

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

Diego Velasquez

v.

Case No. 23-cv-15-SDE-AKJ

Hon. Mary S. McElroy

Hon. Sandra Lynch

Hon. Rogeriee Thompson

REPORT AND RECOMMENDATION

Plaintiff Diego Velasquez, appearing pro se and in forma pauperis, has sued Judge Mary S. McElroy of the United States District Court for the District of Rhode Island, and Judges Sandra Lynch and Rogeriee Thompson of the United States Court of Appeals for the First Circuit. See Compl. ([Doc. No. 1](#)). Mr. Velasquez's claims in this suit are based on his dissatisfaction with trial court and appellate rulings in a prior suit in this court. See Velasquez v. Superior Court, No. 22-cv-167-MSM-PAS, [Order of Dismissal \(D.R.I. May 6, 2022\)](#), [aff'd, Case. No. 22-1375 \(1st Cir. July 18, 2022\)](#) ("Velasquez I"). Judge McElroy ordered Velasquez I dismissed. Id. Judges Lynch and Thompson were on the appellate panel that affirmed the dismissal. Id. As Mr. Velasquez is proceeding in forma pauperis, preliminary review of the complaint is appropriate. [28 U.S.C. § 1915\(e\)\(2\)](#).

Preliminary Review Standard

The court conducts a preliminary review of complaints filed by pro se litigants proceeding in forma pauperis. See [28 U.S.C.](#)

§ 1915(e)(2). In considering whether a pro se complaint states a claim, the court construes the pleading liberally. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam). The court then determines whether, stripped of legal conclusions, and with all reasonable inferences construed in plaintiff's favor, the complaint contains "sufficient factual matter, accepted as true, to 'state a claim to relief.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (citation omitted). Claims may be dismissed, sua sponte, if the court lacks jurisdiction, a defendant is immune from the relief sought, or the complaint fails to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(e)(2).

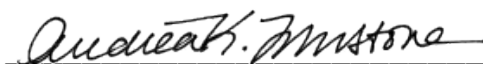
Discussion

Mr. Velasquez's suit against Judges McElroy, Lynch and Thompson is barred by the doctrine of absolute judicial immunity and should therefore be dismissed. "[I]t is an axiom of black letter law that when a judge carries out traditional adjudicatory functions, he or she has absolute immunity for those actions." Zenon v. Guzman, 924 F.3d 611, 616 (1st Cir. 2019). "Judicial immunity is appropriate unless a judge is carrying out an activity that is not adjudicatory." Id. at 617. "[A]bsolute judicial immunity means not just immunity from damages, but immunity from suit altogether." Id. at 617 n.10 (citation omitted). Mr. Velasquez's claims in this suit

indisputably arise from the defendants' actions taken in their adjudicatory capacities in Velasquez I: Judge McElroy in dismissing the case and Judges Lynch and Thompson in affirming the dismissal on appeal. Accordingly, the district judge should dismiss this complaint in its entirety.

Conclusion

Based on the foregoing, the undersigned recommends that the district judge dismiss this case on the basis of absolute judicial immunity. Any objections to this Report and Recommendation must be filed within fourteen days of receipt of this notice. See Fed. R. Civ. P. 72(b)(2). The fourteen-day period may be extended upon motion. Only those issues raised in the objection(s) to this Report and Recommendation are subject to review in the district court. See Sch. Union No. 37 v. United Nat'l Ins. Co., 617 F.3d 554, 564 (1st Cir. 2010). Any issues not preserved by such objection(s) are precluded on appeal. See id. Failure to file any objections within the specified time waives the right to appeal the district court's Order. See Santos-Santos v. Torres-Centeno, 842 F.3d 163, 168 (1st Cir. 2016).



Andrea K. Johnstone
United States Magistrate Judge

February 28, 2023

cc: Diego Velasquez, pro se