

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

JDN

**WO**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Gilbert Martinez,	)	No. CV 05-3500-PHX-DGC (DKD)
	)	
Plaintiff,	)	<b>ORDER</b>
vs.	)	
	)	
Maricopa County Sheriff's Office, et al.,	)	
	)	
Defendants.	)	

---

This is one of more than one thousand civil rights actions filed since September 2004 by Maricopa County Jail inmates.<sup>1</sup> Plaintiff is an inmate at the Lower Buckeye Jail in Phoenix, Arizona. The Court will require an answer to the Complaint.

**A. Application to Proceed In Forma Pauperis & Filing Fee**

Plaintiff's request to proceed *in forma pauperis* will be granted. 28 U.S.C. § 1915(a). Pursuant to 28 U.S.C. § 1915(b)(1), Plaintiff is required to pay the statutory filing fee of **\$250.00** for this action. No initial partial filing fee will be assessed by this Order. 28 U.S.C. § 1915(b)(1).

Plaintiff will be obligated for monthly payments of 20 percent of the preceding month's income credited to Plaintiff's trust account. The Court will direct the appropriate

---

<sup>1</sup>Many inmates apparently believe that they will receive an immediate payout from a fund established in Hart v. Hill, No. CV 77-0479-PHX-EHC (MS) (D. Ariz.). No such fund exists. The inmates in Hart asked for injunctive relief and not monetary damages. The Court at this time expresses no opinion whether Plaintiff's lawsuit may result in an award of damages.

TERMPREF

1 agency to collect these monthly payments, which will be forwarded to the Clerk of Court  
2 each time the amount in Plaintiff's account exceeds \$10.00, until the filing fee is paid in full.  
3 28 U.S.C. § 1915(b)(2).

4 Plaintiff should take notice that if he is released before the filing fee is paid in full,  
5 he must pay the remaining unpaid amount of the filing fee within 120 days of the date of  
6 his release. If Plaintiff fails to pay the remainder of the filing fee within 120 days of the date  
7 of his release, the action will be dismissed, unless Plaintiff shows good cause, in writing,  
8 why he is unable to pay the remainder of the filing fee.

9 **B. Statutory Screening of Prisoner Complaints**

10 The Court is required to screen complaints brought by prisoners seeking relief  
11 against a governmental entity or officer or employee of a governmental entity. 28 U.S.C.  
12 § 1915A(a). The Court must dismiss a complaint or portion thereof if the Plaintiff has raised  
13 claims that are legally "frivolous or malicious," that fail to state a claim upon which relief  
14 may be granted, or that seek monetary relief from a defendant who is immune from such  
15 relief. 28 U.S.C. § 1915A(b)(1), (2).

16 **C. Claims and/or Parties to be Served and/or Dismissed**

17 *1. Service*

18 In his Complaint Plaintiff alleges that the jail is severely overcrowded, and the living  
19 conditions are unsanitary. These allegations adequately state a claim, and the Court will  
20 require Defendant Arpaio to answer to the Complaint.

21 *2. Dismissal*

22 **a. Improper Defendant**

23 The Maricopa County Sheriff's Office is not a proper Defendant. In Arizona, the  
24 responsibility of operating jails and caring for prisoners is placed by law upon the sheriff.  
25 See A.R.S. § 11-441(A)(5); A.R.S. § 31-101. A sheriff's office is simply an administrative  
26 creation of the county sheriff to allow him to carry out his statutory duties, and not a  
27 "person" amenable to suit pursuant to § 1983. Accordingly, the Maricopa County Sheriff's  
28 Office will be dismissed from this action as an improper Defendant.

1           **b. Retaliation**

2           To state a valid constitutional claim, a plaintiff must allege that he suffered specific  
3 injury as a result of the specific conduct of a defendant, and show an affirmative link  
4 between the injury and the conduct of the defendant. Rizzo v. Goode, 423 U.S. 362, 371-72,  
5 377 (1976). For a person to liable in his official capacity, Plaintiff must allege that he acted  
6 as a result of a policy, practice, or custom. See Cortez v. County of Los Angeles, 294 F.3d  
7 1186, 1188 (9th Cir. 2001). A supervisor, in his individual capacity, “is only liable for  
8 constitutional violations of his subordinates if the supervisor participated in or directed  
9 the violations, or knew of the violations and failed to act to prevent them.” Taylor v. List,  
10 880 F.2d 1040, 1045 (9th Cir. 1989). “A plaintiff must allege facts, not simply conclusions,  
11 that show that an individual was personally involved in the deprivation of his civil rights.”  
12 Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).

13           In Count II, Plaintiff alleges that a "detention officer" threatened and intimidated  
14 Plaintiff and other inmates after they requested grievance forms. However, Plaintiff does  
15 not establish that the action of the detention officer was the result of a policy which  
16 Defendant Arpaio enacted and enforced. Further, Plaintiff does not demonstrate that  
17 Defendant Arpaio was directly involved with, or even aware of, the alleged constitutional  
18 violation. Because Plaintiff only names Defendant Arpaio, this Count will be dismissed  
19 without prejudice.

20 **D. Rule 41 Cautionary Notice**

21           Plaintiff should take notice that if he fails to timely comply with every provision of  
22 this Order, or any order entered in this matter, this action will be dismissed pursuant to  
23 Rule 41(b) of the Federal Rules of Civil Procedure. See Ferdik v. Bonzelet, 963 F.2d 1258,  
24 1260-61 (9th Cir. 1992) (district court may dismiss action for failure to comply with any  
25 order of the Court).

26 **IT IS THEREFORE ORDERED that:**

27           (1) Plaintiff’s Application to Proceed *In Forma Pauperis* is granted. Plaintiff is  
28 obligated to pay the statutory filing fee of \$250.00 for this action.

1 (2) The Maricopa County Sheriff or his designee shall collect the filing fee from  
2 Plaintiff's trust account by collecting monthly payments in an amount equal to 20 percent  
3 of the preceding month's income credited to Plaintiff's trust account and forwarding the  
4 payments to the Clerk of the Court each time the amount in the account exceeds \$10.00 in  
5 accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the  
6 name and number assigned to this action.

7 (3) The following Defendants are dismissed without prejudice: Maricopa County  
8 Sheriff's Office.

9 (4) The Clerk of Court shall send Plaintiff a service packet including the Complaint,  
10 this Order, and both summons and request for waiver forms for Defendant Joseph Arpaio.

11 (5) Plaintiff shall complete and return the service packet to the Clerk of Court within  
12 20 days of the date of filing of this Order. The United States Marshal will not provide  
13 service of process if Plaintiff fails to comply with this Order.

14 (6) If Plaintiff does not either obtain a waiver of service of the summons or complete  
15 service of the Summons and Complaint on each Defendant within 120 days of the filing of  
16 the complaint or within 60 days of the filing of this Order, whichever is later, the action may  
17 be dismissed as to each Defendant not served pursuant to Rule 4(m) of the Federal Rules  
18 of Civil Procedure and Rule 16.2(b)(2)(B)(i) of the Local Rules of Civil Procedure.

19 (7) The United States Marshal shall retain the Summons, a copy of the Complaint,  
20 and a copy of this Order for future use.

21 (8) The United States Marshal shall notify Defendant of the commencement of this  
22 action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal  
23 Rules of Civil Procedure. The notice to Defendant shall include a copy of this Order. The  
24 Marshal shall file waivers of service of the summons or requests for waivers that were  
25 returned as undeliverable as soon as they are received. If a waiver of service of summons  
26 is not returned by a Defendant within thirty days from the date the request for waiver was  
27 sent by the Marshal, the Marshal shall:  
28

1 (a) Personally serve copies of the Summons, Complaint, and this Order upon  
2 the Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure;

3 (b) Within 10 days after personal service is effected, file the return of service  
4 for the Defendant, along with evidence of the attempt to secure a waiver of service  
5 of the summons and of the costs subsequently incurred in effecting service upon  
6 the Defendant. The costs of service shall be enumerated on the return of service  
7 form (USM-285) and shall include the costs incurred by the Marshal for  
8 photocopying additional copies of the Summons, Complaint, or this Order and for  
9 preparing new process receipt and return forms (USM-285), if required. Costs of  
10 service will be taxed against the personally served defendant pursuant to Rule  
11 4(d)(2) and (5) of the Federal Rules of Civil Procedure, unless otherwise ordered by  
12 the Court.

13 **(9) A Defendant who agrees to waive service of the Summons and Complaint shall**  
14 **return the signed waiver forms to the United States Marshal, not the Plaintiff.**

15 (10) Defendant shall answer the Complaint or otherwise respond by appropriate  
16 motion within the time provided by the applicable provisions of Rule 12(a) of the Federal  
17 Rules of Civil Procedure.

18 (11) Any answer or responsive pleading shall state the specific Defendant(s) by  
19 name on whose behalf it is filed. The Court may strike any answer, responsive pleading,  
20 or other motion or paper that does not identify the specific Defendant(s) by name on  
21 whose behalf it is filed.

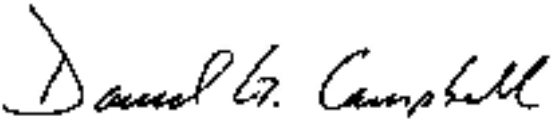
22 (12) Plaintiff shall serve upon Defendant, or if appearance has been entered by  
23 counsel, upon counsel, a copy of every further pleading or other document submitted for  
24 consideration by the Court. Plaintiff shall include with the original document and copy, to  
25 be filed with the Clerk of the Court, a certificate stating the date a true and correct copy of  
26 the pleading or document was mailed to Defendant or counsel. Any paper received by a  
27 District Court Judge or Magistrate Judge which has not been filed with the Clerk of Court  
28 may be disregarded by the Court.

1 (13) At all times during the pendency of this action, Plaintiff shall immediately advise  
2 the Court and the United States Marshal of any change of address and its effective date.  
3 Such notice shall be captioned "NOTICE OF CHANGE OF ADDRESS." The notice shall  
4 contain only information pertaining to the change of address and its effective date.  
5 Plaintiff shall serve a copy of the notice on all opposing parties. The notice shall not  
6 include any motions for any other relief. Failure to file a Notice of Change of Address may  
7 result in the dismissal of the action for failure to prosecute pursuant to Rule 41(b) of the  
8 Federal Rules of Civil Procedure.

9 (14) A clear, legible copy of every pleading or other document filed shall  
10 accompany each original pleading or other document filed with the Clerk for use by the  
11 District Judge or Magistrate Judge to whom the case is assigned. Failure to comply with  
12 this requirement may result in the pleading or document being stricken without further  
13 notice to Plaintiff.

14 (15) This matter is referred to Magistrate Judge David K. Duncan pursuant to Rule  
15 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings.

16 DATED this 9<sup>th</sup> day of November, 2005.

17  
18  
19 

20 \_\_\_\_\_  
21 David G. Campbell  
22 United States District Judge  
23  
24  
25  
26  
27  
28