

1 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not
2 demand detailed factual allegations, “it demands more than an unadorned, the-defendant-
3 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
4 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
5 statements, do not suffice.” Id.

6 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
7 claim to relief that is plausible on its face.’” Id. (quoting Bell Atlantic Corp. v. Twombly,
8 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
9 that allows the court to draw the reasonable inference that the defendant is liable for the
10 misconduct alleged.” Id. “Determining whether a complaint states a plausible claim for
11 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
12 experience and common sense.” Id. at 1950. Thus, although a plaintiff’s specific factual
13 allegations may be consistent with a constitutional claim, a court must assess whether there
14 are other “more likely explanations” for a defendant’s conduct. Id. at 1951.

15 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
16 must “continue to construe *pro se* filings liberally.” Hebbe v. Pliler, 627 F.3d 338, 342 (9th
17 Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent standards
18 than formal pleadings drafted by lawyers.’” Id. (quoting Erickson v. Pardus, 551 U.S. 89,
19 94 (2007) (*per curiam*)).

20 If the Court determines that a pleading could be cured by the allegation of other facts,
21 a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal of the
22 action. See Lopez v. Smith, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (*en banc*). The Court
23 should not, however, advise the litigant how to cure the defects. This type of advice “would
24 undermine district judges’ role as impartial decisionmakers.” Pliler v. Ford, 542 U.S. 225,
25 231 (2004); see also Lopez, 203 F.3d at 1131 n.13 (declining to decide whether the court was
26 required to inform a litigant of deficiencies). The Court will dismiss Plaintiff’s First
27 Amended Complaint for failure to state a claim, but because the First Amended Complaint
28 may possibly be saved by amendment, it will be dismissed with leave to amend.

1 **II. First Amended Complaint**

2 Plaintiff alleges ten counts for violations of his due process and equal protection
3 rights, denial of access to the courts, violation of the Americans with Disabilities Act (ADA),
4 and threats to safety. Plaintiff sues 35 Defendants: Maricopa County; Maricopa County
5 Commissioners Stephen Holding, Ann Hamner, Brian Rees¹, and Jane or John Doe 2;
6 Maricopa County Attorney William Montgomery; Deputy Maricopa County Attorneys Julie
7 Warzynski, John or Jane Doe 1, and Jane Doe 6 ; Maricopa County Sheriff Joseph Arpaio;
8 Maricopa County Sheriff's Office (MCSO) Transport Officers Rodriguez, Adam Stoddard,
9 Sergeants Funk and Doe, and Lieutenants Johnson and Salazar; MCSO employees Jane or
10 John Doe 3, 7, and 9 and Officers A8924, B0661, A8090, B0846, Gary Byrnes, and Bower;
11 MCSO Bureau Hearing Officers Jane or John Doe 8 and Sergeant A4191; MCSO External
12 Referees James Garitson, Rick Wilson, and Scott; City of Phoenix Police Officers Ramirez,
13 John Doe 8721, and John Doe (defendant 5); and Plaintiff's criminal defense attorneys,
14 Marvin Davis and Justin Beresky. Plaintiff seeks declaratory, injunctive, compensatory, and
15 punitive relief.

16 **Background**

17 On January 15, 2009, Plaintiff was found guilty by a jury of resisting arrest and
18 aggravated assault in Maricopa County Superior Court case# CR2008-119398. Sentencing
19 in that case was initially continued due to Plaintiff's other pending cases.²

20 On July 13, 2009, the Maricopa County Superior Court ordered a full Rule 11
21 competency evaluation of Plaintiff in cases CR2008-007665 and CR2008-007673.³ That
22 evaluation was extended to yet another case pending against Plaintiff, CR2009-007748. On
23

24 ¹ Spelled as "Reese" by Plaintiff. Commissioner Rees ordered a full Rule 11
25 competency evaluation of Plaintiff on May 19, 2011. See [http://www.courtminutes.
26 maricopa.gov/docs/Criminal/052011/m4732627.pdf](http://www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732627.pdf) (last visited Nov. 16, 2011).

27 ² See e.g., [http://www.courtminutes.maricopa.gov/docs/Criminal/082009/
28 m3859425.pdf](http://www.courtminutes.maricopa.gov/docs/Criminal/082009/m3859425.pdf) (last visited Nov. 16, 2011).

³ See <http://www.courtminutes.maricopa.gov/docs/Criminal/072009/m3797122.pdf>
(last visited Nov. 16, 2011).

1 April 27, 2010, the court found Plaintiff incompetent in those cases, ordered him
2 involuntarily treated, and committed him to the Maricopa County Correctional Health
3 Services Restoration Program to attempt to restore him to competency.⁴ On August 8, 2010,
4 the court found that Plaintiff remained incompetent and the lack of a substantial probability
5 that he would be restored to competency within 21 months from when he was first found
6 incompetent, and that he posed a danger to himself and the public.⁵ The court ordered
7 Plaintiff taken to Desert Vista Behavioral Health Center for in-patient evaluation, and
8 dismissed *without prejudice* the charges in CR2008-007665, CR2008-007673, and CR2009-
9 007748.⁶

10 On August 10, 2010, Plaintiff was found incompetent and not restorable in CR2008-
11 119398.⁷ On October 19, 2010, the court ordered briefing as to whether sentencing in
12 CR2008-119398 should go forward.⁸ On January 3, 2011, after finding that Plaintiff had
13 been competent during trial and was again competent for purposes of sentencing, the court
14 sentenced Plaintiff to concurrent sentences of 1.75 years for resisting arrest and aggravated
15 assault, with one prior felony conviction, in CR2008-119398.⁹

17 ⁴ See <http://www.courtminutes.maricopa.gov/docs/Criminal/042010/m4201815.pdf>
18 (last visited Nov. 16, 2011).

19 ⁵ See <http://www.courtminutes.maricopa.gov/docs/Criminal/082010/m4341366.pdf>
20 (last visited Nov. 16, 2011).

21 ⁶ *Id.*, n.5.

22 ⁷ See <http://www.courtminutes.maricopa.gov/docs/Criminal/082010/m4363067.pdf>;
23 <http://www.courtminutes.maricopa.gov/docs/Criminal/082010/m4363068.pdf> (last visited
Nov. 16, 2011).

24 ⁸ See <http://www.courtminutes.maricopa.gov/docs/Criminal/102010/m4441962.pdf>
25 (last visited Nov. 16, 2011).

26 ⁹ See <http://www.courtminutes.maricopa.gov/docs/Criminal/122010/m4492913.pdf>
27 and <http://www.courtminutes.maricopa.gov/docs/Criminal/012011/m4534120.pdf> (last
28 visited Nov. 16, 2011). On January 25, 2011, Plaintiff appealed to the Arizona Court of
Appeals, case# 1 CA-CR11-0047; the appeal remains pending. See [http://apps.supremecourt.
az.gov/aacc/1ca/1capartyindex.htm](http://apps.supremecourt.az.gov/aacc/1ca/1capartyindex.htm) (last visited Nov. 19, 2011).

1 On March 22, 2011, the grand jury indicted Plaintiff in three new cases: CR2011-
2 005839 charging two counts of aggravated assault and one count of criminal damage and
3 CR2011-005824 and CR2011-005833 each charging one dangerous drug violation and one
4 drug paraphernalia charge.¹⁰ The charges at issue in the 2011 cases appear to be charges that
5 had been previously dismissed without prejudice. See n.5.

6 On May 19, 2011, the Maricopa County Superior Court ordered a full Rule 11
7 competency evaluation in the 2011 cases.¹¹ The court also affirmed bond in the amount of
8 \$1,800 in CR2011-005824.¹² On August 11, 2011, the court continued a Rule 11
9 competency hearing until September 15, 2011 and sanctioned Plaintiff 30 days in jail for
10 contempt based on his refusal to cooperate in the competency evaluations.¹³ On October 20,
11 2011, the court ordered a third competency evaluation in the 2011 cases because the first two
12 experts had split in their opinions.¹⁴ Plaintiff remains confined in the Fourth Avenue Jail in
13 connection with the 2011 cases.¹⁵

14 **III. Failure to State a Claim**

15 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
16 conduct about which he complains was committed by a person acting under the color of state

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18 ¹⁰ See <http://www.courtminutes.maricopa.gov/docs/Criminal/102011/m4957303.pdf>
19 (last visited Nov. 16, 2011).

20 ¹¹ See <http://www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732627.pdf>,
21 <http://www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732625.pdf>, and [http://](http://www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732626.pdf)
22 www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732626.pdf (last visited Nov. 16,
2011).

23 ¹² See <http://www.courtminutes.maricopa.gov/docs/Criminal/052011/m4732625.pdf>.

24 ¹³ See <http://www.courtminutes.maricopa.gov/docs/Criminal/082011/m4852942.pdf>
25 (last visited Nov. 16, 2011).

26 ¹⁴ See <http://www.courtminutes.maricopa.gov/docs/Criminal/102011/m4957303.pdf>
27 (last visited Nov. 16, 2011).

28 ¹⁵ On September 30, 2011, Plaintiff filed an appeal in the Arizona Court of Appeals,
which was dismissed as premature on October 5, 2011, case# 1 CA-CR11-0671. See
<http://apps.supremecourt.az.gov/aacc/1ca/1capartyindex.htm> (Last visited Nov. 19, 2011).

1 law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v.
2 Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). In addition, a plaintiff must allege that he
3 suffered a specific injury as a result of the conduct of a particular defendant and he must
4 allege an affirmative link between the injury and the conduct of that defendant. Rizzo v.
5 Goode, 423 U.S. 362, 371-72, 377 (1976).

6 **A. Maricopa County Commissioners**

7 Plaintiff sues Maricopa County Commissioners Holding, Hamner, Rees, and Doe 2.
8 As the Court previously informed Plaintiff, judges are absolutely immune from damages for
9 all judicial acts performed within their subject matter jurisdiction, “even when such acts are
10 in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.”
11 Stump v. Sparkman, 435 U.S. 349, 356 (1978); Sadoski v. Mosley, 435 F.3d 1076, 1079 (9th
12 Cir. 2006); Harvey v. Waldron, 210 F.3d 1008, 1012 (9th Cir. 2000). An act is “judicial”
13 when it is a function normally performed by a judge and the parties dealt with the judge in
14 the judge’s judicial capacity. Stump, 435 U.S. at 362; Crooks v. Maynard, 913 F.2d 699, 700
15 (9th Cir. 1990). Such immunity also “extends to actions for declaratory, injunctive and other
16 equitable relief.” Mullis v. Bankruptcy Court for the Dist. of Nev., 828 F.2d 1385, 1394 (9th
17 Cir. 1987). Cf. Pulliam v. Allen, 466 U.S. 522, 541-42 (1984) (state officials have judicial
18 or quasi-judicial immunity from damages only).

19 In his First Amended Complaint, Plaintiff seeks relief against the Defendant
20 commissioners solely based upon rulings in his criminal proceedings. As discussed above,
21 the commissioners are entitled to absolute immunity for their actions in connection with
22 judicial proceedings. Because these Defendants have absolute judicial immunity for their
23 actions in their judicial capacities, and that is the only basis for which Plaintiff asserts
24 liability, these Defendants will be dismissed as will Plaintiff’s claims against them.

25 **B. Maricopa County Attorney Montgomery and Sheriff Arpaio**

26 Plaintiff sues both Maricopa County Attorney Montgomery and Maricopa County
27 Sheriff Arpaio. Plaintiff alleges that both knew of claimed misconduct alleged in various
28 counts, but failed that they failed to act to alleviate the claimed misconduct.

1 To state a claim against a particular individual defendant, a “plaintiff must allege
2 facts, not simply conclusions, that show that [the] individual was personally involved in the
3 deprivation of his civil rights.” Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).
4 For an individual to be liable in his official capacity, a plaintiff must allege that the official
5 acted as a result of a policy, practice, or custom. See Cortez v. County of Los Angeles, 294
6 F.3d 1186, 1188 (9th Cir. 2001). In addition, there is no *respondeat superior* liability under
7 § 1983, so a defendant’s position as the supervisor of someone who allegedly violated a
8 plaintiff’s constitutional rights does not make him liable. Monell v. Dep’t of Soc. Servs., 436
9 U.S. 658, 691 (1978); Taylor, 880 F.2d at 1045. A supervisor in his individual capacity, “is
10 only liable for constitutional violations of his subordinates if the supervisor participated in
11 or directed the violations, or knew of the violations and failed to act to prevent them.”
12 Taylor, 880 F.2d at 1045.

13 Plaintiff’s allegations against Montgomery and Arpaio are vague and conclusory. As
14 discussed below, Plaintiff fails to allege facts to support that any Defendant violated his
15 federal constitutional rights, much less that Montgomery or Arpaio knew of or participated
16 in any alleged constitutional violation. Plaintiff otherwise fails to allege facts to support that
17 Montgomery or Arpaio promulgated or endorsed a practice of policy that resulted in a
18 violation of Plaintiff’s federal rights. Accordingly, Montgomery and Arpaio will be
19 dismissed as will the allegations against them.

20 C. Deputy County Attorneys

21 Plaintiff also sues Deputy County Attorneys Warzynski, Doe 1, and Doe 6. As the
22 Court previously informed Plaintiff, prosecutors are absolutely immune from liability under
23 § 1983 for their conduct in “initiating a prosecution and in presenting the State’s case”
24 insofar as that conduct is “intimately associated with the judicial phase of the criminal
25 process.” Buckley v. Fitzsimmons, 509 U.S. 259, 270 (1993) (citing Imbler v. Pachtman,
26 424 U.S. 409, 430 (1976)); Burns v. Reed, 500 U.S. 478, 486 (1991) (quoting Imbler, 424
27 U.S. at 430-431); Ashelman v. Pope, 793 F.2d 1072, 1076 (9th Cir. 1986). Immunity also
28 extends to a prosecutor “eliciting false or defamatory testimony from witnesses” or for

1 making false or defamatory statements during, and related to judicial proceedings. Buckley,
2 509 U.S. 259, 270 (1993) (citations omitted). Because Plaintiff only seeks relief against the
3 deputy prosecutors for acts taken in connection with criminal proceedings against him, these
4 Defendants are entitled prosecutorial immunity. Accordingly, these Defendants, and
5 Plaintiff's allegations against them, will be dismissed.

6 **D. Defense Counsel**

7 Plaintiff also sues his former or current criminal defense attorneys, Justin Beresky and
8 Marvin Davis. As the Court previously informed Plaintiff, a prerequisite for any relief under
9 42 U.S.C. § 1983 are allegations to support that a defendant acted under the color of state
10 law. Whether an attorney representing a criminal defendant is privately retained, a public
11 defender, or court-appointed counsel, he does not act under color of state law. See Polk
12 County v. Dodson, 454 U.S. 312, 317-18 (1981); Miranda v. Clark County, Nevada, 319
13 F.3d 465, 468 (9th Cir. 2003) (*en banc*). Accordingly, Defendants Beresky and Davis will
14 be dismissed as will Plaintiff's claims to the extent asserted against these Defendants.

15 **E. Maricopa County**

16 Plaintiff sues Maricopa County. A municipality is a "person" for purposes of § 1983,
17 i.e., a municipality such as a city or county, and may be sued. See Leatherman v. Tarrant
18 County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 166 (1993); Monell, 436
19 U.S. at 694. To state a claim against a municipality under § 1983, a plaintiff must allege
20 facts to support that his constitutional rights were violated pursuant to a policy or custom of
21 the municipality. Cortez, 294 F.3d at 1188 (citing Monell, 436 U.S. at 690-91); Thompson
22 v. City of Los Angeles, 885 F.2d 1439, 1443 (9th Cir. 1989)). Thus, a municipality may not
23 be sued solely because an injury was inflicted by one of its employees or agents. Long v.
24 County of Los Angeles, 442 F.3d 1178, 1185 (9th Cir. 2006). Therefore, a § 1983 claim
25 against a municipal defendant "cannot succeed as a matter of law" unless a plaintiff: (1)
26 contends that the municipal defendant maintains a policy or custom pertinent to the plaintiff's
27 alleged injury; and (2) explains how such policy or custom caused the plaintiff's injury.
28 Sadoski v. Mosley, 435 F.3d 1076, 1080 (9th Cir. 2006) (affirming dismissal of a municipal

1 defendant pursuant to Fed. R. Civ. P. 12(b)(6)).

2 Plaintiff fails to allege *facts* to support that Maricopa County maintained a policy or
3 custom that resulted in the violation of Plaintiff’s federal constitutional rights. He also fails
4 to allege facts to support that any constitutional injury was the result of a municipal policy
5 or custom. Accordingly, Plaintiff also fails to state a claim against Maricopa County and it,
6 and allegations against it, will be dismissed.

7 **F. Count I**

8 In Count I, Plaintiff claims that his Fifth Amendment Due Process rights were violated
9 by the March 22, 2011 re-filing of the previously dismissed charges. He contends that he
10 was denied “proper notification.” (Doc. 5 at 3.) He further contends that various Defendants
11 had a custom or practice of dismissing charges and re-filing them, despite the lack of
12 probable cause, by obtaining grand jury indictments to avoid preliminary hearings.

13 Under the Fourth Amendment, there must be a “reasonably prompt” judicial
14 determination of probable cause following a warrantless arrest “as a prerequisite to extended
15 restraint on liberty following arrest.” Gerstein v. Pugh, 420 U.S. 103, 114 (1975). A
16 probable cause determination pursuant to Gerstein must be made by a neutral magistrate, but
17 an adversary hearing is not required. Id. However, the Constitution does not require a
18 preliminary hearing if an indictment has been returned by the grand jury. Id. at 119 (“[W]e
19 do not imply that the accused is entitled to judicial oversight or review of the decision to
20 prosecute. Instead, we adhere to the Court’s prior holding that a judicial hearing is not
21 prerequisite to prosecution by information.” Lem Woon v. Oregon[, 229 U.S. 586, 589-90
22 (1913)]).”

23 Plaintiff implies, and records available on-line reflect, that Plaintiff was indicted by
24 a grand jury. That is constitutionally sufficient to establish probable cause.¹⁶ Neither
25

26 ¹⁶ As explained by the Arizona Court of Appeals, “The purpose of a preliminary
27 hearing is to determine whether the prosecution’s case establishes probable cause” for a
28 prosecution. Segura v. Cunanan, 219 P.3d 228, 234 (Ariz. App. 2008). Alternatively, the
prosecution may establish probable cause for a *prosecution* by obtaining a grand jury
indictment. Id.

1 dismissal without prejudice and refile of charges, nor seeking an indictment, rather than
2 holding a preliminary hearing, violate the Constitution. To the extent that Plaintiff believes
3 that he was denied constitutionally adequate notice, he fails to set forth facts to support that
4 allegation. Moreover, that is a matter to be presented to the state court in the first instance.

5 Further, the abstention doctrine set forth in Younger v. Harris, 401 U.S. 37 (1971),
6 prevents a federal court in most circumstances from directly interfering with ongoing
7 criminal proceedings in state court. The Younger abstention doctrine also bars requests for
8 declaratory and monetary relief for constitutional injuries arising out of a plaintiff's ongoing
9 state criminal prosecution. Mann v. Jett, 781 F.2d 1448, 1449 (9th Cir. 1986). The Younger
10 abstention doctrine also applies while a case works its way through the state appellate
11 process, if a prisoner is convicted. New Orleans Pub. Serv., Inc. v. Council of City of New
12 Orleans, 491 U.S. 350, 369 (1989). Thus, even if Plaintiff adequately alleged a constitutional
13 violation, the abstention doctrine applies while his criminal proceedings are pending. See
14 Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme, 433 F.3d 1199, 1224 (9th
15 Cir. 2006); Smith v. Central Ariz. Water Conservation Dist., 418 F.3d 1028, 1030 (9th Cir.
16 2005). For all of these reasons, Count I will be dismissed for failure to state a claim.

17 **G. Count II**

18 In Count II, Plaintiff alleges a violation of his Fourth Amendment rights based on the
19 following facts: on May 13, 2011, Plaintiff went to a Phoenix Police Records Center to
20 reclaim a bicycle that had been stolen from him. After taking Plaintiff's information, Officer
21 Ramirez directed Plaintiff into an enclosed area to sign papers. Once there, however,
22 Plaintiff was arrested by Defendants Doe 4 and 5 on an outstanding warrant. Plaintiff was
23 handcuffed and he and his backpack were searched. Plaintiff contends that the warrants were
24 invalid, that he had not received notice of the warrants, and that the search incident to arrest
25 violated his Fourth Amendment rights.

26 As an initial matter, Plaintiff fails to allege any basis to support that the warrant was
27 invalid. Plaintiff also fails to state a claim for violation of his Fourth Amendment rights.
28 "While the Fourth Amendment generally prohibits searches without a warrant, the warrant

1 requirement is subject to some well-established exceptions.” United States v. Smith, 389
2 F.3d 944, 950-51 (9th Cir. 2004) (citing Flippo v. West Virginia, 528 U.S. 11, 13 (1999);
3 Morgan v. United States, 323 F.3d 776, 781 (9th Cir. 2003)). These include a search incident
4 to arrest. Id. “The search-incident-to-arrest exception permits law enforcement officers to
5 conduct a warrantless search of a person who is arrested, and of his surrounding area, when
6 the search is incident to the arrest.” Id. (citing Chimel v. California, 395 U.S. 752, 762-63
7 (1969)). Plaintiff’s allegations reflect that he was searched incident to an arrest, which
8 absent more does not state a Fourth Amendment claim. Because Plaintiff fails to state a
9 constitutional claim in Count II, it will be dismissed.

10 **H. Count III**

11 In Count III, Plaintiff alleges that he was denied reasonable bond in violation of his
12 Eighth Amendment rights based on the following facts: after his arrest, Plaintiff was taken
13 to the Fourth Avenue Jail pursuant to an invalid arrest warrant and five \$1,800 bonds were
14 set. Plaintiff objected to his arrest and the bond amount before Commissioner Hamner.
15 Hamner consolidated the five bonds “created by MCSO Officer A8924” into three bonds.

16 Plaintiff appears to be attempting to assert an Eighth Amendment Excessive Bail
17 claim. The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor
18 excessive fines imposed, nor cruel and unusual punishments inflicted.” The “Excessive Bail
19 Clause prevents the imposition of bail conditions that are excessive in light of the valid
20 interests the state seeks to protect by offering bail.” Galen v. County of Los Angeles, 477
21 F.3d 652, 660 (9th Cir. 2007). To state a claim for excessive bail, a plaintiff must allege facts
22 to support that bail is excessive for the purpose of achieving a state’s valid interests. Id.
23 Arizona law provides that the purpose of bail and any conditions of release set by a judicial
24 officer include (1) assuring the appearance of the accused; (2) protecting against the
25 intimidation of witnesses; and (3) protecting the safety of the victim, any other person, or the
26 community. Ariz. Rev. St. § 13-3961(B).

27 As explained above, Defendant Hamner is entitled to absolute judicial immunity.
28 Even if that were not the case, however, Plaintiff fails to allege facts to support that the bail

1 set was excessive in light of the valid purposes for which it was set. Id. at 661; accord
2 Harvey v. City of South Lake Tahoe, No. CIV S-10-1653, 2011 WL 3501687, at *4 (E. D.
3 Cal. Aug. 9, 2011). Indeed, it appears that bail was set both to ensure that Plaintiff appeared
4 and to protect Plaintiff and the community. Accordingly, Plaintiff fails to state a claim for
5 violation of the Excessive Bail Clause and Count III will be dismissed.

6 **I. Count IV**

7 Plaintiff designates Count IV as a claim for violation of the Americans with
8 Disabilities Act (ADA), 42 U.S.C. §§ 12131-34, and Equal Protection. He contends that on
9 May 19, 2011, Defendants Rees and Doe 6 discriminated against him based upon a mental
10 disability. He further alleges that Defendants Holding, Warzynski, Bereskey, and Doe 7
11 dismissed cases CR2008-007665, CR2008-007673, and CR2009-007748 without jurisdiction
12 based on his mental illness and sentenced him to “involuntary servitude” in Desert Vista
13 Hospital. (Doc. 5 at 6.)

14 The ADA is applicable in the jail context. Pennsylvania Dep’t of Corr. v. Yeskey,
15 524 U.S. 206, 213 (1998). Under Title II of the ADA, “no qualified individual with a
16 disability shall, by reason of such disability, be excluded from participation in or be denied
17 the benefits of the services, programs, or activities of a public entity, or be subjected to
18 discrimination by any such entity.” 42 U.S.C. § 12132. A “public entity” is “any State or
19 local government; [or] (B) any department, agency, special purpose district, or other
20 instrumentality of a State or States or local government” 42 U.S.C. § 12131.
21 Individuals, however, may *only* be sued under the ADA in their official, rather than, their
22 individual capacities. Vinson v. Thomas, 288 F.3d 1145, 1156 (9th Cir. 2002) (plaintiff
23 cannot sue state officials in their individual capacities to vindicate rights created by Title II
24 of the ADA). To state an ADA claim, a plaintiff must allege facts to support that he: “(1) is
25 a handicapped person; (2) that he is otherwise qualified; and that [officials’] actions either
26 (3) excluded his participation in or denied him the benefits of a service, program, or activity;
27 or (4) otherwise subjected him to discrimination on the basis of his physical handicap.”
28 Duffy v. Riveland, 98 F.3d 447, 455 (9th Cir. 1996).

1 Assuming that Plaintiff adequately alleges that he is a handicapped person who is
2 otherwise qualified, he fails to allege facts to support that any Defendant excluded his
3 participation in, or denied him the benefits of, any service, program, or activity, or otherwise
4 discriminated against him based on such handicap. While Plaintiff was civilly committed
5 to Desert Vista due to his mental illness and because he posed a danger to himself and others,
6 his commitment was not a criminal penalty. Such commitment, absent more, does not violate
7 Plaintiff's constitutional rights. Further, as described herein and as is obvious from a review
8 of the state court records available on-line, Plaintiff has been afforded ample opportunities
9 to contest various competency proceedings. Plaintiff does not allege facts to support that the
10 state court lacked jurisdiction over him or that dismissal of the criminal charges in his 2008
11 and 2009 cases in any way violated his federal constitutional or statutory rights.
12 Accordingly, Count IV will be dismissed for failure to state a claim.

13 **J. Count V**

14 Plaintiff labels Count V as a claim for conspiracy to violate his constitutional right of
15 access to the courts in connection with a hearing held on May 19, 2011 in his 2011 cases and
16 Equal Protection. Plaintiff contends that Commissioner Rees, Doe 13, and Doe 6 addressed
17 his mental health at the hearing, although the hearing had been set for an initial appearance
18 and arraignment in the 2011 cases. Plaintiff contends that he was not afforded notice that his
19 mental health would be an issue and that he has not received discovery, minute entries, or
20 orders from the hearing.

21 The right of meaningful access to the courts prohibits state officials from actively
22 interfering with an inmate's attempt to prepare or file legal documents. Lewis v. Casey, 518
23 U.S. 343, 350 (1996). That right, however, only encompasses the ability to bring petitions
24 or complaints to federal court and not to discover or even effectively litigate such claims
25 once filed with a court. Id. at 354; see also Cornett v. Donovan, 51 F.3d 894, 899 (9th Cir.
26 1995) ("The right of access is designed to ensure that a habeas petition or civil rights
27 complaint of a person in state custody will reach a court for consideration.") The right
28 "guarantees no particular methodology but rather, the conferral of a capability – the

1 capability of bringing contemplated challenges to sentences or conditions of confinement
2 before the courts.” Lewis, 518 U.S. at 356. Further, the denial of access to a paralegal or use
3 of a law library is not actionable if there is no claim of prejudice to an existing or future legal
4 action. Id. at 351-53. That is, an inmate must establish that he suffered an “actual injury.”
5 See Vandelft v. Moses, 31 F.3d 794, 797 (9th Cir. 1994). An “actual injury” is “actual
6 prejudice with respect to contemplated or existing litigation, such as the inability to meet a
7 filing deadline or present a claim.” Lewis, 518 U.S. at 348. In other words, a plaintiff must
8 allege facts to support that a defendant’s conduct prevented him from bringing to court a non-
9 frivolous claim that he wished to present. Id. at 351-53.

10 Plaintiff asserts a denial of access to the courts in connection with his criminal
11 proceedings. However, the appointment of counsel satisfies the obligation of access to the
12 courts. See United States v. Wilson, 690 F.2d 1267, 1271-72 (9th Cir. 1982) (“The offer of
13 court-appointed counsel to represent [a defendant] satisfied the Fifth Amendment obligation
14 to provide meaningful access to the courts.”). Plaintiff was and is represented by criminal
15 defense counsel in his criminal proceedings. Accordingly, Plaintiff fails to state a claim for
16 denial of access to the court in Count V.

17 Plaintiff also asserts racial discrimination against him because he is Hispanic in
18 violation of his Equal Protection rights. The Equal Protection Clause of the Fourteenth
19 Amendment provides that a state may not “deny to any person within its jurisdiction the
20 equal protection of the laws,” which is essentially a direction that all persons similarly
21 situated should be treated alike. U.S. Const., amend. XIV; see City of Cleburne v. Cleburne
22 Living Ctr., Inc., 473 U.S. 432, 439 (1985). A state practice that interferes with a
23 fundamental right or that discriminates against a suspect class of individuals is subject to
24 strict scrutiny. Massachusetts Bd. of Ret. v. Murgia, 427 U.S. 307, 312 (1976); see City of
25 Cleburne, 473 U.S. at 441. Absent allegations that he is a member of a suspect class, or that
26 a fundamental right has been violated, a plaintiff must allege facts to support that he has been
27 intentionally treated differently from others who are similarly situated without a reasonable
28 basis therefor. See Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000). Conclusory

1 allegations do not suffice. See Village of Arlington Heights v. Metropolitan Hous. Dev.
2 Corp., 429 U.S. 252, 265 (1977).

3 Plaintiff fails to allege any facts against any Defendant to support that he has been
4 treated differently than any other defendant based on his race. Accordingly, Plaintiff fails
5 to state a claim on this basis in Count V.

6 **K. Count VI**

7 Plaintiff designates Count VI as a claim for violation of his right to petition for redress
8 of grievances. He alleges the following: his arrest on May 13, 2011 was illegal. On May 17,
9 2011, Plaintiff submitted a request to Defendant B0661 asking that his family be permitted
10 to provide him with his boxes of motions, case law, and exhausted grievances from his 2008-
11 2010 confinement. Defendant Sergeant A8090 denied the request on May 19, 2011 because
12 Plaintiff was represented in his criminal case and was not proceeding pro per. On June 13,
13 2011, Plaintiff filed another request to receive the boxes from his family. Defendant B0846
14 responded that Inmate Legal Services did not provide the services requested. On June 19,
15 2011, Plaintiff filed a grievance. On June 22, 2011, Defendant Doe 8 responded and on June
16 28, 2011, Defendant Bureau Hearing Officer A4191 denied the request. On July 5, 2011,
17 Defendant Byrnes denied Plaintiff's grievance appeal and Plaintiff appealed to the external
18 grievance referee. On July 23, 2011, Defendant External Grievance Referee Garitson denied
19 Plaintiff's grievance appeal. Plaintiff contends that he was thereby denied access to the
20 court.

21 As discussed above, representation by counsel affords Plaintiff with constitutionally
22 adequate access to the court in connection with his criminal case. Otherwise, Plaintiff does
23 not allege facts to support that he has been denied the ability to bring petitions or complaints
24 in court and he is not constitutionally entitled to access to records held by family members.

25 Plaintiff also fails to state a claim to the extent that this claim is predicated on the
26 denial of Plaintiff's grievances or grievance appeals. Where a defendant's only involvement
27 in allegedly unconstitutional conduct is the denial of administrative grievances, the failure
28 to intervene on a prisoner's behalf to remedy the alleged unconstitutional behavior does not

1 amount to active unconstitutional behavior for purposes of § 1983. Shehee v. Luttrell, 199
2 F.3d 295, 300 (6th Cir. 1999); accord Mintun v. Blades, No. CV-06-139, 2008 WL 711636,
3 at *7 (D. Idaho Mar. 14, 2008); Stocker v. Warden, No. 1:07-CV-00589, 2009 WL 981323,
4 at *10 (E.D. Cal. Apr. 13, 2009). For the reasons discussed, Count VI will be dismissed for
5 failure to state a claim.

6 **L. Counts VII and VIII**

7 Plaintiff asserts a claim for threat to his safety and retaliation in Counts VII and VIII
8 based on the same allegations. Plaintiff fails to state a claim on either basis.

9 To state a claim under § 1983 for failure to protect or threats to safety, an inmate must
10 allege facts to support that he was incarcerated under conditions posing a substantial risk of
11 harm and that jail officials were “deliberately indifferent” to those risks. Farmer v. Brennan,
12 511 U.S. 825, 832-33 (1994). To adequately allege deliberate indifference, a plaintiff must
13 allege facts to support that a defendant knew of, but disregarded, an excessive risk to inmate
14 safety. Id. at 837. That is, “the official must both [have been] aware of facts from which the
15 inference could be drawn that a substantial risk of serious harm exist[ed], and he must also
16 [have] draw[n] the inference.” Id.

17 To state a constitutional claim for retaliation, a plaintiff must allege that a defendant
18 acting under color of state law took adverse action against him because he engaged in
19 constitutionally-protected conduct, the adverse action was not narrowly tailored to advance
20 legitimate goals, and the adverse action chilled the plaintiff’s exercise of his First
21 Amendment rights or caused him to suffer more than minimal harm. Rhodes v. Robinson,
22 408 F.3d 559, 567-58 (9th Cir. 2005); see also Hines v. Gomez, 108 F.3d 265, 267 (9th Cir.
23 1997) (retaliation claims requires an inmate must show (1) that the prison official acted in
24 retaliation for the exercise of a constitutionally-protected right, and (2) that the action
25 “advanced no legitimate penological interest”).

26 Plaintiff makes various assertions in support of Counts VII and VIII. However, his
27 allegations are difficult to follow and appear to concern random incidents occurring between
28 2009 and the present. Plaintiff fails to allege facts to support that any Defendant knew or had

1 reason to know of a substantial risk to Plaintiff’s safety. That is, he fails to allege facts to
2 support that he was incarcerated under conditions posing a substantial risk of harm to him.
3 Plaintiff also fails to allege facts to support that any Defendant retaliated against him for
4 engaging in constitutionally-protected conduct. Finally, to the extent that Plaintiff complains
5 of responses to grievances and grievance appeals, he fails to state a claim. See Shehee, 199
6 F.3d at 300; accord Mintun, 2008 WL 711636, at *7; Stocker, 2009 WL 981323, at *10. For
7 all of these reasons, Plaintiff fails to state a claim in Counts VII and VIII.

8 **M. Count IX**

9 In Count IX, Plaintiff asserts that he was denied access to the courts while he was
10 confined at the Desert Vista Hospital. He contends that “Defendant” failed to provide him
11 access to a law library or a grievance system to access the courts for redress of grievances.
12 (Doc. 5 at 11.) Plaintiff fails to link any specific Defendant to these allegations. Further, as
13 discussed above, Plaintiff does not have a constitutional right to a law library. Plaintiff also
14 does not have a constitutional right to a grievance system. “There is no legitimate claim of
15 entitlement to a grievance procedure.” Mann v. Adams, 855 F.2d 639, 640 (9th Cir. 1988).
16 Finally, Plaintiff fails to allege an actual injury. See Lewis, 518 U.S. at 348. For all of these
17 reasons, Plaintiff fails to state a claim in Count IX and it will be dismissed.

18 **N. Counts X**

19 Plaintiff designates Count X as a claim for violation of Equal Protection rights for
20 alleged discrimination against him based on his race and ethnicity – Hispanic, Native
21 American, and German – by failing to “provide equal service due to a mental disability.”
22 Specifically, he asserts that Defendants Rees, Holding, Warzynski, Davis, Doe 6, and
23 Beresky conspired or engaged in discrimination against him at hearings on May 13, May 19,
24 July 7, August 11, and September 15, 2011 by forcing Plaintiff to comply with court orders
25 he never received. He also asserts that Maricopa County, Arpaio, and Montgomery knew
26 of a practice to so discriminate.

27 As explained above, Defendants Rees, Holding, Warzynski, Davis, Doe 6, Beresky,
28 Montgomery, and Arpaio are all being dismissed for the reasons stated. Even if that were

1 not the case, however, Plaintiff only makes conclusory allegations of discrimination by them
2 based on his race, ethnicity, or mental illness. He fails to allege specific facts to support
3 either the existence of a policy or practice of discrimination or facts to support that any
4 Defendant has discriminated against him based on his race, ethnicity, or mental illness.
5 Count X will be dismissed for failure to state a federal claim against any Defendant.

6 **VI. Leave to Amend**

7 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed for
8 failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may
9 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of
10 Court will mail Plaintiff a court-approved form to use for filing a second amended complaint.
11 If Plaintiff fails to use the court-approved form, the Court may strike the amended complaint
12 and dismiss this action without further notice to Plaintiff.

13 Plaintiff must clearly designate on the face of the document that it is the "Second
14 Amended Complaint." The second amended complaint must be retyped or rewritten in its
15 entirety on the court-approved form and may not incorporate any part of any prior complaint
16 by reference. Plaintiff may include only one claim per count.

17 A second amended complaint supersedes every prior complaint. Ferdik v. Bonzelet,
18 963 F.2d 1258, 1262 (9th Cir. 1992); Hal Roach Studios v. Richard Feiner & Co., 896 F.2d
19 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat any prior complaint as
20 nonexistent. Ferdik, 963 F.2d at 1262. Any cause of action that was raised in a previous
21 complaint is waived if it is not raised in a second amended complaint. King v. Atiyeh, 814
22 F.2d 565, 567 (9th Cir. 1987).

23 **V. Warnings**

24 **A. Release**

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

1 **B. Address Changes**

2 Plaintiff must file and serve a notice of a change of address in accordance with Rule
3 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
4 relief with a notice of change of address. Failure to comply may result in dismissal of this
5 action.

6 **C. Copies**

7 Plaintiff must submit an additional copy of every filing for use by the Court. See
8 LRCiv 5.4. Failure to comply may result in the filing being stricken without further notice
9 to Plaintiff.

10 **D. Possible “Strike”**

11 Because the Complaint and the First Amended Complaint have been dismissed for
12 failure to state a claim, if Plaintiff fails to file an amended complaint correcting the
13 deficiencies identified in this Order, the dismissal may count as a “strike” under the “3-
14 strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not
15 bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “if
16 the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility,
17 brought an action or appeal in a court of the United States that was dismissed on the grounds
18 that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,
19 unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C.
20 § 1915(g).

21 **E. Possible Dismissal**

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

26 **IT IS ORDERED:**

27 (1) The First Amended Complaint is **dismissed** for failure to state a claim. (Doc.
28 5.) Plaintiff has **30 days** from the date this Order is filed to file a second amended complaint

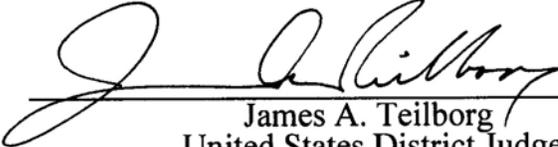
1 in compliance with this Order.

2 (2) If Plaintiff fails to file an amended complaint within 30 days, the Clerk of
3 Court must, without further notice, enter a judgment of dismissal of this action with prejudice
4 that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g).

5 (3) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil
6 rights complaint by a prisoner.

7 (4) To the extent that Plaintiff seeks any relief in his Notice fo Additional Address,
8 doc. 8, such relief is **denied**.

9 DATED this 22nd day of November, 2011.

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13 James A. Teilborg
United States District Judge
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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.

2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.

3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.

4. The Filing Fee. The filing fee for this action is \$350.00. If you are unable to immediately pay the filing fee, you may request leave to proceed *in forma pauperis*. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915” for additional instructions.

5. Original and Judge’s Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten.

6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$350 filing fee or the application to proceed *in forma pauperis* to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed *in forma pauperis*). Each original document (except the initial complaint and application to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. See Fed. R. Civ. P. 5(a), (d). Any document received by the Court that does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court before any defendant has answered your original complaint. See Fed. R. Civ. P. 15(a). After any defendant has filed an answer, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “Bivens v. Six Unknown Federal Narcotics Agents” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.

3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. See 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

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

(Full Name of Plaintiff) Plaintiff,

vs.

CASE NO. _____
(To be supplied by the Clerk)

(1) _____
(Full Name of Defendant)

(2) _____

(3) _____

(4) _____

Defendant(s).

Check if there are additional Defendants and attach page 1-A listing them.

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- Original Complaint
- First Amended Complaint
- Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

- 28 U.S.C. § 1343(a); 42 U.S.C. § 1983
- 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
- Other: _____

2. Institution/city where violation occurred: _____

B. DEFENDANTS

1. Name of first Defendant: _____ . The first Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
2. Name of second Defendant: _____ . The second Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
3. Name of third Defendant: _____ . The third Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ . The fourth Defendant is employed as:
_____ at _____ .
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____
_____.

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
 Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count I. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.

5. **Administrative Remedies:**
a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No
b. Did you submit a request for administrative relief on Count I? Yes No
c. Did you appeal your request for relief on Count I to the highest level? Yes No
d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____
_____.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____
_____.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.

5. **Administrative Remedies.**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count III? Yes No

c. Did you appeal your request for relief on Count III to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____
_____.

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.