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

Angel Ayon,  
Plaintiff,  
vs.  
Joseph Arpaio,  
Defendant.

No. CV 09-321-PHX-DGC (JRI)

**ORDER**

Plaintiff Angel Ayon, who is confined in the Maricopa County Lower Buckeye Jail, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed *In Forma Pauperis*. The Court will order Defendant Arpaio to answer Counts I and II of the Complaint and will dismiss the remaining claim without prejudice.

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

Plaintiff's Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C. § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess an initial partial filing fee of \$4.36. The remainder of the fee will be collected monthly in payments of 20% of the previous month's income each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government agency to collect and forward the fees according to the statutory formula.

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

2 The Court is required to screen complaints brought by prisoners seeking relief against  
3 a governmental entity or an officer or an employee of a governmental entity. 28 U.S.C.  
4 § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff has raised  
5 claims that are legally frivolous or malicious, that fail to state a claim upon which relief may  
6 be granted, or that seek monetary relief from a defendant who is immune from such relief.  
7 28 U.S.C. § 1915A(b)(1), (2).

8 **III. Complaint**

9 Plaintiff names Maricopa County Sheriff Joseph Arpaio as Defendant in the  
10 Complaint and raises three grounds for relief:

- 11 (1) Plaintiff's Eighth Amendment rights are violated by Defendant's provision of  
12 only two meals per day, which he contends is not enough food;
- 13 (2) Plaintiff's Fifth Amendment rights were violated when he was housed with 25  
14 to 35 other people in an area of the intake section that was only designed to  
15 hold 10 to 12 people and did not have a place to sit or a blanket to sleep on;  
16 and
- 17 (3) Defendant requires pretrial detainees to wear clothing that says "unsentenced,"  
18 which Plaintiff contends presumes detainees are guilty although they have not  
19 been proven guilty.

20 Plaintiff seeks money damages. Liberally construed, Plaintiff's allegations in Count  
21 I and II state a claim and the Court will require Defendant Arpaio to answer those claims.

22 **IV. Failure to State a Claim**

23 Plaintiff's allegations in Count III are insufficient to state claim because Plaintiff has  
24 failed to show a constitutional deprivation. "It cannot be said that all . . . conditions . . . even  
25 if discomforting or undesirable, amount to deprivations of constitutional dimensions . . . [A]  
26 federal court is not the proper forum for challenging or changing every aspect of the harsh  
27 realities of confinement unless conditions cannot be tolerated under the Constitution."  
28 Thomas v. Smith, 559 F.Supp. 223, 224 (W.D.N.Y. 1983) (citing Griffin v. Smith, 493

1 F.Supp. 129 (W.D.N.Y. 1980)). Simply being required to wear clothing that says  
2 “unsentenced,” regardless of whether Plaintiff believes this to be an accurate description,  
3 does not rise to the level of a constitutional violation. Count III will be dismissed for failure  
4 to state a claim.

5 **V. Warnings**

6 **A. Release**

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

11 **B. Address Changes**

12 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
13 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
14 relief with a notice of change of address. Failure to comply may result in dismissal of this  
15 action.

16 **C. Copies**

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

22 **D. Possible Dismissal**

23 If Plaintiff fails to timely comply with every provision of this Order, including these  
24 warnings, the Court may dismiss this action without further notice. See Ferdik v. Bonzelet,  
25 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an action for failure to  
26 comply with any order of the Court).

27 **IT IS ORDERED:**

28 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. #3) is **granted**.

1 (2) As required by the accompanying Order to the appropriate government agency,  
2 Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$4.36.

3 (3) Counts III is **dismissed** without prejudice.

4 (4) Defendant Arpaio must answer Counts I and II.

5 (5) The Clerk of Court must send Plaintiff a service packet including the  
6 Complaint (Doc. #1), this Order, and both summons and request for waiver forms for  
7 Defendant Arpaio.

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

11 (7) If Plaintiff does not either obtain a waiver of service of the summons or  
12 complete service of the Summons and Complaint on Defendant within 120 days of the filing  
13 of the Complaint or within 60 days of the filing of this Order, whichever is later, the action  
14 may be dismissed. Fed. R. Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(I).

15 (8) The United States Marshal must retain the Summons, a copy of the Complaint,  
16 and a copy of this Order for future use.

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

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

26 (b) within 10 days after personal service is effected, file the return of service  
27 for Defendant, along with evidence of the attempt to secure a waiver of service of the  
28 summons and of the costs subsequently incurred in effecting service upon Defendant.

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The costs of service must be enumerated on the return of service form (USM-285) and must include the costs incurred by the Marshal for photocopying additional copies of the Summons, Complaint, or this Order and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

(10) **If Defendant agrees to waive service of the Summons and Complaint, he must return the signed waiver forms to the United States Marshal, not the Plaintiff.**

(11) Defendant must answer the Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

(12) This matter is referred to Magistrate Judge Jay R. Irwin pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure for all pretrial proceedings as authorized under 28 U.S.C. § 636(b)(1).

DATED this 24th day of March, 2009.



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David G. Campbell  
United States District Judge