

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

KM

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

John Kim Weston,  
Plaintiff,

vs.

Dora Schriro, et al.,  
Defendants.

No. CV 07-324-TUC-DCB

**ORDER**

Plaintiff John Kim Weston, who is confined in the Arizona State Prison Complex-Safford, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. On August 21, 2007, the Court dismissed the Complaint with leave to amend. Plaintiff filed an Amended Complaint (Doc. #5) on September 24, 2007. The Court will order Defendants to answer the Amended Complaint.

**I. Statutory Screening of Prisoner Complaints**

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

TERMPREF

1 **II. Amended Complaint**

2 Plaintiff names Arizona Department of Corrections Director Dora Schriro and Pastoral  
3 Administrator Mike Linderman as Defendants to the Amended Complaint.

4 Plaintiff's sole ground for relief is that his First Amendment rights were violated when  
5 Defendant Linderman denied him a kosher diet, which Plaintiff requested because the kosher  
6 diet meets the requirements of his Muslim faith. Plaintiff also alleges that Defendant Schriro  
7 violated his First Amendment rights by supporting Defendant Linderman's decision and by  
8 implementing policies which deny Plaintiff a diet that meets the requirements of his religion.  
9 Plaintiff seeks injunctive relief.

10 Plaintiff allegations adequately state a claim, and the Court will require Defendants  
11 to answer the Amended Complaint.

12 **III. Warnings**

13 **A. Release**

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

18 **B. Address Changes**

19 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
20 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
21 relief with a notice of change of address. Failure to comply may result in dismissal of this  
22 action.

23 **C. Copies**

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

1           **D.     Possible Dismissal**

2           If Plaintiff fails to timely comply with every provision of this Order, including these  
3 warnings, the Court may dismiss this action without further notice. See *Ferdik v. Bonzelet*,  
4 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
5 comply with any order of the Court).

6           **IT IS ORDERED:**

7           (1)     The Clerk of Court must send Plaintiff a service packet including the Amended  
8 Complaint (Doc. #5), this Order, and both summons and request for waiver forms for  
9 Defendants Schriro and Linderman.

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

13          (3)     If Plaintiff does not either obtain a waiver of service of the summons or  
14 complete service of the Summons and Amended Complaint on a Defendant within 120 days  
15 of the filing of the Complaint or within 60 days of the filing of this Order, whichever is later,  
16 the action may be dismissed as to each Defendant not served. Fed. R. Civ. P. 4(m); LRCiv  
17 16.2(b)(2)(B)(i).

18          (4)     The United States Marshal must retain the Summons, a copy of the Amended  
19 Complaint, and a copy of this Order for future use.

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

27  
28

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

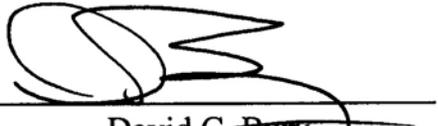
4 (b) within 10 days after personal service is effected, file the return of service  
5 for Defendant, along with evidence of the attempt to secure a waiver of service of the  
6 summons and of the costs subsequently incurred in effecting service upon Defendant.  
7 The costs of service must be enumerated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

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

16 (7) Defendants must answer the Amended Complaint or otherwise respond by  
17 appropriate motion within the time provided by the applicable provisions of Rule 12(a) of  
18 the Federal Rules of Civil Procedure.

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

22 DATED this 11<sup>th</sup> day of October, 2007.

23  
24  
25  
26  
27  
28  
  
David C. Bury  
United States District Judge