

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

RYAN SCOTT BARNETT,

Plaintiff,

V.

CITY OF DALLAS, ET AL.,

Defendants.

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No. 3:24-cv-2425-E-BN

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE  
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Ryan Scott Barnett filed a *pro se* complaint under 42 U.S.C. § 1983 alleging violations of federal law against the City of Dallas, its police chief, a deputy police chief, and several other Dallas police officers concerning Barnett’s arrest and subsequent detention and criminal charge, a charge that, after indictment, was downgraded to a misdemeanor and then dismissed. *See* Dkt. No. 3.

And, because Barnett also moved for leave to proceed *in forma pauperis* (“IFP”), *see* Dkt. No. 4, United States District Judge Ada Brown referred this lawsuit to the undersigned United States magistrate judge for pretrial management under 28 U.S.C. § 636(b) and a standing order of reference.

The Court granted Barnett’s IFP motion, *see* Dkt. No. 5, and Judge Brown accepted the undersigned’s findings and conclusions recommending that the Court dismiss the claims against the City, the police chief, and the deputy police chief, *see Barnett v. City of Dall.*, No. 3:24-cv-2425-E-BN, 2024 WL 4594111 (N.D. Tex. Oct. 7, 2024), *rec. accepted*, 2024 WL 4593011 (N.D. Tex. Oct. 28, 2024) (“*Barnett I*”) [Dkt.

Nos. 6 & 7].

After reviewing Barnett's remaining claims – all against the police officers Barnett claims falsely arrested him – the undersigned now recommends, for the reasons and to the extent set out below, that the Court dismiss the complaint in its entirety.

### Legal Standards

Where a plaintiff is granted leave to proceed IFP, the Court must “dismiss the case at any time” if it “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B)(ii).

Under this standard, a *pro se* complaint need not contain detailed factual allegations – just “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

“The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

But, “[w]here a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.” *Id.* (cleaned up; quoting *Twombly*, 550 U.S. at 557).

On the other hand, “[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.” *Id.*

And, while a court must accept a plaintiff’s allegations as true, it is “not bound

to accept as true a legal conclusion couched as a factual allegation.” *Id.* (quoting *Twombly*, 550 U.S. at 555).

In fact, “the court does not ‘presume true a number of categories of statements, including,’” in addition to legal conclusions, “‘mere labels; threadbare recitals of the elements of a cause of action; conclusory statements; and naked assertions devoid of further factual enhancement.’” *Armstrong v. Ashley*, 60 F.4th 262, 269 (5th Cir. 2023) (quoting *Harmon v. City of Arlington, Tex.*, 16 F.4th 1159, 1162-63 (5th Cir. 2021)).

And, so, to avoid dismissal, plaintiffs must “plead facts sufficient to show” that the claims asserted have “substantive plausibility” by stating “simply, concisely, and directly events” that they contend entitle them to relief. *Johnson v. City of Shelby, Miss.*, 574 U.S. 10, 12 (2014) (per curiam) (citing FED. R. CIV. P. 8(a)(2)-(3), (d)(1), (e)); *see also Robbins v. Oklahoma*, 519 F.3d 1242, 1248 (10th Cir. 2008) (“The burden is on the plaintiff to frame a ‘complaint with enough factual matter (taken as true) to suggest’ that he or she is entitled to relief.” (quoting *Twombly*, 550 U.S. at 556)).

### **Analysis**

Barnett alleges that, on August 12, 2023, he was “selling legally compliant sealed prepackaged consumable hemp product” not in but near Klyde Warren Park in Dallas. Dkt. No. 3 at 8-9. The officers were called to the scene by park management. *See id.* at 9. Barnett was detained and arrested, and his product was seized. *See id.* at 9-12. He was then released from the Dallas County jail on bond. *See id.* at 12.

Barnett’s complaint and the applicable state court record, *see State v. Barnett*, F23-57294 (292nd Jud. Dist. Ct., Dall. Cnty., Tex.); *State v. Barnett*, M24-00316

(Cnty. Crim. Ct. No. 7, Dall. Cnty., Tex.) – as a matter of public record of which the Court may take judicial notice, *see Stiel v. Heritage Numismatic Auctions, Inc.*, 816 F. App'x 888, 892 (5th Cir. 2020) (per curiam) (under Federal Rule of Evidence 201, a district court may “take judicial notice of the state court’s orders, final judgment, and docket as matters of public record” (citations omitted)) – further reflect that:

- on August 12, 2023, Barnett was arrested for felony possession of marijuana;
- on May 21, 2024, a Dallas County grand jury indicted Barnett for possession of a useable quantity of marijuana in an amount of two ounces or less within 1,000 feet of a school, in violation of Texas Health and Safety Code § 481.121;
- on the same date, this felony charge was determined to be a misdemeanor and transferred; and
- on August 19, 2024, the misdemeanor charge was dismissed in the interest of justice on the motion of the Dallas County District Attorney.

To start, Barnett has sued the officers in their official and individual capacities. *See* Dkt. No. 3 at 2-3.

“The performance of official duties creates two potential liabilities, individual-capacity liability for the person and official-capacity liability for the municipality.” *Turner v. Houma Mun. Fire & Police Civil Serv. Bd.*, 229 F.3d 478, 485 (5th Cir. 2000).

Where “a defendant government official is sued in his individual and official capacity, and the city or state is also sued,” the ‘official-capacity claims and the claims against the governmental entity essentially merge.’ *Harmon v. Dall. Cnty., Tex.*, 927 F.3d 884, 891 (5th Cir. 2019) (quoting *Turner*, 229 F.3d at 485).

And the standards applicable to pleading municipal liability apply to an

official-capacity claim. *See, e.g., Byrum v. City of Mesquite*, 126 F. App'x 670, 671 (5th Cir. 2005) (per curiam) (“A governmental entity or municipality, as well as officers thereof acting in their official capacity, can be held liable under § 1983 only if official policy or custom caused the deprivation of a constitutional right.” (citations omitted)).

And, so, the official-capacity claims against the officers are not plausibly alleged for the same reasons the claims against the City fail. *See Barnett I*, 2024 WL 4594111, at \*2-\*4.

Similarly, to the extent that the complaint could be construed as including claims against the Dallas Police Department itself, courts in this circuit dismiss claims against non-jural entities – commonly servient political departments, such as a local law enforcement entity. *See, e.g., Combs v. City of Dall.*, 289 F. App'x 684, 686 (5th Cir. 2008) (per curiam) (affirming dismissal of “the DPD as a defendant because it is a servient political department that does not enjoy a separate and distinct legal existence from the City of Dallas,” as the plaintiff failed to “show that the City of Dallas granted the DPD the capacity to sue or be sued as a separate and distinct entity” (citing *Darby v. Pasadena Police Dep't*, 939 F.2d 311, 313-14 (5th Cir. 1991) (“[U]nless the true political entity has taken explicit steps to grant the servient agency with jural authority, the agency cannot engage in any litigation except in concert with the government itself.”))).

Moving to the substance of the claims against the officers in their individual capacities, then, Barnett first alleges Fourth Amendment violations based on unreasonable search and seizure, false arrest, and malicious prosecution.

But, because Barnett was prosecuted under a grand jury indictment for the acts underlying these claims, the independent-intermediary doctrine shields the officers from liability.

“It is well settled that if facts supporting an arrest are placed before an independent intermediary such as a magistrate or grand jury, the intermediary’s decision breaks the chain of causation for false arrest, insulating the initiating party.” *Deville v. Marcantel*, 567 F.3d 156, 170 (5th Cir. 2009).

And, so, “a properly secured arrest warrant or grand jury indictment will shield a defendant who has committed or initiated a false arrest.” *Wilson v. Stroman*, 33 F.4th 202, 208 (5th Cir. 2023) (citing *Buehler v. City of Austin/Austin Police Dep’t*, 824 F.3d 548, 553-54 (5th Cir. 2016)).

“This is true even if the independent intermediary’s action occurred after the arrest or if the arrestee was never convicted of a crime.” *Id.*

This doctrine applies equally to Fourth Amendment violations grounded on theories of malicious prosecution and unreasonable search and seizure. *See Bledsoe v. Willis*, No. 23-30238, 2023 WL 8184814, at \*4 (5th Cir. Nov. 27, 2023) (per curiam) (applying the doctrine in the context of malicious prosecution); *Crocker v. Garcia*, Civ. A. No. H-10-4604, 2010 WL 4955401, at \*3 (S.D. Tex. Nov. 30, 2010) (“It is well settled that if facts supporting a search or an arrest are placed before an independent intermediary such as a magistrate or grand jury, the intermediary’s decision breaks the chain of causation for purposes of a Fourth Amendment violation, insulating the initiating party.” (collecting cases)).

And Barnett has not alleged an exception to the doctrine to that could preclude its application to his claims – or, more importantly, facts that could support applying an exception here. *See Shaw v. Villanueva*, 918 F.4th 414, 417 (5th Cir. 2019) (“True, there is an exception to the doctrine.... [I]f the plaintiff shows that the defendant tainted the intermediary’s decision-making process, the defendant can be liable. But the plaintiff has to show that the defendant maliciously withheld relevant information or otherwise misdirected the intermediary.” And, at the pleadings stage, “unadorned allegations,” devoid of “specific facts showing that [a defendant] misdirected” the intermediary, will “not establish[] the exception.” (footnotes omitted)).

Barnett also alleges that the officers violated the Sixth Amendment. But he does not allege how they could have, particularly considering that Barnett “does not allege facts from which the Court may infer that the Sixth Amendment had attached when” the officers interacted with Barnett. *Munoz v. Red Oak Police Dep’t*, No. 3:22-cv-2411-B-BN, 2022 WL 18356461, at \*2 (N.D. Tex. Dec. 28, 2022) (citing *Flowers v. City of Harlingen*, Civ. A. No. B-04-085, 2005 WL 8167150, at \*4 (S.D. Tex. May 23, 2005) (“Because the Sixth Amendment right to counsel does not attach until the initiation of an adversary judicial process in respect to a specific crime, Plaintiff has not pleaded sufficient facts to overcome Defendants qualified immunity defense.”), *rec. adopted*, 2005 WL 8167153 (S.D. Tex. July 6, 2005)), *rec. accepted*, 2023 WL 228207 (N.D. Tex. Jan. 17, 2023); *see also Holloway v. Newman*, No. 6:23cv196, 2023 WL 4357258, at \*2-\*3 (E.D. Tex. May 25, 2023) (“The Sixth Amendment to the United

States Constitution provides all defendants a right ‘to be informed of the nature and cause of the accusation’ against them. But that does not mean that arresting officers themselves must explain the details underlying an arrest. [Instead, t]he actual examination of the facts of a case to determine whether probable cause exists for detention must be made by a judge or magistrate at an initial appearance within some reasonable time after the arrest, typically within 48 hours. And an accused does not have a Sixth Amendment right to be informed of the nature and cause of the accusation until the government has committed itself to prosecution. That commitment threshold can be crossed in several ways, including formal charge, preliminary hearing, indictment, information, or arraignment. But regardless of whether, when, or how adversarial criminal judicial proceedings began against Plaintiff on the assault/family violence charge, as required to trigger his Sixth Amendment rights, that had not occurred at the time Defendant Newman arrested and delivered him to jail.” (cleaned up), *rec. adopted*, 2023 WL 4354201 (E.D. Tex. July 5, 2023).

Barnett further alleges against the officers an Eighth Amendment violation based on an allegedly excessive bail of \$2,000.

First, it is not clear that the Eighth Amendment could apply to Barnett since he was never a state prisoner under the facts he now alleges. *See Ford v. Anderson Cnty., Tex.*, 102 F.4th 292, 307 (5th Cir. 2024) (per curiam) (“The constitutional rights of a pretrial detainee are found in the procedural and substantive due process guarantees of the Fourteenth Amendment.” (quoting *Est. of Henson v. Wichita Cnty.*,

795 F.3d 456, 462 (5th Cir. 2015))).

But an excessive bail claim is also not plausibly alleged where Barnett fails to allege “facts concerning the circumstances that might have warranted [the] amount of bail,” *Been v. Edwards*, No. CIV-15-1258-F, 2015 WL 9263911, at \*4 (W.D. Okla. Dec. 3, 2015).

Barnett also alleges under Section 1983 a “Fifth Amendment (‘Takings’)” claim against the officers, evidently based on the seizure of apparent contraband incident to his arrest on drug-related charges.

First, the Fifth Amendment does not apply to state actors (like the Dallas police officers) under Section 1983.

Regardless, “the police power encompasses the government’s ability to seize and retain property to be used as evidence in a criminal prosecution, even if the government ultimately does not rely on that evidence in criminal proceedings.” *Rhaburn v. United States*, 88 Fed. Cl. 310, 313 (2009) (cleaned up).

And, so, “property seized and retained pursuant to the police power is not taken for a ‘public use’ in the context of the Takings Clause.” *Id.* (cleaned up).

That said, “[n]o state ‘police power’ justifies the act of permanently depriving arrestees of their personal property seized at the time of arrest when the state has no ongoing interest in retaining or ensuring the disposal of the property.” *Conyers v. City of Chi.*, No. 12-CV-06144, 2020 WL 2528534, at \*10 (N.D. Ill. May 18, 2020).

But, as to the officers – the only remaining defendants – the complaint allows only for a reasonable inference that they were personally involved only with the

initial taking and retention of Barnett's property. *Cf. Blakely v. Andrade*, 360 F. Supp. 3d 453, 489 (N.D. Tex. 2019) (as against an individual defendant, absent plausible allegations to support supervisory liability, "[t]here must be some showing of personal involvement by a particular individual defendant to prevail against that individual" under Section 1983 (citation omitted)).

Barnett's final claim is that there was a conspiracy to violate his civil rights. But his conspiracy allegations, too, are merely conclusions, which are not enough.

Instead, "the plaintiff must allege facts that suggest 'an agreement between the ... defendants to commit an illegal act' and 'an actual deprivation of constitutional rights.'" *Terwilliger v. Reyna*, 4 F.4th 270, 285 (5th Cir. 2021) (quoting *Cinel v. Connick*, 15 F.3d 1338, 1343 (5th Cir. 1994)).

Barnett therefore fails to allege a plausible claim against the remaining, and the complaint as amended should be dismissed.

That said, the opportunity file objections to these findings, conclusions, and recommendation (as further explained below) allows Barnett an opportunity to show that this case should not be dismissed and that the Court should instead grant leave to amend. *See Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1209 (5th Cir. 2021) (per curiam) ("A court should freely give leave to amend when justice so requires, but a movant must give the court at least some notice of what his or her amendments would be and how those amendments would cure the initial complaint's defects. If the plaintiff does not provide a copy of the amended complaint nor explain how the defects could be cured, a district court may deny leave." (citations omitted)).

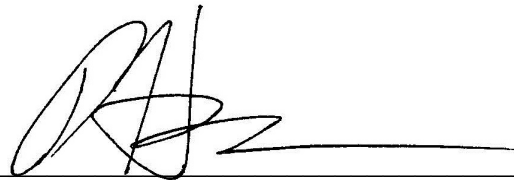
But, if Barnett fails to show through timely objections a basis to amend to allege a plausible claim, the Court should dismiss this lawsuit with prejudice.

### **Recommendation**

Unless Plaintiff Ryan Scott Barnett shows through timely objections a basis to amend the complaint to allege a plausible claim, the Court should dismiss this lawsuit with prejudice.

A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). In order to be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).

DATED: October 31, 2024



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DAVID L. HORAN  
UNITED STATES MAGISTRATE JUDGE