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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

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Zdravko Kotzev,

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No. CV-10-0907-PHX-FJM

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Plaintiff,

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**ORDER**

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vs.

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Charles L. Ryan, et al.,

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Defendants.

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The court has before it defendant Ryan’s motion for summary judgment (doc. 68), plaintiff’s response (doc. 73), defendant’s reply (doc. 77), plaintiff’s motion for summary judgment (doc. 70), defendant’s response (doc. 81), and plaintiff’s reply (doc. 82). We also have before us defendant’s motion to exceed the page limit for his reply (doc. 76).

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After a jury trial, plaintiff was found guilty of (1) conspiracy, (2) participating in a criminal syndicate, (3) use of a wire communication in a drug transaction, (4) possession of a narcotic for sale, (5) fraudulent schemes and artifices, and (6) possession of drug paraphernalia. On December 9, 2005, plaintiff was sentenced to five years in prison on Counts 1, 2, 4, and 5, two and one-half years on Count 3, and two years probation plus \$1,350 in fines on Count 6. The sentences on Counts 1, 2, 3, 4, and 5 were to run concurrently, followed by community supervision. Plaintiff rejected probation on Count 6 and was instead sentenced to one year imprisonment, to run concurrently with the other

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1 sentences. Plaintiff was released from the Arizona Department of Corrections (ADC)  
2 custody on May 8, 2009, and he completed his community supervision on January 7, 2010.

3 After his release, plaintiff filed this action under 42 U.S.C. § 1983, asserting that the  
4 ADC, through its Director Charles Ryan, subjected him to unauthorized detention by  
5 requiring him to serve a sentence that exceeded the maximum sentence imposed by the  
6 sentencing court, improperly modified his sentence by requiring that he serve flat time and  
7 probation, discriminated against him on the basis of his ethnicity by forcing him to  
8 participate in the functional literacy program, denying him release credits because of his  
9 ethnicity and his lack of English proficiency, subjected him to double jeopardy, and  
10 conspired to violate his constitutional rights by participating in the alleged unconstitutional  
11 activity. Plaintiff challenges the constitutionality of A.R.S. § 41-1604.07 and A.R.S. § 31-  
12 229, as well as various policies of the ADC. The complaint asserts seven separate counts:  
13 (1) unauthorized detention and confinement, (2) conspiracy for deprivation of civil rights,  
14 (3) ethnic discrimination, (4) unauthorized modification of sentence, (5) double jeopardy  
15 violation, (6) forcible spousal-separation, and (7) intentional infliction of emotional distress.

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17 Plaintiff originally sought compensatory and punitive damages, as well as declaratory  
18 and injunctive relief. In a previous order, this court dismissed counts 6 and 7, and dismissed  
19 all claims against Ryan in his individual capacity (doc. 29), leaving only claims against Ryan  
20 in his official capacity. Because claims for damages against Ryan in his official capacity are  
21 prohibited under the Eleventh Amendment, Will v. Michigan Dep't of State Police, 491 U.S.  
22 58, 71 & n.10, 109 S. Ct. 2304, 2312 & n.10 (1989), the only claims remaining are plaintiff's  
23 claims for declaratory and injunctive relief against Ryan in his official capacity. Both parties  
24 now move for summary judgment on all remaining claims.

25 We agree with defendant that plaintiff's claims for declaratory and injunctive relief  
26 are moot. A case becomes moot when the "issues presented are no longer 'live' or the parties  
27 lack a legally cognizable interest in the outcome." Murphy v. Hunt, 455 U.S. 478, 481, 102  
28 S. Ct. 1181, 1183 (1982); Porter v. Jones, 319 F.3d 483, 489 (9th Cir. 2003). An inmate's

1 request for injunctive relief concerning the prison where he was incarcerated becomes moot  
2 once he is released from prison. Dilley v. Gunn, 64 F.3d 1365, 1368 (9th Cir. 1995). The  
3 same is true for claims seeking declaratory relief. See Rhodes v. Stewart, 488 U.S. 1, 4, 109  
4 S. Ct. 202, 203-04 (1988).

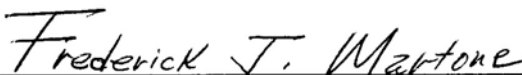
5 Plaintiff's release from custody extinguishes his legal interest in injunctive or  
6 declaratory relief because such relief would offer him no redress. See Bernhardt v. County  
7 of Los Angeles, 279 F.3d 862, 871 (9th Cir. 2002). After his release, plaintiff is no longer  
8 subject to the prison conditions, policies, and statutes that he challenges. Therefore, we  
9 conclude that, because plaintiff was released from custody after serving his sentence, his  
10 remaining claims for injunctive and declaratory relief are moot.

11 **IT IS ORDERED GRANTING** defendant's motion to exceed the page limit (doc.  
12 76).

13 **IT IS ORDERED GRANTING** defendant's motion for summary judgment (doc. 68).

14 **IT IS ORDERED DENYING** plaintiff's motion for summary judgment (doc. 70).

15 DATED this 16<sup>th</sup> day of April, 2012.

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 Frederick J. Martone  
19 United States District Judge  
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