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

Jonathan W. Pardini,

Plaintiff,

vs.

Dora Schriro, et al.,

Defendants.

No. CV 08-1509-PHX-DGC (ECV)

**ORDER**

\_\_\_\_\_

On March 4, 2008, Plaintiff Jonathan W. Pardini, who is confined in the Arizona State Prison Complex-Yuma (ASPC-Yuma), filed in the Tucson Division of this Court a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. #3). The Clerk of Court assigned this action the case number of CV 08-136-TUC-CKJ. Plaintiff did not pay the \$350.00 civil action filing fee but filed a deficient Application to Proceed *In Forma Pauperis*.

By Order filed March 14, 2008 (Doc. #3), the Court denied Plaintiff's Application to Proceed *In Forma Pauperis* without prejudice. Plaintiff was given 30 days to either pay the \$350.00 filing fee or file a new, completed Application to Proceed *In Forma Pauperis* and a certified six-month trust account statement from Central Office of the Arizona Department of Corrections (ADOC). On April 15, 2008, Plaintiff filed a new Application to Proceed *In Forma Pauperis* (Doc. #4).

TERMPREF

1 By Order filed August 15, 2008 (Doc. #5), the Court transferred this action to the  
2 Phoenix Division of the Court because the cause of action arose in Yuma County, which is  
3 within the Phoenix Division. The Clerk of Court in Phoenix assigned this case the new case  
4 number of CV 08-1509-PHX-DGC (ECV).

5 The Court will order Defendant Watson to answer Counts I and II of the Complaint,  
6 will order Defendant Villalobos to answer Count I of the Complaint, will order Defendant  
7 Schriro to answer Count III of the Complaint, and will dismiss the remaining counts and  
8 Defendants for failure to state a claim upon which relief may be granted.

9 **I. Application to Proceed *In Forma Pauperis* and Filing Fee**

10 Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #4) will be granted.  
11 Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will  
12 assess an initial partial filing fee of \$23.62. The remainder of the fee will be collected  
13 monthly in payments of 20% of the previous month's income each time the amount in the  
14 account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order  
15 requiring the appropriate government agency to collect and forward the fees according to the  
16 statutory formula..

17 **II. Statutory Screening of Prisoner Complaints**

18 The Court is required to screen complaints brought by prisoners seeking relief against  
19 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
20 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
21 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
22 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
23 28 U.S.C. § 1915A(b)(1), (2).

24 **III. Complaint**

25 Named as Defendants in the Complaint are: (1) Dora Schriro, ADOC Director;  
26 (2) Herb Haley, ADOC Protective Segregation Administrator; (3) Kristine Harkin,  
27 Classification Officer; (4) Stephan Morris, Classification Supervisor; (5) J. Franko, Deputy  
28 Warden, Cheyenne Unit, ASPC-Yuma; (6) R. Watson, Assistant Deputy Warden, Cheyenne

1 Unit, ASPC-Yuma; (7) S. Miller, Captain, Chief of Security, Cheyenne Unit, ASPC-Yuma;  
2 (8) Villalobos, Sergeant, Cheyenne Unit, ASPC-Yuma; (9) McNatt, Sergeant, S.S.U.  
3 Supervisor, Cheyenne Unit, ASPC-Yuma; (10) Dempsy, Corrections Officer, S.S.U.  
4 Department, Cheyenne Unit, ASPC-Yuma; (11) Clark, Sergeant, Disciplinary Coordinator,  
5 Cheyenne Unit/CDU, ASPC-Yuma; (12) Barron, Sergeant, CDU Supervisor, Cheyenne  
6 Unit/CDU, ASPC-Yuma; and (13) Sundwall, Captain, Disciplinary Hearing Officer,  
7 Cheyenne Unit/CDU, ASPC-Yuma.

8 Plaintiff presents five counts in the Complaint. Plaintiff seeks a jury trial, declaratory  
9 and injunctive relief, compensatory and punitive monetary damages, and costs and fees.

#### 10 **IV. Discussion**

##### 11 **A. Count I**

12 In Count I, Plaintiff claims that he has been subjected to a “Failure To Protect, Threat  
13 To Safety” and that “he has been repeatedly physically assaulted everywhere ADOC staff  
14 assign him placement, stating that each time he just needed [to be] moved to an alternate  
15 general population location.” Plaintiff alleges that these assaults stemmed from word being  
16 sent throughout the prison system by his co-defendant that he was a snitch.

17 Plaintiff specifically alleges that on December 7, 2007, he was placed in the Cheyenne  
18 Unit of ASPC-Yuma, even after he advised “a Captain for ADOC” that his placement “would  
19 pose a threat to his safety due to it[]s proximity to the Dakota Unit, where inmates who were  
20 aware of his situation would have been transferred.” Plaintiff states that “he was assured he  
21 would be interviewed prior to placement on the unit, by security called S.S.U. and he would  
22 be able to convey this information to them.” However, Plaintiff claims that when he advised  
23 CO II Ortiz and Defendants Sgt. Villalobos of “this problem” upon his arrival at the  
24 Cheyenne Unit, Defendant Villalobos “instructed Plaintiff he would not be interviewed by  
25 S.S.U. staff or any other, he would be assigned placement on the unit, and he had no recourse  
26 regarding concerns to his safety, even while he saw inmates from the adjacent unit posing  
27 that danger waiting for him on that very unit.” Some time after following “the direct order  
28 by staff to go to his assigned placement,” Plaintiff claims that he “was physically assaulted

1 again by multiple inmates and told he had to leave the unit.”

2 Plaintiff allege that on December 8, 2007, he “sought protective placement by  
3 Security Staff due to the physical assaults and threats” and was placed in the Complex  
4 Detention Unit (CDU). Plaintiff further alleges that Defendant Watson entered CDU and  
5 advised him that he would be returned to the unit where he “was just assaulted and removed  
6 from” and that he would “have to accept the physical assaults” and that “refusal” to do so  
7 “would result in refusal of shelter, adequate clothing, all property, medication, food, legal  
8 materials, etc. until [he] complied.” Plaintiff states that on December 15, 2007, he “received  
9 most of the allowable property.”

10 Plaintiff’s claims in Count I will be liberally construed as being brought under the  
11 Eighth Amendment. A prison official violates the Eighth Amendment in failing to protect  
12 an inmate only when two conditions are met. First, the alleged constitutional deprivation  
13 must be, objectively, “sufficiently serious;” the official’s act or omission must result in the  
14 denial of “the minimal civilized measure of life’s necessities.” Farmer v. Brennan, 511 U.S.  
15 825, 834 (1994). Second, the prison official must have a “sufficiently culpable state of  
16 mind,” *i.e.*, he must act with deliberate indifference to inmate health or safety. Id. In  
17 defining “deliberate indifference” in this context, the Supreme Court has imposed a  
18 subjective test: “the official must both be aware of the facts from which the inference could  
19 be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”  
20 Id. at 837 (emphasis added).

21 Deliberate indifference is a higher standard than negligence or lack of ordinary due  
22 care for the prisoner’s safety. Id. at 835. A merely negligent failure to protect an inmate is  
23 not actionable under § 1983. Davidson v. Cannon, 474 U.S. 344, 347 (1986).

24 Although *pro se* pleadings are liberally construed, Haines v. Kerner, 404 U.S. 519,  
25 520-21 (1972), conclusory and vague allegations will not support a cause of action. Ivey v.  
26 Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982). Further,  
27 a liberal interpretation of a civil rights complaint may not supply essential elements of the  
28 claim that were not initially pled. Id.

1           **1. Defendant Schriro**

2           Plaintiff alleges that Defendant Schriro “enacted policies, procedures and practices  
3 which instructed, allowed and/or enable the threat to safety of the Plaintiff to take place;  
4 allowed it to perpetuate, and disallows a means of safety for staff or Plaintiff to stop it. Also,  
5 she has enacted policies, procedures and/or practices which are illegal as written and/or  
6 applied. Also, she has failed to act in a manner which conforms to State and/or Federal  
7 Constitutional standards, or properly supervise those who don’t meet said standards, which  
8 she had or should have knowledge of.”

9           Plaintiff’s allegations against Defendant Schriro are too conclusory and vague to state  
10 a claim under the Eighth Amendment. Plaintiff does not state any facts whatsoever to  
11 support these allegations. He does not describe any of the policies, procedures, or practices  
12 allegedly at issue, and does not show how Defendant Schriro failed to “properly” supervise  
13 anyone. Accordingly, Plaintiff has failed to state a claim upon which relief may be granted  
14 against Defendant Schriro in Count I.

15           **2. Defendant Haley**

16           Plaintiff alleges that Defendant Haley “failed to recognize the continued threat to  
17 safety of the Plaintiff in denying assignment to protective placement, by denying such  
18 assignment, and continue to.” Plaintiff has not stated any facts to support this allegation,  
19 such as when this happened, where this happened, or what facts Defendant Haley knew when  
20 he made this decision. Accordingly, Plaintiff has failed to state a claim upon which relief  
21 may be granted against Defendant Haley in Count I.

22           **3. Defendants Harkin and Morris**

23           Plaintiff alleges that Defendants Harkin and Morris “failed to provide safe placement  
24 to Plaintiff by repeatedly assigning him to locations which endanger(ed) his life, and  
25 continue to do so.” Again, Plaintiff has not stated any facts to support this allegation, such  
26 as when this happened, where, or what facts Defendant Harkin or Morris knew when they  
27 assigned him to these unspecified locations. Accordingly, Plaintiff has failed to state a claim  
28 upon which relief may be granted against either Defendant Harkin or Morris in Count I.

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**4. Defendants Franko, Watson, Miller, Villalobos, McNatt, and Dempsey**

Plaintiff alleges that Defendants Franko, Watson, Miller, Villalobos, McNatt, and Dempsey “all allowed placement at the Cheyenne Unit when they knew or should have known the threat to Plaintiff’s life.” However, Plaintiff has not stated any facts at all to support this allegation against Defendants Franko and Miller. Moreover, with regard to Defendants McNatt and Dempsey, Plaintiff only states that he was interviewed by Defendant Dempsey of S.S.U. on December 10, 2007, that Defendant Dempsey informed him that he would not be returned to the same unit, and that when he was interviewed by Defendants McNatt and Dempsey on December 13, 2007, “it was stated to [him] they didn’t know why [he] received the treatment [he] did, but once they learned of it they were carefull[] to keep their distance to it due to the potential rep[er]cussion which could stem from it” and that “it seemed odd how it happened as they had not completed their initial stages of the investigation which was the practice, and felt that serious mistakes were made.” None of these facts support a violation of the Eighth Amendment. Accordingly, Plaintiff has failed to state a claim upon which relief may be granted against Defendants Franko, Miller, McNatt, and Dempsey in Count I.

Liberally construed, Plaintiff’s complaint states an Eighth Amendment claim against Defendants Watson and Villalobos. Accordingly, the Court will call for an answer to Count I from Defendants Watson and Villalobos.

**B. Count II**

In Count II, Plaintiff claims that, as described in Count I, he was denied “food and medication, adequate cold weather clothing, all legal and writing material, and hygiene.” Plaintiff’s claims in Count II will be liberally construed as being brought under the Eighth Amendment. See Bell v. Wolfish, 441 U.S. 520 (1979) (A convicted inmate’s claims for unconstitutional conditions arises from the Eighth Amendment prohibition against cruel and unusual punishment).

To state a claim for unconstitutional conditions, a plaintiff must allege an objectively

1 “sufficiently serious” deprivation that results in the denial of “the minimal civilized measure  
2 of life’s necessities.” Farmer, 511 U.S. at 834; Allen v. Sakai, 48 F.3d 1082, 1087 (9th Cir.  
3 1994); see Estate of Ford v. Ramirez-Palmer, 301 F.3d 1043, 1049-50 (9th Cir. 2002). That  
4 is, a plaintiff must allege facts supporting that he is incarcerated under conditions posing a  
5 substantial risk of harm. Farmer, 511 U.S. at 834. In addition to alleging facts to support  
6 that he is confined in conditions posing a substantial risk of harm, a plaintiff must also allege  
7 facts to support that a defendant had a “sufficiently culpable state of mind,” i.e., that the  
8 official acted with deliberate indifference to inmate health or safety. See Farmer, 511 U.S.  
9 837. In defining “deliberate indifference” in the jail context, the Supreme Court has imposed  
10 a subjective test: “the official must both be aware of the facts from which the inference could  
11 be drawn that a substantial risk of serious harm exists, and he must also draw the inference.”  
12 Id.

13 **1. Defendant Schriro**

14 Plaintiff alleges that Defendant Schriro “implemented internal policies, procedures  
15 and/or practices authorizing the condition, actions and omissions described in Count I.  
16 Additionally, this designation of behavior and treatment of Plaintiff prevented other ADOC  
17 staff from potentially or effectively intervening in an effort to prevent it, thereby failing to  
18 properly supervise subordinates when she knew or should have known.”

19 As with Count I, Plaintiff’s allegations against Defendant Schriro in Count II are too  
20 conclusory and vague to state a claim under the Eighth Amendment. Again, Plaintiff does  
21 not state any facts to support these allegations. Accordingly, Plaintiff has failed to state a  
22 claim upon which relief may be granted against Defendant Schriro in Count II.

23 **2. Defendants Franko, Watson, Miller, Villalobos, McNatt, Dempsey, and**  
24 **Barron**

25 Plaintiff alleges that Defendants Franko, Watson, Miller, Villalobos, McNatt,  
26 Dempsey, and Barron “all knew or should have known their acts and/or omissions in  
27 conjunction to said conditions was/is illegal and violative, as well as their failure to  
28 adequately supervise their subordinates who also participated or omitted to prevent said

1 treatment and conditions. All had actual and or constructive knowledge of the behavior  
2 undertaken, and failed to prevent it or participated in asserting it.”

3 Plaintiff has not stated any facts at all to support these allegation against Defendants  
4 Franko, Miller, McNatt, Dempsy, and Barron. With regard to Defendant Villalobos, Plaintiff  
5 only states in Count I that during the time that he was refused “shelter, adequate clothing, all  
6 property, medication, food, legal materials, etc.,” Plaintiff had occasion to question  
7 Defendant Villalobos and another officer, Lt. Smith, “who advised [him] such denial (s) were  
8 based upon” Defendant Watson’s “instructions.” Thus, it appears that Defendant Watson  
9 was the person responsible for the denial of these basic necessities, not Defendant Villalobos.  
10 Accordingly, Plaintiff has failed to state a claim upon which relief may be granted against  
11 Defendants Franko, Miller, Villalobos, McNatt, Dempsey, and Barron in Count II.

12 Liberally construed, Plaintiff’s complaint states an Eighth Amendment claim against  
13 Defendant Watson. Accordingly, the Court will call for an answer to Count II from  
14 Defendant Watson.

15 **C. Count III**

16 In Count III, Plaintiff claims that he was denied due process prior to punishment and  
17 before deprivation of rights and privileges. Plaintiff’s claims in Count III will be liberally  
18 construed as being brought under the Due Process Clause of the Fourteenth Amendment.

19 **1. Defendant Schriro**

20 Plaintiff alleges that Defendant Schriro:

21 has implemented a classification policy that determines inmate custody rights,  
22 privileges and placement which allows for no input by the effected inmate it  
23 concerns or any appeal process to address errors, eliminating all due process  
24 for the inmate to address their accusers[,] to information used against him as  
25 well as no manner for the inmate to effectively provide important information  
26 in determining facts relied upon, thus adversely effecting all aspects of due  
27 process and operating at times as punishment as well as arbitrary and  
28 capricious determinations. This is the only process used. It is illegal as  
written and applied. Inmates are, by use of this policy, practice, procedure and  
guidelines, placed in danger, and as in the D.I. 67 process when asked where  
they may recommend (only during D.I. 67 process, not reclass) it’s used as a  
means to do just the opposite. Additionally, Defendant Schriro denies due  
process in utilizing the method of denying food, property, medications, legal

1 materials, adequate clothing, mail, hygiene, etc. It's just summarily denied.

2 Liberally construed, Plaintiff's complaint has stated a due process claim against  
3 Defendant Schriro. Accordingly, the Court will call for an answer to Count III from  
4 Defendant Schriro.

5 **2. Defendant Haley**

6 Plaintiff alleges that Defendant Haley "repeatedly denied Plaintiff's right to protection  
7 by refusing protective placement, violating his due process." However, Plaintiff has not  
8 stated any facts to support this allegation, such as when this happened, where, what facts  
9 Defendant Haley knew when he made this decision, or how he denied Plaintiff due process  
10 in making his decision. Accordingly, Plaintiff has failed to state a claim upon which relief  
11 may be granted against Defendant Haley in Count III.

12 **3. Defendants Harkin and Morris**

13 Plaintiff alleges that Defendants Harkin and Morris "denied Plaintiff his due process  
14 in using said reclass policy(s) which disallows the necessary facts and information to be  
15 provided and/or used, and relied upon. It disallows any input by the inmate while  
16 detrimentally effecting his safety, visitation, parole, jobs, education, rights, privileges,  
17 property, court access, etc., in their use of a procedure that's illegal as written and as they  
18 apply it."

19 Plaintiff has not stated any facts to support this conclusory and vague allegation. He  
20 does not give any details of when and how Defendants Harkin and Morris used the  
21 reclassification policy. Accordingly, Plaintiff has failed to state a claim upon which relief  
22 may be granted against either Defendant Harkin or Morris in Count III.

23 **4. Defendants Franko, Watson, Miller, Villalobos, McNatt, Dempsey and**  
24 **Barron**

25 Plaintiff alleges in part that Defendants Franko, Watson, Miller, Villalobos, McNatt,  
26 Dempsey and Barron "allowed, participated in, knew of, failed to prevent, ordered, or caused  
27 by act or omission the removal of all property, medication, hygiene, shelter and all the things  
28 listed previous, for the Plaintiff resisting/failing to agree or cooperate and waive his right to

1 protection from physical assault.” Plaintiff further alleges that “[t]hese Defendants created,  
2 followed, authorized, contributed, allowed and/or failed to prevent said conditions for which  
3 no immediate[] recourse was available, due to no means allowed to access the long time  
4 process of the grievance procedure.” Plaintiff argues that “[w]hen Plaintiff is stripped of all  
5 property and access to any means, that due process avenue is intentionally and effectively  
6 barred from him, by the Defendants.”

7 Plaintiff’s allegations against Defendants Franko, Watson, Miller, Villalobos, McNatt,  
8 Dempsy and Barron in Count III are conclusory and vague. Plaintiff does not describe  
9 specific, individual actions of any of these Defendants. General allegations against a group  
10 of Defendants are not sufficient. Accordingly, Plaintiff has failed to state a claim upon which  
11 relief may be granted against Defendants Franko, Watson, Miller, Villalobos, McNatt,  
12 Dempsy and Barron in Count III.

13 **5. Defendant Clark**

14 Plaintiff alleges that Defendant Clark “processed a false disciplinary report against  
15 Plaintiff, without proper investigatory review, which resulted in a wrongful guilty finding,  
16 and the Plaintiff being placed on disciplinary loss of privileges beyond the thirty days  
17 allowed by policy, and continues to run.” Again, Plaintiff’s allegation is conclusory and  
18 vague. Plaintiff does not explain what the disciplinary report was about, what was improper  
19 about Defendant Clark’s investigatory review, and how the improper review resulted in a  
20 wrongful guilty finding. Accordingly, Plaintiff has failed to state a claim upon which relief  
21 may be granted against Defendant Clark in Count III.

22 **D. Count IV**

23 In Count IV, Plaintiff claims that he “was returned to the same complex (Yuma) and  
24 housed with the same inmates he was previously removed from due to safety/life if  
25 continuation of housing proximity, without any factual determination made that placement  
26 was/is safe, as retaliation for previously seeking protections by AD[O]C staff.” Plaintiff also  
27 claims that he was “placed outside in weather that prevailed in the low 30 degree  
28 temperature, without adequate clothing, and denied all food, medication, property, legal

1 materials, court access, clothing, property, hygiene, etc. for days on end for seeking  
2 protective placement from continued physical assaults known to have occurred.”

3 “A prisoner suing prison officials under section 1983 for retaliation must allege that  
4 he was retaliated against for exercising his constitutional rights and that the retaliatory action  
5 does not advance legitimate penological goals, such as preserving institutional order and  
6 discipline.” Barnett v. Centoni, 31 F.3d 813, 815-16 (9th Cir. 1994). Thus, to succeed on  
7 the merits of a retaliation claim, a prisoner must demonstrate that he was retaliated against  
8 for exercising his constitutional rights, and he must also demonstrate that the retaliatory  
9 action does not advance a legitimate penological goal, or is not narrowly tailored to achieve  
10 that goal. Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985).

11 Plaintiff has not specifically alleged in Count IV that he was retaliated against for  
12 exercising his constitutional rights. Moreover, Plaintiff has not demonstrated that the alleged  
13 retaliatory action does not advance a legitimate penological goal, or is not narrowly tailored  
14 to achieve that goal. Accordingly, Count IV will be dismissed for failure to state a claim  
15 upon which relief may be granted.

#### 16 **E. Count V**

17 In Count V, Plaintiff claims that all of the Defendants abused their authority and that  
18 this abuse of authority “raised to a level of unconstitutional behavior, violative of Plaintiff’s  
19 rights/privileges.” In order to state a claim under 42 U.S.C. § 1983, Plaintiff must show that  
20 the conduct of a defendant deprived him of a constitutional right. Haygood v. Younger, 769  
21 F.2d 1350, 1354 (9th Cir. 1985) (*en banc*). However, Plaintiff has failed to allege the  
22 violation of a specific constitutional provision in Count III. Plaintiff simply does not have  
23 a constitutional right for prison officials not to abuse their authority. Accordingly, Count IV  
24 will be dismissed for failure to state a claim upon which relief may be granted.

#### 25 **V. Dismissal of Defendants**

26 Because no claims now remain against them, Defendants Herb Haley, Kristine Harkin,  
27 Stephan Morris, J. Franko, S. Miller, McNatt, Dempsy, Clark, Barron, and Sundwall will be  
28 dismissed from this action will be dismissed from this action for failure to state a claim upon

1 which relief may be granted.

2 **VI. Warnings**

3 **A. Release**

4 Plaintiff must pay the unpaid balance of the filing fee within 120 days of his release.  
5 Also, within 30 days of his release, he must either (1) notify the Court that he intends to pay  
6 the balance or (2) show good cause, in writing, why he cannot. Failure to comply may result  
7 in dismissal of this action.

8 **B. Address Changes**

9 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
10 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
11 relief with a notice of change of address. Failure to comply may result in dismissal of this  
12 action.

13 **C. Copies**

14 Plaintiff must serve Defendants, or counsel if an appearance has been entered, a copy  
15 of every document that he files. Fed. R. Civ. P. 5(a). Each filing must include a certificate  
16 stating that a copy of the filing was served. Fed. R. Civ. P. 5(d). Also, Plaintiff must submit  
17 an additional copy of every filing for use by the Court. See LRCiv 5.4. Failure to comply  
18 may result in the filing being stricken without further notice to Plaintiff.

19 **D. Possible Dismissal**

20 If Plaintiff fails to timely comply with every provision of this Order, including these  
21 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
22 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
23 comply with any order of the Court).

24 **IT IS ORDERED:**

- 25 (1) Plaintiff's Application to Proceed *In Forma Pauperis* (Doc. #4) is **granted**.  
26 (2) As required by the accompanying Order to the appropriate government agency,  
27 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$23.62.  
28 (3) Counts IV and V of the Complaint are **dismissed** for failure to state a claim

1 upon which relief may be granted.

2 (4) Defendants Herb Haley, Kristine Harkin, Stephan Morris, J. Franko, S. Miller,  
3 McNatt, Dempsy, Clark, Barron, and Sundwall are **dismissed** from this action for failure to  
4 state a claim upon which relief may be granted.

5 (5) Defendant Watson **must answer** Counts I and II of the Complaint, Defendant  
6 Villalobos **must answer** Count I of the Complaint, and Defendant Schriro **must answer**  
7 Count III of the Complaint.

8 (6) The Clerk of Court **must send** Plaintiff a service packet including the  
9 Complaint (Doc. #1), this Order, and both summons and request for waiver forms for  
10 Defendants Dora Schriro, Villalobos, and R. Watson.

11 (7) Plaintiff **must complete and return** the service packet to the Clerk of Court  
12 within 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 (8) **If** Plaintiff does not **either** obtain a waiver of service of the summons or  
15 complete service of the Summons and Complaint on a Defendant within 120 days of the  
16 filing of the Complaint or within 60 days of the filing of this Order, whichever is later, the  
17 action **may be dismissed** as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv  
18 16.2(b)(2)(B)(I).

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

21 (10) The United States Marshal **must notify** Defendants Dora Schriro, Villalobos,  
22 and R. Watson of the commencement of this action and request waiver of service of the  
23 summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to  
24 Defendants must include a copy of this Order. The Marshal must immediately file requests  
25 for waivers that were returned as undeliverable and waivers of service of the summons. If  
26 a waiver of service of summons is not returned by a Defendant within 30 days from the date  
27 the request for waiver was sent by the Marshal, the Marshal must:

28 (a) **personally serve** copies of the Summons, Complaint, and this Order

1 upon the Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure;  
2 and

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

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

14 (12) Defendants **must answer** Counts I, II, and III of the Complaint or otherwise  
15 respond by appropriate motion within the time provided by the applicable provisions of Rule  
16 12(a) of the Federal Rules of Civil Procedure.

17 (13) Any answer or response **must state** the specific Defendant by name on whose  
18 behalf it is filed. The Court may strike any answer, response, or other motion or paper that  
19 does not identify the specific Defendant by name on whose behalf it is filed.

20 (14) This matter is **referred** to Magistrate Judge Edward C. Voss pursuant to Rules  
21 72.1 and 72.2 of the Local Rules of Civil Procedure for further proceedings.

22 DATED this 2nd day of September, 2008.

23 

24 \_\_\_\_\_  
25 David G. Campbell  
26 United States District Judge  
27  
28