UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

PHILLIP INKEL, et al.	:	
	:	
Plaintiffs,	:	
	:	**NO. 3:04cv69 (JBA)**
v.	:	
	:	
GEORGE BUSH, et al.	:	
	:	
Defendants.	:	

RULING PURSUANT TO 28 U.S.C. § 1915(e)(2)(B)

Phillip Inkel and his wife, Meredith LaBella, bring this action on behalf of themselves and their eight minor children, seeking injunctive relief, monetary damages, a writ of habeas corpus, and other relief. Plaintiffs have met the requirements of 28 U.S.C. § 1915(a) and have been granted leave to proceed in forma pauperis in this action.

I. STANDARD

Pursuant to 28 U.S.C. § 1915(e)(2)(B), "the court shall dismiss the case at any time if the court determines that... the action... is frivolous or malicious; ...fails to state a claim on which relief may be granted; or ...seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915 (e)(2)(B)(i)-(iii). Thus, the dismissal of a complaint by a district court under any of the three enumerated sections in 28 U.S.C. § 1915(e)(2)(B) is mandatory rather than discretionary.

See Cruz v. Gomez, 202 F.3d 593, 596 (2d Cir. 2000).

In reviewing the complaint pursuant to § 1915(e)(2)(B)(ii), the court "accept[s] as true all factual allegations in the complaint" and draws inferences from these allegations in the light most favorable to the plaintiff. Id. at 596 (citing King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999)). Dismissal of the complaint under 28 U.S.C. 1915(e)(2)(B)(ii) is only appropriate if "'it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" Id. at 597 (quoting Conley v. Gibson, 355 U.S. 41, 45-46 (1957)).

In addition, "unless the court can rule out any possibility, however unlikely it might be, that an amended complaint would succeed in stating a claim," the court should permit "a pro se plaintiff who is proceeding in forma pauperis" to file an amended complaint that states a claim upon which relief may be granted. Gomez v. USAA Federal Savings Bank, 171 F.3d 794, 796 (2d Cir. 1999).

II. FACTUAL ALLEGATIONS

Plaintiffs allege widespread conspiracies among a variety of private and government actors in the state of Connecticut to deprive plaintiffs of their rights. The complaint alleges that "the defendants, in accordance with well established written

policies or practices regularly and routinely prepare false reports, false work papers, false summaries and false memos related to providing healthcare, court, police, social and child protection services. Their reports are fraudulent and serve to conceal from appropriate paying agencies crimes committed by law enforcement officers, doctors, lawyers, court officers, social service providers, child protection services, government and healthcare service providers relating to payment made under the federal government's medicaid, safe streets, and health and welfare programs." Compl. [doc. #3] ¶ 30. The complaint further alleges that unspecified defendants conspired to prevent plaintiffs from pursuing two previous civil rights actions in this District (Inkel v. Town of Colchester, 3:96cv935(DJS); and Inkel v. Town of Colchester, 3:03cv411(MRK)). Id. at ¶ 26.

Plaintiff Inkel elaborates, in his "Addition of Facts and Claims to Complaint,"[1] that he witnessed an incident in 1993 in which two Colchester police officers beat a fifteen-year-old boy in a McDonald's parking lot. Addition at 1. Inkel alleges that he attempted to file a variety of complaints about this incident to a series of officials, none of whom would take a statement from him, between 1993 and 1996. Id. at 3-20. He alleges that, in retaliation for these complaints, members of the Colchester

[1]In light of the rule permitting liberal amendment of pleadings, Fed. R. Civ. Pro. 15(a), and in light of plaintiffs' pro se status, the Court will treat the "Addition of Facts and Claims to Complaint" as an amendment or supplement to the original complaint that does not supercede the complaint.

Police Department began harassing him, arresting him on false charges, filing false paperwork, calling him "crazy," and attempting to have him committed to state mental health facilities, all in an effort to "punish and disparage" him. Id. at 4, 7. He alleges further acts of police brutality against himself and others, "in furtherance of a larger conspiracy to protect public corruption by the governing authorities operating in Connecticut." Id. at 6. Inkel also alleges that, in July 1994, two Colchester police officers hired a confidential informant for $30,000 to murder him. Id. at 16-19. After this death threat, Inkel alleges, he fled to Alaska, where Connecticut authorities misled Alaskan police officials into suspecting Inkel of committing a murder. Id. at 22.

On a separate topic, Inkel alleges state-sanctioned wrongdoing with respect to a 1995 child custody case that was "a sleeper terroristic bad faith action." Id. at p. 23. He further alleges illegal actions by the Department of Children and Family Services (DCF) in 1999, resulting in the removal of three of the plaintiff's children from his home, and the threatened removal of two other children. Id. at 32. Inkel finally alleges that, in January 2002, employees of Hartford Hospital and DCF "wrongfully" diagnosed his son Aaron Baker's mental health needs, "cover[ed] up a crime of sexual assault he committed, drug[ged] him in lieu of treatment and then disparage[d] and hurt and initiate[d] abuse

of legal process and ultimately kidnap[ped] Aaron... ." Id. at 33. Further factual allegations are discussed where relevant to the ruling on plaintiffs' claims.

III. CLAIMS ASSERTED

Plaintiffs assert the following legal claims: (1) violation of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141; (2) violation of plaintiffs' Fourth and Fourteenth Amendment rights to be free from unlawful searches and seizures; (3) violation of plaintiffs' First and Fourteenth Amendment rights to assemble and petition the government; (5) deprivation of civil rights and conspiracy to deprive plaintiffs of civil rights in violation of 42 U.S.C. §§ 1983 and 1985; (6) violations of the False Claims Act, 31 U.S.C. § 3729-30; and (7) violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act (18 U.S.C. § 1959 et seq.).

Plaintiffs seek to enjoin defendants from engaging in "stalking, seizing, assaulting, imprisoning, arresting, killing, kidnapping, obstructing justice and... acts of [racketeering]." Compl. [doc. #3] ¶ 31. They also seek an injunction "to seize" their children, Anastasia Inkel, Abigail Baker, and Aaron Baker, who are currently in the custody of the Connecticut Department of Children and Families (DCF). Id. at ¶ 33. Plaintiffs seek a writ of habeas corpus under 28 U.S.C. § 2254. Id. at ¶ 32. They

ask the Court to require defendants to "bid sureties of the peace in the amount of 4 billion U.S. dollars" to compel defendants to "effectively end the ... narcotics trade in Colchester, Connecticut," and ask for another surety of the peace "in the amount of 10 billion U.S. dollars to ensure the safety and protection of the plaintiffs from ... murder, kidnapping, obstructing justice and any other deprivations of their federally protected rights." Id. at ¶¶ 35-37. Plaintiffs seek an injunction ordering defendants "to adopt and implement practices, procedures and reorganize and reform their court, police, community based medical providers, child protection and juvenile justice services so that they may operate effectively... ." Id. at ¶ 55(c). They also seek a declaratory judgment that defendants have violated the U.S. Constitution. Plaintiffs seek treble compensatory damages, punitive damages, costs and fees. Finally, plaintiffs seek to vacate the judgment rendered in a previous § 1983 case, docket no. 3:96-CV-935 (DJS), on March 8, 2000. Addition at 35.

IV. DISCUSSION

A. Claim Under Violent Crime Control and Law Enforcement Act of 1994

The Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, grants authority to the United States Department of Justice to initiate a civil action for injunctive

or declaratory relief against a law enforcement agency that has engaged in a pattern or practice "that deprives persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States." 42 U.S.C. § 14141(a). By its terms, the statute provides enforcement authority only to the Department of Justice. 42 U.S.C. § 14141(b); see also United States v. City of Los Angeles, 288 F.3d 391, 396, 402 (9th Cir. 2002), Daniels v. City of New York, 200 F.R.D. 205, 207 n.3 (S.D.N.Y. 2001).

Because 42 U.S.C. § 14141 contains no private right of action, this count of the complaint fails to state a claim upon which relief can be granted, and must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

B. Claim Under False Claims Act

Plaintiffs also style their suit as a qui tam action under the False Claims Act (FCA), 31 U.S.C. § 3729. This statute allows an individual relator to bring suit on behalf of the federal government against a party who has defrauded the government, usually in connection with a contract or public benefits program; the successful relator may recover treble damages. See 31 U.S.C. §§ 3729-30.

Plaintiffs do not set forth any factual allegations regarding this claim. They merely assert that "these claims are based upon the defendant’s [sic] false claims and false

statements made in connection with the submission of their owned, managed, controlled and empowered police operations, court operations, medical operations (medicaid), social and child protection services, and safe street operations cost reports to paying agencies of the United States of American in order to obtain payment from an uncertain date through the present." Compl. [doc. #3] ¶ 29.

Rule 9(b) of the Federal Rules of Civil Procedure requires that "In all averments of fraud..., the circumstances constituting fraud... shall be stated with particularity." Fed. R. Civ. P. 9(b). This rule applies to FCA claims, requiring qui tam plaintiffs to "to state with particularity the specific statements or conduct giving rise to the fraud claim." Gold v. Morrison-Knudsen Co., 68 F.3d 1475, 1476-77 (2d Cir. 1995).

Inkel's complaint fails to meet the Rule 9(b) requirement. It is not clear against which defendants the FCA violations are alleged. There is no hint of what types of payments the defendants demanded or received. There is no allegation of the amount of the payments or demands, or when they were made. Nor does the complaint suggest why defendants may not have been entitled to any federal government money they received. Without any factual allegations at all, plaintiffs' FCA count fails to state a claim upon which relief may be granted, and must be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii).

Plaintiffs also fail to state a cognizable FCA claim against the state defendants, though for a different reason. The Supreme Court in Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 787-88 (2000), held that a state is not a "person" under the FCA and therefore cannot be subjected to liability under that statute. Thus plaintiffs' FCA claims (if any) against the State of Connecticut and its agencies, including the Department of Children and Families, the Attorney General's Office, the State's Attorney's Office, as well as the State of Vermont and the Vermont Department of Social Services, are not cognizable under the statute. These claims are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii).

C. Civil RICO Claim

Plaintiffs allege violations of the civil RICO statute, 18 U.S.C. § 1964 (1976). "To state a claim for damages under RICO a plaintiff has two pleading burdens. First, he must allege that the defendant has violated the substantive RICO statute, 18 U.S.C. § 1962 (1976), commonly known as 'criminal RICO.'" Moss v. Morgan Stanley, Inc., 719 F.2d 5, 17 (2d Cir. 1983), cert. denied, 465 U.S. 1025 (1984). Then he "must allege that he was 'injured in his business or property by reason of a violation of section 1962.' Id. (quoting 18 U.S.C. § 1964(c))."

To sufficiently allege a violation of 'criminal RICO,' a plaintiff must "allege the existence of seven constituent

elements: (1) that the defendant (2) through the commission of two or more acts (3) constituting a 'pattern' (4) of 'racketeering activity' (5) directly or indirectly invests in, or maintains an interest in, or participates in (6) an 'enterprise' (7) the activities of which affect interstate or foreign commerce." Id. (quoting 18 U.S.C. § 1962(a)-(c)). Plaintiffs' complaint in this case fails to allege most of these elements. "Racketeering activity" is defined in 18 U.S.C. § 1961(1) to include a variety of criminal activity, including murder, kidnapping, and threats to commit those crimes. Plaintiffs do allege one instance in which two police officers allegedly threatened or conspired to kill plaintiff Inkel. However, there is no other factual allegation in the complaint that would meet the definition in § 1961. Moreover, the RICO statute requires a "pattern," defined as "at least two acts of racketeering activity." Id. at § 1961(5). Therefore one alleged threat of murder does not suffice. Furthermore, plaintiffs do not allege any connection to interstate commerce, nor do they allege that defendants in any way have maintained an "enterprise," defined as "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact..." Id. at § 1961(4).

For these reasons, plaintiffs' claim of RICO violations is insufficient under the standards of Fed. R. Civ. P. 9(b) and 18

U.S.C. § 1962, and must be dismissed.

D. Claims for Sureties of the Peace

Plaintiffs seek an order requiring defendants to bid sureties of the peace under Connecticut law.[2] They seek a $4 billion bond to ensure defendants enforce the narcotics laws in the state of Connecticut and a $10 billion bond to prevent defendants from physically harming plaintiffs or depriving plaintiffs of their civil rights.

While federal courts may in some situations exercise supplemental jurisdiction over substantive claims based upon state law, see 28 U.S.C. § 1367, their remedial powers are limited by federal statute. With the Bail Reform Act of 1984, Congress revoked the authority of federal courts to require sureties of the peace. See 18 U.S.C. § 3043, repealed, Pub. L. 98-473, 98 Stat. 1986 (Oct. 12, 1984). Therefore plaintiffs' demands for sureties of the peace fail to state claims upon which relief may be granted, and those claims are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

E. Motion to Vacate Judgment in 3:96-CV-935

Inkel moves to reopen or vacate the judgment rendered by The Hon. Dominic Squatrito in civil action no. 3:96-cv-935. Addition

[2]The applicable statute reads, in pertinent part: "Any judge of the superior court may, from his personal knowledge or upon complaint of another, require sureties of the peace and good behavior from any person who threatens to beat or kill another or resists or abuses any officer in the execution of his office or contends with angry words, or, by any unlawful act, terrifies or disturbs any person." Conn. Gen. Stat. § 54-56f.

at 35. Plaintiff does not specify the grounds for his motion. The Court will construe this as a motion for relief from judgment under Fed. R. Civ. P. 60(b).

The Court first notes that Inkel actually prevailed in civil action no. 3:96-cv-935. On March 8, 2000, Judge Squatrito rendered judgment in Inkel's favor against Colchester Police Officers Thomas and Nardella, who are also defendants in this case. (A number of defendants had been dismissed, some on Inkel's motion and some on defendants' motions, prior to the entry of judgment.) A bench trial was held in late February and early March, ending on March 8, 2000. On that date Judge Squatrito found for Inkel and closed the case.

As Inkel won his case, his motion for relief from judgment under Rule 60 most likely is moot. Even if it were not, a Rule 60 motion should be addressed to the court that issued the judgment, not to this Court. Furthermore, a Rule 60 motion on most grounds must be filed within one year of the judgment, which would have required Inkel to file his motion by March 8, 2001. The instant complaint was filed on January 15, 2004. Therefore the motion is both filed in the wrong court and is time-barred, and it must be dismissed.

F. Claims for Damages under 42 U.S.C. §§ 1983 and 1985

The majority of plaintiffs' claims sound in constitutional tort under 42 U.S.C. § 1983. Plaintiffs allege that various

officials violated their constitutional rights in a series of arrests, prosecutions, and child custody actions. Plaintiffs also allege that a variety of private individuals conspired with government officials to deprive them of their civil rights, in violation of 42 U.S.C. § 1985.

1. Statute of Limitations

In Connecticut, the limitations period for filing an action under 42 U.S.C. § 1983 or § 1985 is three years. Lounsbury v. Jeffries, 25 F.3d 131, 134 (2d Cir. 1994) (holding that Connecticut's three-year limitations period for tort suits, set forth in Conn. Gen. Stat. § 52-577, is the appropriate limitations period for civil rights actions under § 1983); Meyer v. Frank, 550 F.2d 726, 727 (2d Cir. 1977) (same statute of limitation applies to § 1985 claims as to § 1983 claims). The complaint in this case was filed on January 15, 2004. Therefore, the Court may entertain only those § 1983 or § 1985 claims arising after January 15, 2001.[3]

Nearly all of plaintiffs' claims are time-barred.

[3]At the time the complaint was filed, plaintiff Inkel was incarcerated but plaintiff LaBella was not. [Letter from Labella, Jan. 9, 2004]. The Court does not know whether the complaint was filed by Inkel from prison or by LaBella in person. The Second Circuit has held that a pro se prisoner complaint is deemed filed as of the date the prisoner gives it to prison officials to be forwarded to the court. See Dory v. Ryan, 999 F.2d 679, 682 (2d Cir. 1993), citing Houston v. Lack, 487 U.S. 266, 270 (1988). The complaint in this action is not dated on the signature line or elsewhere, and thus the Court cannot tell when it was signed. Even if the complaint were written by Inkel and handed to prison officials several weeks before it was filed in the Clerk's office, those few weeks would not make a difference in this case because plaintiffs allege no incidents within the time frame of January 2001.

Plaintiffs' claims against Colchester police officers Gendron and Nardella arise from an incident of police brutality in May of 1993. Addition at 1. Further claims against Nardella and the claims against Colchester police officer Thomas and State Troopers Popitti, Guerra, and Wheeler, as well as Backus Hospital and fourteen individual employees of Backus Hospital, all arise from an arrest in July 1993. Id. at 1-3. Claims against State Police Sgt. Gibleaur[4] arise from an incident on July 5, 1993. Id. at 3. Another incident involving State Troopers Thomas, Nardella and Briger occurred during an arrest on August 3, 1993. Id. at 4-5. A third incident involving Nardella and Gendron as well as State Trooper Arigno arises from a search and arrest on September 16, 1993. Id. at 5-6. Plaintiffs' claims against Investigator James Dignotti of the State's Attorney's Office arise from Dignotti's alleged failure to investigate a complaint of police brutality made sometime during the summer of 1993. Id. at 7. Inkel alleges that Lt. Herbert Burnham[5] of the Connecticut State Police failed to investigate another complaint of police brutality made in the fall of 1993. Id. at 9. Burnham allegedly referred Inkel to Lt. Richard Wheeler, whom Inkel contacted

[4]Gibleaur is not listed as a defendant in the original complaint or the Addition. Even if the Court construes the allegations of the Addition as intending to name Gibleaur as a defendant, any claims against Gibleaur are time-barred.

[5]Lt. Burnham is not listed as a defendant in the original complaint or the Addition. Even if the Court construes the allegations of the Addition as intending to name Burnham as a defendant, any claims against Burnham are time-barred.

immediately, and who also refused to take Inkel's complaint. Id. at 9-10. Finally, Inkel alleges prosecutorial misconduct in the form of threatening to destroy evidence by Assistant State's Attorney Steven Carney during the summer of 1993. Id. at 11-12. All of these incidents arising in 1993 are time-barred. Lounsbury, 25 F.3d at 134. Therefore, these § 1983 and § 1985 claims are dismissed against: Colchester Police Department members Gendron, Nardella and Thomas; Connecticut State Troopers Popitti, Guerra, Wheeler, Gibleaur, Briger, Arigno Burnham, and Wheeler; State's Attorney's Office Investigator Dignotti; Backus Hospital and the fourteen individual hospital employees; and Assistant State's Attorney Carney.

Inkel alleges that in 1993 and 1994 he brought his complaints of police brutality by the Colchester Police Department to one of his elected representatives, Colchester First Selectman Jenny Contois. Id. at 11. He alleges that Contois did not "take any meaningfull [sic] remedial action and failed to document or record Inkel's or others' complaints." Id. He further alleges that Contois reported Inkel's complaints directly to the police department, which took further retaliatory action against him. Id. This claim is time-barred, having arisen many years before January 15, 2001.[6] Therefore

[6]While local legislators are absolutely immune from suit under § 1983 for "all actions taken 'in the sphere of legitimate legislative activity.'" Bogan v. Scott-Harris, 523 U.S. 44, 54 (1998), quoting Tenney v. Brandhove, 341 U.S. 367, 376 (1951), whether provision of constituent services regarding

plaintiffs' claim against Contois must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

The Court reaches the same conclusion with respect to Inkel's claims arising in 1994. Inkel alleges that he complained about police misconduct to Assistant U.S. Attorney John Durham on or around April 15, 1994, and Durham failed to investigate the complaint and "did many other acts outside the scope of his authority to assist covering up the crimes habitually committed by law enforcement in Connecticut for all relevant times including till present." Id. at 12. This claim arose far before January 15, 2003, and, as well, Durham is neither a state actor for purposes of § 1983 nor a private conspirator under § 1985. Accordingly, plaintiffs' § 1983/§ 1985 claim against Durham must be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Inkel next alleges an incident of police brutality on May 21, 1994 at a McDonald's restaurant in Colchester, Connecticut. This incident allegedly involved Connecticut State Trooper Norman Seney III, Norwich police officer Joseph Jones, and Colchester police officers James Nardella and Charles Scott Thomas.[7]

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a dispute with a municipal agency is a "legislative activity" could be disputed. See Harhay v. Town of Ellington Bd. of Educ., 323 F.3d 206, 211 (2d Cir. 2003) (distinguishing between legislative and administrative actions). The Court does not decide this question because even if First Selectman Contois were not entitled to absolute immunity for her action (or failure to act) in these circumstances, the § 1983 claim is barred by the statute of limitations.

[7]Neither Jones nor Thomas is listed as a named defendant. To the extent that Inkel intended to name these individuals as defendants, the claims against them are time-barred.

Addition at 13-15. Inkel further alleges that Nardella and Thomas solicited a confidential informant at some point between May 21 and June 16, 1994 to murder Inkel and Inkel learned of this plot on July 27, 1994. Id. at 16, 19. Inkel alleges that he informed then-U.S. Attorney Christopher Droney, who in turn dispatched FBI agents Mike Griffin and Jim Hibbert to interview Inkel, but Inkel alleges that these federal employees did not protect his safety. Id. at 20. These claims, having arisen in 1994, are all time-barred, and are dismissed.

Inkel alleges that, in 1995 and 1996, unnamed officials in Connecticut misled officials in Alaska into believing that Inkel was involved in a murder in Anchorage. Addition at 22. Although it is unclear which defendants may have been involved, even if Inkel were to specify, this claim would be barred by the three-year statute of limitations, and therefore the claim is dismissed.

Inkel alleges that, in 1995, a private individual named Melody Wolf brought a child custody and support enforcement action against him in Connecticut state court. Inkel alleges that a child support enforcement officer named Terry Drew committed wrongful actions against him during this proceeding, including interfering with his parental rights and falsifying court orders. Addition at 23. Inkel's § 1983 claim against Drew and § 1985 claim against Wolf both are barred by the statute of

limitations and therefore are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Inkel alleges prosecutorial misconduct on the part of Assistant State's Attorney Robert Satti of New London sometime in 1995. Addition at 25. This claim also is barred by the statute of limitations and is dismissed.

Inkel makes claims against the following individuals relating to the previous civil case (3:96-CV-935 (DJS)), in which he brought claims of police brutality: The Hon. Dominic Squatrito (D. Conn); private attorney John Schoenhorn; and private attorney William Bloss. Addition at 25-26, 29-31. The case before Judge Squatrito was terminated on March 8, 2000. Any § 1983 claims arising from this case (apart from whether a federal judge or private attorneys could said to be acting under color of state law) are barred by the three-year statute of limitations, and are dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

Inkel next alleges various abuses in 1999 by the Connecticut Department of Children and Families (DCF) and case worker Deb Barber. DCF removed three children from the home of Inkel and LaBella. Addition at 32. To the extent that the complaint can be read to seek relief under § 1983 for events arising from this 1999 child custody dispute, these claims are time-barred under the three-year statute of limitations, and are dismissed.

Thus, the only § 1983/§ 1985 claims that are not time-barred are those arising from medical treatment and custody actions concerning Inkel's children in 2002 and 2003. Inkel alleges that, in January 2002, employees of the Institute of Living, the mental health arm of Hartford Hospital, conspired with the Connecticut Department of Children and Families (DCF) and the United States government to "wrongfully" diagnose minor plaintiff Aaron Baker's mental health needs, and to "cover up a crime of sexual assault he committed, drug Aaron in lieu of treatment, and then disparage and hurt and initiate abuse of legal process [sic] and ultimately kidnap Aaron on account [sic] Phillip Inkel and LaBella threatened to sue and would not comply with their illegal orders of covering up Aaron's mental health needs and mistreat [sic] him." Addition at 33. Plaintiff further alleges that Magistrate Judge Harris Lifshitz, DCF, and the Connecticut office of child support enforcement conspired against Inkel to take his children away and to put Inkel in jail for "contempt of child support." Id. Inkel further alleges that DCF wrongfully took custody of children Anastasia Inkel and Abigail Baker on, respectively, November 3 and November 7, 2003. Id. at 34. Inkel claims that he was never accorded a "fair hearing on this matter."

2. Magistrate Judge Lifshitz

Although Inkel's § 1983 claim against Magistrate Judge

Lifshitz is timely, the claim must be dismissed because judges are absolutely immune from suit for damages under the Constitution. Pierson v. Ray, 386 U.S. 547 (1967). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." Mireles v. Waco, 502 U.S. 9, 11 (1991). "The absolute immunity of a judge applies 'however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.'" Young v. Selsky, 41 F.3d 47, 51 (2d Cir. 1994), quoting Cleavinger v. Saxner, 474 U.S. 193, 199-200 (1985). Judicial immunity is overcome in only two situations. "First, a judge is not immune from liability for nonjudicial actions, i.e., actions not taken in the judge's judicial capacity. Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." Mireles, 502 U.S. at 11 (citations omitted).

Inkel claims that Magistrate Lifshitz did not accord him a "fair hearing" on DCF's petition to remove three children from his custody. Addition at 34. This allegation does not fall within either exception to judicial immunity. Holding hearings is quintessentially a judicial function. Inkel does not allege any facts indicating that Magistrate Lifshitz acted without jurisdiction, only that Inkel felt he was not accorded due process. The proper remedy for such a claim is to appeal the custody ruling. Section 1983 does not provide the remedy Inkel

seeks, and the claim against Magistrate Lifshitz must be dismissed.

3. United States Government

Inkel alleges that the United States government conspired with DCF and Hartford Hospital to misdiagnose Aaron Baker. By their terms, neither 42 U.S.C. § 1983 nor 42 U.S.C. § 1985 creates a cause of action against the federal government. Rather, § 1983 applies against those who act under the color of state law, and § 1985 applies against those private individuals who conspire to deprive victims of their federal civil rights. Neither situation is alleged in Inkel's complaint. Therefore these claims for damages are dismissed as to the United States and any federal officials (unspecified in the complaint) alleged to have been involved with decisions concerning the medical treatment or custody of the Inkel children.

4. Institute of Living at Hartford Hospital

Inkel alleges that employees of the Institute of Living, Hartford Hospital's mental health arm, failed to treat minor plaintiff Aaron Baker properly. To state a claim for relief under § 1983, plaintiffs must allege facts demonstrating that defendants acted under color of state law. See Lugar v. Edmondson Oil Co., 457 U.S. 922, 930 (1982); Washington v. James, 782 F.2d 1134, 1138 (2d Cir. 1986). Plaintiff has not alleged any such facts. He does not, for instance, allege that his

child, Aaron Baker, was involuntarily committed to the institution by order of the State of Connecticut or a court. He does not assert that Hartford Hospital itself is a state institution, or that it has any affiliation with the State of Connecticut. Therefore the complaint against Hartford Hospital fails to state a § 1983 claim because it contains no allegations that the hospital or its employees are state actors.

Even if the complaint were not deficient in that respect, the substance of Inkel's § 1983 claim must fail. Section 1983 prohibits those acting under color of state law from inflicting "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. § 1983. Inkel's first claim against Hartford Hospital is that its employees misdiagnosed and "drugged" Aaron Baker. Addition at 33. Even reading the complaint generously, this is only a medical malpractice allegation. There is no basis for concluding that Hartford Hospital's alleged malpractice in any way deprived Inkel or his son of their federally-protected Constitutional or statutory rights. Cf. Estelle v. Gamble, 429 U.S. 97, 104 (1976) ("deliberate indifference" to medical needs of prisoners states a claim under § 1983 for violations of Eighth Amendment's prohibition on cruel and unusual punishments).

Read broadly, Inkel's complaint also could be read to allege a § 1985 claim against Hartford Hospital for conspiring with

state and federal officials to "cover up a crime of sexual assault" that was allegedly committed by Aaron Baker. Addition at 33. The complaint thus seems to allege somehow that Baker had a right to be prosecuted for committing a crime. There is no Constitutional right to be prosecuted; indeed, prosecutors are immune from suit for their discretionary decisions whether to prosecute or not prosecute certain cases. See Imbler v. Pachtman, 424 U.S. 409 (1976). Therefore the complaint fails to state a § 1985 claim against Hartford Hospital stemming from the sexual assault incident, and Hartford Hospital and its employees are dismissed as defendants in this case pursuant to § 1985(e)(2)(B)(ii).

5. Remaining § 1983 Claims

After narrowing the allegations, see supra, § IV.F.1-4, the only claims remaining under 42 U.S.C. § 1983 are that DCF and its employees improperly removed Aaron Baker, Abigail Baker, and Anastasia Inkel from their parents' custody without due process, and that they mishandled Aaron Baker's medical condition in violation of his constitutional rights. Plaintiffs do not specifically allege which DCF employees were involved with the decisions concerning the children. Reading the complaint generously, the Court will assume that all the defendants listed under the heading "Connecticut Department of Children Agents" are alleged to be connected to the removal and treatment decisions.

They are: Commissioner of DCF Darlene Dunbar; Kristine Ragaglia; Deborah Barber; Randall Snow; Gerald Hetu; Colleen Lenney; Jean Corsini; Susan Wax; Torrence Jennings; Susan Smith; and Commissioner of the Department of Social Services Patricia Wilson Coker. These individuals will not be dismissed pursuant to § 1915.

G. Injunctive Relief in the Form of a Child Custody Decree

Plaintiffs seek an order from this court "to seize" Aaron Baker, Abigail Baker, and Anastasia Inkel from DCF's custody. Child custody issues are not within the federal question jurisdiction of the district courts. See 28 U.S.C. § 1331, Ankenbrandt v. Richards, 504 U.S. 689, 703 (1992). Furthermore, it is well-settled that federal courts will not exercise jurisdiction over domestic relations matters, including child custody issues, even if diversity of citizenship exists.[8] Ankenbrandt, 504 U.S. at 703. Plaintiffs' request for an injunction removing their children from the custody of DCF fails to state a claim upon which relief may be granted, and therefore it is dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

[8]Inkel asserts that he is a "citizen of Alaska" who receives his mail in Connecticut. Compl. [doc. #3] ¶ 1. At the time he filed the complaint, he was incarcerated in Connecticut. For current purposes, it is immaterial whether Inkel is a citizen of Alaska or Connecticut. First, the other plaintiffs are Connecticut citizens, thus defeating complete diversity of citizenship. See 28 U.S.C. § 1332(a). Second, even if there were complete diversity, this Court would not entertain a child custody claim under its diversity jurisdiction. Ankenbrandt, 504 U.S. at 703.

H. Other Claims for Injunctive Relief

Plaintiffs seek preliminary and permanent injunctive relief "for the enjoinment of illegal activities and the protection of innocent persons." Compl. [doc #3] ¶ 31. They ask the court to "enjoin defendants Bush, Rowland, Contois, Dunbar, Coker and Peligrino from stalking, seizing, assaulting, imprisoning, arresting, killing, kidnapping, obstructing justice, and any other predicate acts of racketeering forming the basis of this lawsuit." Id. Plaintiffs also seek an injunction ordering defendants "to adopt and implement practices, procedures and reorganize and reform their court, police, community based medical providers, child protection and juvenile justice services so that they may operate effectively... ." Id. at ¶ 55(c).

An injunction is only proper to prevent "future harm." Sheppard v. Beerman, 94 F.3d 823, 829 (2d Cir. 1996). The complaint in this case does not contain sufficient factual allegations showing that defendants are likely to be subjected to harm from defendants in the future. First, the allegations of police brutality--presumably the allegations to which an injunction preventing "arresting," "seizing," "assaulting," "imprisoning," and "obstructing justice" are directed--all arise from incidents in the early 1990s. Other than conclusory allegations that there is an ongoing global conspiracy against them, plaintiffs set forth no facts indicating that a pattern of

police brutality, or other behavior threatening the safety of the family, is ongoing at this time, or has occurred anytime since about 1996. Therefore plaintiffs do not demonstrate a likelihood of harm in the future if this Court does not enjoin police brutality against the Inkel/LaBella family or issue an injunction instructing the police department to "operate effectively." See Compl. ¶ 55(C). Therefore the requested injunction against police brutality is denied.

There are two components to plaintiffs' demand for injunctive relief concerning child custody issues. First is plaintiffs' demand an injunction preventing "kidnapping," which the Court interprets to mean an injunction preventing DCF from retaining custody of their children. As such, this request is indistinguishable from their request for a child custody decree (which was styled a request to "seize" the children from DCF), a type of relief the Court has no jurisdiction to grant. See supra, § III.G.

The second component of the request for injunctive relief with respect to child custody issues is a request that DCF "operate effectively" in the future. Because three of the minor plaintiffs in this case remain in DCF custody, and Aaron Baker is alleged to still be deprived of appropriate medical care while in DCF custody, the Court concludes that there is a possibility that plaintiffs may be able to demonstrate a threat of future harm

entitling them to injunctive relief against DCF. Their claim to injunctive relief directed toward DCF procedures will remain in the case. The defendants relevant to this claim are the same individuals relevant to the remaining § 1983 claim. See supra, § III.F.5.

I. Petition for Writ of Habeas Corpus

Plaintiffs seek a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Compl. ¶ 32. The Court assumes that this claim applies only to Inkel, the only plaintiff alleged to be in state custody. In his Addition, Inkel states that as of sometime in February, 2004, he was "in jail, locked in a cell 22 hours a day, disguised as contempt of child support." Addition at p. 33. He does not specify the court or date of conviction, or why he believes his conviction was wrongful, aside from a global conspiracy against him. More importantly, Inkel does not make any allegations showing that he exhausted his state appeals before filing this complaint on January 15, 2004. A Supplemental Affidavit from LaBella, dated January 9, 2004 [attached to doc. #1], states that Inkel was arrested on December 17, 2003.

Federal law deprives this Court of jurisdiction over a petition for habeas corpus unless the petitioner has exhausted all available state remedies. 28 U.S.C. § 2254 ("An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted

unless it appears that the applicant has exhausted the remedies available in the courts of the State...").

In addition, Inkel has not named as a respondent his custodian, namely the warden of the prison holding him; thus the petition does not indicate whether this Court has proper jurisdiction over that custodian. See Rumsfeld v. Padilla, __U.S. __, 124 S. Ct. 2711, 2719 (2004) (proper respondent is immediate custodian, and district court may only entertain habeas petition if it has personal jurisdiction over respondent). In the absence of allegations that Inkel has exhausted his state remedies and that this Court has jurisdiction over the proper respondent, this Court must dismiss Inkel's habeas petition.

J. Defendants Unconnected to Factual Allegations

The supplemental complaint names as defendants a number of individuals, listed in the margin,[9] who are not mentioned

[9]George Bush, President of the United States; Connecticut Governor John Rowland; Lowell Weicker, also sued as Governor of Connecticut; Connecticut Chief Court Administrator Joseph Peligrino; Estate of Judge Tambarro; Judges Susan Handy, Kenefick, John Driscoll, Barbara Youngblood, Lopez, Stewart Schieliman; Estates of Connecticut Assistant State's Attorneys John Bailey and Robert Satti; Assistant State's Attorneys Tom Griffin, David Sullivan, Kevin Kane, "Unknown State's Attorney of West Hartford," "Unknown State's Attorney of Manchester;" Attorney General Richard Blumenthal; Assistant Attorneys General Ray Sarnowski, John E. Tacker, and Nina Elgroi; Connecticut State Troopers Arthur Spada, Morales, Garcia, Rearick, Steven Fields, Carl Schultz, Stephen Ostrowski, Denise Rodriguez, Cook, Erick Crooks, Lawrence Slyman, Ralph Chappell, Mark Coleman, William Bohanowitz, William Schemansky, Cheryl Leblanc, and Kevin Serry; FBI Special Agent Carmen Spagnola; Connecticut Child Enforcement Bureau Officers Sylvia Carver and Kraus; Town of Marlborough, Connecticut, Police Department and "Marlborough Police Officer Unknown;" Town of Portland, Connecticut, Police Department and "Portland Police Officer Unknown;" Colchester Police Department officers James Cassel, Estate of Richard Duvall, Robert Sarcheki; Vermont Governor Howard Dean; Vermont Department of Social Services social workers Jane Foote and Carol Haggett; Norwich Pediatric Group and Dr. Richard Geller; United Community Services, Sharon Stackpole and "Doctor P.;" Salmon River Counseling, "Mary Jo;"

elsewhere in the Complaint or the Addition. There is no allegation in either document indicating how these defendants are associated with any of the wrongs alleged.

A complaint must set forth "'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Conley v. Gibson, 355 U.S. 41, 47 (1957) (emphasis added) (quoting Fed. R. Civ. P. 8(a)(2)); see also Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002). A pro se complaint is held "to less stringent standards than formal pleadings drafted by lawyers." Haines v. Kerner, 404 U.S. 519, 520-21 (1972); see also Platsky v. CIA, 953 F.2d 26, 28 (2d Cir. 1991). Thus, "when an in forma pauperis plaintiff raises a cognizable claim, his complaint may not be dismissed sua sponte for frivolousness... even if the complaint fails to flesh out all the required details." Livingston v. Adirondack Beverage Co., 141 F.3d 434, 437 (2d Cir. 1998) (internal quotation omitted). However, even a pro se plaintiff must give "fair notice" to defendants concerning the basis of his or her claims. Conley, 355 U.S. at 47.

Pediatric Associates of Marlborough, Dr. Carrie Striem; Connecticut Children's Medical Center Emergency Room and "Doctor Unknown White Female;" Colchester Board of Education; Jack Jacketer Elementary School and Principal Mrs. Luce, Principal Jacqueline Somberg, Jill Hornkohl, Janice Massey, "school psychologist Mrs. Efferon," Mrs. Collins, "Unknown school nurse;" "Private Individuals" named Robert Balaban, Bill Krowell, Donna Krowell, Timothy Baker, Alice Trailor, Sara Schulman, Fred Schulman; Dairy Queen of Portland, CT; Attorneys Elizabeth Sabilia, Raymond Rigat, David Cosham, Valerie Alexander and James Szereko; Halloran and Sage; Jacobs, Grudberg, Belt and Dow; and, finally, "Unlimited John or Jane Does."

Because plaintiffs make no factual allegations at all against these defendants, the complaint fails to give these defendants sufficient notice of the claims against them. Read generously, the complaint cannot possibly be sufficient as against these defendants. Therefore the complaint is dismissed as to all defendants listed in footnote 9.

V. CONCLUSION

Accordingly, all counts of the complaint are DISMISSED EXCEPT claims seeking damages pursuant to § 1983 and injunctive relief against due process violations stemming from the 2002-2003 removal of three children from the Inkel home and medical treatment while in DCF custody.

All defendants are DISMISSED EXCEPT: Commissioner of DCF Darlene Dunbar, Commissioner of the Department of Social Services Patricia Wilson Coker, Kristine Ragaglia, Deborah Barber, Randall Snow, Gerald Hetu, Colleen Lenney, Jean Corsini, Susan Wax, Torrence Jennings, and Susan Smith.

Plaintiffs are directed to amend their complaint in accordance with this ruling, and to file an appropriate Substituted Complaint. Failure to comply within 45 days of this ruling may result in the dismissal of the case without further notice. Plaintiffs may serve their Substituted Complaint by mail on Defendants Dunbar and Wilson Coker, because they have appeared

in this case.

In order that the United States Marshal can serve the Substituted Complaint on the remaining nine defendants, the plaintiffs are directed to complete two of the enclosed 285 U.S. Marshal service forms for each defendant using that defendant's current work address. The plaintiff shall complete and return to the Clerk the enclosed service forms, two completed Notice of Lawsuit and Waiver of Service of Summons forms for each defendant, one for official capacity and one for individual capacity, and 18 copies of the Substituted Complaint within 45 days of the date of this order. The plaintiff is cautioned that failure to return the forms and copies within 45 days to the Clerk at 141 Church Street, New Haven, CT, 06510, may result in the dismissal of this case without further notice from this court.

Upon receipt of the forms, the Clerk is directed to forward the appropriate papers to the U.S. Marshal. The U.S. Marshal is directed to serve the Substituted Complaint on defendants Ragaglia, Barber, Snow, Hetu, Lenney, Corsini, Wax, Jennings, and Smith in their individual and official capacities within 30 days of receipt.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, October 19, 2004