 1170, 1173-74 (10th Cir. 1997) (citation omitted).

The Tenth Circuit has pointed out that the Supreme Court’s decisions in *Twombly* and *Erickson* gave rise to a new standard of review for § 1915(e)(2)(B)(ii) dismissals. *See Kay v. Bemis*, 500 F.3d 1214, 1218 (10th Cir. 2007) (citations omitted); *see also Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009). As a result, courts “look to the specific allegations in the complaint to determine whether they plausibly support a legal claim for relief.” *Kay*, 500 F.3d at 1218 (citation omitted). Under this new standard, “a plaintiff must ‘nudge his claims across the line from conceivable to plausible.’” *Smith*, 561 F.3d at 1098 (citation omitted). “Plausible” in this context does not mean “likely to be true,” but rather refers “to the scope of the allegations in a complaint: if they are so general that they encompass a wide swath of conduct, much of it innocent,” then the plaintiff has not “nudged [his] claims across the line from conceivable to plausible.” *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (citing *Twombly*, 127 S. Ct. at 1974).

III. DISCUSSION

A. Failure to State a Claim under § 1983

As noted, to state a claim under § 1983, a plaintiff “must show that the alleged (constitutional) deprivation was committed by a person acting under color of state law.” *West*, 487 U.S. at 48–49 (1988); *Daniels v. Williams*, 474 U.S. 327, 330–331 (1986); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978); *Northington v. Jackson*, 973 F.2d 1518, 1523 (10th Cir. 1992). The “under color of state law” requirement is a “jurisdictional requisite for a § 1983 action.” *West*, 487 U.S. at 42; *Polk County v. Dodson*, 454 U.S. 312 (1981). Thus, it is of no consequence how discriminatory or wrongful the actions a plaintiff may describe; merely private conduct does not satisfy the “under color of” element and therefore no section 1983 liability exists. See *Brentwood Academy v. Tennessee Secondary Athletic Ass’n*, 531 U.S. 288, 294–96 (2001); *American Manufs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50 (1999). A defendant acts “under color of state law” when he “exercise[s] power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *West*, 487 U.S. at 49; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982); *Yanaki v. Iomed, Inc.*, 415 F.3d 1204, 1208 (10th Cir. 2005), *cert. denied*, 547 U.S. 1111 (2006).

The Court finds from the face of the Complaint that Plaintiff fails to state a cause of action under § 1983 against Defendant Naylor because this individual is not shown to have been a state actor.

B. *Younger* Abstention

Because Plaintiff seeks to relief related to his criminal case, the Court is prohibited from hearing Plaintiff’s claim under *Younger v. Harris*, 401 U.S. 37, 45 (1971). “The *Younger* doctrine requires a federal court to abstain from hearing a case where . . . (1) state judicial proceedings are

ongoing; (2) [that] implicate an important state interest; and (3) the state proceedings offer an adequate opportunity to litigate federal constitutional issues.” *Buck v. Myers*, 244 F. App’x 193, 197 (10th Cir. 2007) (unpublished) (citing *Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202, 1204 (10th Cir. 2003); *see also Middlesex Cty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)). “Once these three conditions are met, Younger abstention is non-discretionary and, absent extraordinary circumstances, a district court is required to abstain.” *Buck*, 244 F. App’x at 197 (citing *Crown Point I, LLC v. Intermountain Rural Elec. Ass’n*, 319 F.3d 1211, 1215 (10th Cir. 2003)).

Here, the first condition is met because Plaintiff’s state criminal proceedings are pending. *See State v. Waters*, Case No. 2022-CR-000333 (Seward County District Court) (filed October 3, 2022). The second condition for *Younger* abstention would be met because Kansas undoubtedly has an important interest in enforcing its criminal laws through criminal proceedings in the state’s courts. *In re Troff*, 488 F.3d 1237, 1240 (10th Cir. 2007) (“[S]tate control over criminal justice [is] a lynchpin in the unique balance of interests” described as “Our Federalism.”) (citing *Younger*, 401 U.S. at 44). Likewise, the third condition would be met because Kansas courts provide Plaintiff with an adequate forum to litigate his constitutional claims by way of pretrial proceedings, trial, and direct appeal after conviction and sentence, as well as post-conviction remedies. *See Capps v. Sullivan*, 13 F.3d 350, 354 n.2 (10th Cir. 1993) (“[F]ederal courts should abstain from the exercise of . . . jurisdiction if the issues raised . . . may be resolved either by trial on the merits in the state court or by other [available] state procedures.”) (quotation omitted); *see Robb v. Connolly*, 111 U.S. 624, 637 (1984) (state courts have obligation ‘to guard, enforce, and protect every right granted or secured by the constitution of the United States’); *Steffel v. Thompson*, 415 U.S. 452, 460–61 (1974) (pendant state proceeding, in all but unusual cases, would provide

federal plaintiff with necessary vehicle for vindicating constitutional rights). Plaintiff's claims are insufficient to trigger any of the *Younger* exceptions.

If this claim is construed as a petition for habeas corpus, Plaintiff fares no better. A prisoner proceeding pretrial under 28 U.S.C. § 2241 must first exhaust available state court remedies. Likewise, the *Younger* doctrine prevents a court proceeding in habeas from intervening in a pending state court criminal matter unless exceptional circumstances are present.

In *Arter v. Gentry*, the Tenth Circuit upheld a district court decision construing a pretrial detainee's claim of excessive bail as a claim under § 2241 and denying habeas relief for failure to exhaust state court remedies and noting that the *Younger* abstention doctrine, "compels us to avoid interference in ongoing state proceedings when the state courts provide an adequate forum to present any federal constitutional challenges." *Arter v. Gentry*, 201 F. App'x 653, 653–54 (10th Cir. 2006) (unpublished). And in *Tucker v. Reeve*, a state pretrial detainee challenged his pretrial detention, alleging state officials set excessive bond, denied him a speedy trial, and engaged in illegal searches and seizures. *Tucker v. Reeve*, 601 F. App'x 760 (10th Cir. 2015) (unpublished). The Tenth Circuit upheld the district court's application of the *Younger* abstention doctrine. *Id.* at 760–61.

IV. Response Required

Plaintiff is required to show good cause why his Complaint should not be dismissed for the reasons stated herein. Failure to respond by the deadline may result in dismissal of this matter without further notice.

IT IS THEREFORE ORDERED BY THE COURT that Plaintiff is granted until **April 11, 2024**, in which to show good cause, in writing to the undersigned, why Plaintiff's Complaint

should not be dismissed for the reasons stated herein.

IT IS FURTHER ORDERED that Plaintiff's motions for leave to proceed in forma pauperis (Docs. 2 and 6) are provisionally granted, pending receipt of the required financial information (*see* Notice of Deficiency, Doc. 7).

IT IS SO ORDERED.

Dated March 11, 2024, in Kansas City, Kansas.

S/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE