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

Torrance Derrick Mincey,)	No. CV 12-0303-PHX-GMS (LOA)
Plaintiff,)	ORDER
vs.)	
Joseph M. Arpaio, et al.,)	
Defendants.)	

Plaintiff Torrance Derrick Mincey, who is confined in the Arizona State Prison Complex, East Unit, in Florence, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983, which the Court dismissed with leave to amend. (Doc. 1, 8.) Plaintiff has filed a First Amended Complaint. (Doc. 12.) The Court will dismiss the First Amended Complaint with leave to amend.

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).

A pleading must contain a “short and plain statement of the claim *showing* that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the-defendant-

1 unlawfully-harmed-me accusation.” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009).
2 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory
3 statements, do not suffice.” Id.

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

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

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

27 **II. First Amended Complaint**

28 Plaintiff alleges four counts for “involuntary servitude,” violation of due process, and

1 cruel and unusual punishment. (Doc. 12 at 3.) Plaintiff sues Maricopa County Sheriff
2 Joseph M. Arpaio. Plaintiff seeks compensatory relief.

3 **Background**

4 The Maricopa County Superior Court ordered Plaintiff to pay child support in case#
5 DR1999-010063.¹ However, Plaintiff has only sporadically paid child support and has
6 accrued substantial arrears. Since at least 2007, the court has held repeated review hearings
7 concerning payment of child support by Plaintiff and has repeatedly found Plaintiff in
8 contempt for failure to pay child support , to purge amounts owed, and/or for failing to
9 appear for review hearings or otherwise comply with court orders by documenting efforts to
10 seek work. Further, the court has issued several child support arrest warrants, resulting in
11 Plaintiff's arrest and indefinite incarceration by MCSO for failure to pay child support or to
12 demonstrate his efforts to find work as ordered by the court. During his various
13 confinements, the court has sometimes ordered that Plaintiff participate in work release
14 programs, if otherwise eligible. At other times, the court has found him ineligible for work
15 release participation. On at least one occasion, Plaintiff absconded from work release and
16 on another he returned to the jail under the influence of drugs or alcohol.

17 In August 2008, Plaintiff filed a petition for writ of habeas corpus, case# LC2008-
18 000465, which the court treated as a special action.² The court described Plaintiff's claims
19 in that action as alleging that despite being ordered into work release in connection with his
20 child support obligations, MCSO had failed to comply and that he was being jailed for an
21 unpaid debt in violation of the state constitution.³ On August 29, 2008, the court denied
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24 ¹ See <http://www.superiorcourt.maricopa.gov/docket/FamilyCourtCases/caseInfo.asp?caseNumber=DR1999-010063> (last visited Apr. 5, 2012). Minute entries for specific dates can be viewed at <http://www.courtminutes.maricopa.gov/JONamesearch.asp>.

26 ² See <http://www.courtminutes.maricopa.gov/docs/Lower%20Court/082008/m3330630.pdf> (last visited Apr. 4, 2012).

27
28 ³ See <http://www.courtminutes.maricopa.gov/docs/Lower%20Court/092008/m3347753.pdf> (last visited Apr. 4, 2012).

1 jurisdiction over Plaintiff's special action.⁴ In its minute entry, the court explained that it had
2 only ordered Plaintiff into work release "if otherwise eligible" and that responsibility for
3 determining eligibility rested with MCSO; the court noted that Plaintiff's propensity for
4 violence and drug use resulted in his designation as a maximum security inmate who was not
5 allowed to participate in work release programs.⁵ The court further stated that Plaintiff's
6 confinement for contempt of court for non-payment of child support did not violate the state
7 constitution.⁶ Finally, the court found that MCSO had not abused its discretion in denying
8 Plaintiff work release status.⁷

9 In addition to the above, Plaintiff has twice been arrested for criminal offenses. On
10 November 16, 2007, Plaintiff was arraigned in case# CR2007-157276,⁸ but on March 28,
11 2008, that case was dismissed based on the lack of probable cause for the arrest.⁹ On June
12 13, 2011, Plaintiff was arraigned on new charges in case# CR2011-101886.¹⁰ On February
13 13, 2012, Plaintiff was sentenced to five years in prison after he pleaded guilty to aggravated
14 driving or actual physical control while under the influence of intoxicating liquor or drugs,
15 with a prior felony conviction for possession of marijuana.¹¹

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18 ⁴ Id., n. 2.

19 ⁵ Id.

20 ⁶ Id.

21 ⁷ Id.

22 ⁸ See <http://www.courtminutes.maricopa.gov/docs/Criminal/112007/m2942720.pdf>
23 (last visited Apr. 5, 2012).

24 ⁹ See <http://www.courtminutes.maricopa.gov/docs/Criminal/032008/m3118924.pdf>
25 (last visited Apr. 5, 2012).

26 ¹⁰ See <http://www.courtminutes.maricopa.gov/docs/Criminal/062011/m4764998.pdf>
27 (last visited Apr. 5, 2012).

28 ¹¹ See <http://www.courtminutes.maricopa.gov/docs/Criminal/032012/m5131372.pdf>
(last visited Apr. 5, 2012).

1 **Plaintiff's Allegations**

2 Except as otherwise indicated, Plaintiff alleges the following facts in his First
3 Amended Complaint: on April 23, 2008, Plaintiff was ordered to work release, but Sheriff
4 Arpaio did not place him on work release and instead required him to work as an unpaid jail
5 trustee. As a result, Plaintiff lost his job and was unable to pay his support obligations. The
6 loss of his job caused Plaintiff to lose “everything” including cars, home, property, and
7 caused his family suffering. Plaintiff was threatened with punishment if he refused to work
8 for Arpaio. After the court determined that there was nothing in Plaintiff’s background that
9 precluded work release, the court ordered that Plaintiff participate in work release on May
10 28, 2009. Plaintiff continued to be detained at the Jail and required to work as a trustee
11 between April 2008 and June 2010. Finally, Plaintiff alleges that he was subjected to
12 unconstitutional conditions of confinement.

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

14 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the
15 conduct about which he complains was committed by a person acting under the color of state
16 law and (2) the conduct deprived him of a federal constitutional or statutory right. Wood v.
17 Ostrander, 879 F.2d 583, 587 (9th Cir. 1989). In addition, to state a valid constitutional
18 claim, a plaintiff must allege that he suffered a specific injury as a result of the conduct of
19 a particular defendant and he must allege an affirmative link between the injury and the
20 conduct of that defendant. Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976).

21 **A. Statute of Limitations**

22 The failure to state a claim includes circumstances where a defense is complete and
23 obvious from the face of the pleadings. Franklin v. Murphy, 745 F.2d 1221, 1228 (9th Cir.
24 1984) (applying former § 1915(d) now codified at 28 U.S.C. § 1915(e)(2)(B)). Further, in
25 the absence of waiver, a court may raise the defense of statute of limitations *sua sponte*. See
26 Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 687 (9th Cir. 1993); see also Hughes v.
27 Lott, 350 F.3d 1157, 1163 (11th Cir. 2003) (appropriate to dismiss prisoner’s complaint *sua*
28 *sponte* as time-barred under § 1915(e)(2)(B)); Nasim v. Warden, Maryland House of Corr.,

1 64 F.3d 951, 956 (4th Cir. 1995) (*en banc*) (same); Pino v. Ryan, 49 F.3d 51, 53 (2d Cir.
2 1995) (same); Moore v. McDonald, 30 F.3d 616, 620 (5th Cir. 1994) (same); Johnson v.
3 Rodriguez, 943 F.2d 104, 107-08 (1st Cir. 1991) (same).

4 In § 1983 actions, the Court applies the statute of limitations of the forum state for
5 personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266, 274-76 (1985); TwoRivers v.
6 Lewis, 174 F.3d 987, 991 (9th Cir. 1999); Vaughan v. Grijalva, 927 F.2d 476, 478 (9th Cir.
7 1991). The Arizona statute of limitations for personal injury actions is two years. See A.R.S.
8 § 12-542 (1); Madden-Tyler v. Maricopa County, 943 P.2d 822, 824 (Ariz. Ct. App. 1997);
9 Vaughan, 927 F.2d at 478. Arizona law also provides for the tolling of the statute of
10 limitation after a cause of action accrues for the period during which a plaintiff was less than
11 18 years old or of unsound mind. A.R.S. § 12-502.

12 Plaintiff's Complaint was filed on February 14, 2012. (Doc. 1.) For his federal claims
13 to be timely, they must have accrued no earlier than February 14, 2010, two years before his
14 Complaint was filed. "[A] claim generally accrues when a plaintiff knows or has reason to
15 know of the injury which is the basis of his action." Cabrera v. City of Huntington Park, 159
16 F.3d 374, 379 (9th Cir. 1998). Plaintiff in part complains of events that occurred prior to
17 February 14, 2010 and of which he had contemporaneous knowledge. Claims concerning
18 events that occurred prior to February 14, 2010 are, therefore, facially time-barred and will
19 be dismissed. For that reason, Plaintiff fails to state a claim in Counts I and II (in part).

20 **B. Arpaio**

21 Plaintiff sues only Sheriff Arpaio. Although Arpaio may properly be sued for
22 constitutional violations, Plaintiff fails to state a claim against him. "A plaintiff must allege
23 facts, not simply conclusions, that show that an individual was personally involved in the
24 deprivation of his civil rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998).
25 For an individual to be liable in his official capacity, a plaintiff must allege that the official
26 acted as a result of a policy, practice, or custom. See Cortez v. County of Los Angeles, 294
27 F.3d 1186, 1188 (9th Cir. 2001). Further, there is no *respondeat superior* liability under §
28 1983, so a defendant's position as the supervisor of a someone who allegedly violated a

1 plaintiff's constitutional rights does not make him liable. Monell, 436 U.S. at 691; Taylor
2 v. List, 880 F.2d 1040, 1045 (9th Cir. 1989). A supervisor in his individual capacity, "is only
3 liable for constitutional violations of his subordinates if the supervisor participated in or
4 directed the violations, or knew of the violations and failed to act to prevent them." Taylor,
5 880 F.2d at 1045.

6 Plaintiff only mentions Arpaio in Count I, which is barred by the statute of limitation.
7 Plaintiff has not otherwise alleged facts to support that Arpaio enacted or enforced a policy,
8 custom, or practice that resulted in the denial of Plaintiff's constitutional rights. Plaintiff has
9 also has not otherwise alleged facts to support that Arpaio directly violated Plaintiff's
10 constitutional rights or to support that Arpaio was aware that Plaintiff's rights were being
11 violated but failed to act. Accordingly, Plaintiff fails to state a claim against Arpaio in his
12 remaining claims and he will be dismissed.

13 **C. Count II (in part)**

14 Plaintiff designates Count II as a claim for violation of his Fourteenth Amendment due
15 process rights. In Count II (in part), Plaintiff alleges that from April 2008 until June 2010,
16 he was denied the ability to participate in work release, despite court orders.

17 Liberty interests which entitle a convicted inmate to due process are "generally limited
18 to freedom from restraint which, while not exceeding the sentence in such an unexpected
19 manner as to give rise to protection by the Due Process Clause of its own force, nonetheless
20 imposes atypical and significant hardship on the inmate in relation to the ordinary incidents
21 of prison life." Sandin v. Conner, 515 U.S. 472, 484 (1995) (internal citations omitted).
22 Thus, a prisoner may challenge a disciplinary action which deprives or restrains a state-
23 created liberty interest in some "unexpected manner." Ramirez v. Galaza, 334 F.3d 850, 860
24 (9th Cir. 2003) (citing Sandin, 515 U.S. at 483-84)). Second, a prisoner may challenge a
25 state action that does not restrain a protected liberty interest, but that "nonetheless imposes
26 atypical and significant hardship on the inmate in relation to the ordinary incidents of prison
27 life." Sandin, 515 U.S. at 484. In analyzing whether a hardship is atypical and significant,
28 three guideposts to consider are: (1) the conditions of confinement; (2) the duration of the

1 condition and the degree of restraint imposed; and (3) whether the sanction will affect the
2 duration of the prisoner's sentence. Ramirez, 334 F.3d at 861; Keenan v. Hall, 83 F.3d 1083,
3 1088-89 (9th Cir. 1996). "Atypicality" requires not merely an empirical comparison, but
4 turns on the importance of the right taken away from the prisoner. See Carlo v. City of
5 Chino, 105 F.3d 493, 499 (9th Cir. 1997); see, e.g., Sandin, 515 U.S. at 472 (30 days
6 disciplinary segregation is not atypical and significant); Torres v. Fauver, 292 F.3d 141, 151
7 (3d Cir. 2002) (4 months in administrative segregation is not atypical and significant); Griffin
8 v. Vaughn, 112 F.3d 703, 706-708 (3d Cir. 1997) (15 months administrative segregation is
9 not atypical and significant); Beverati v. Smith, 120 F.3d 500, 504 (4th Cir. 1997) (6 months
10 of confinement in especially disgusting conditions that were "more burdensome than those
11 imposed on the general prison population were not atypical ... in relation to the ordinary
12 incidents of prison life."); Jones v. Baker, 155 F.3d 810 (6th Cir. 1998) (2 years in
13 administrative segregation is not atypical and significant); Jacks v. Crabtree, 114 F.3d 983
14 (9th Cir. 1997) (denial of year sentence reduction is not an atypical and significant hardship).
15 "As long as the conditions or degree of confinement to which the prisoner is subjected is
16 within the sentence imposed upon him and is not otherwise violative of the Constitution, the
17 Due Process Clause does not in itself subject an inmate's treatment by prison authorities to
18 judicial oversight." Montanye v. Haymes, 427 U.S. 236, 242 (1976). Therefore, to
19 determine whether an inmate is entitled to the procedural protections afforded by the Due
20 Process Clause, the Court must look to the particular restrictions imposed and ask whether
21 they "present the type of atypical, significant deprivation in which a state might conceivably
22 create a liberty interest." Mujahid v. Meyer, 59 F.3d 931, 932 (9th Cir. 1995) (quoting
23 Sandin, 515 U.S. at 486).

24 Plaintiff asserts that he was not allowed to participate in work release for some period
25 of time while he was held at the County Jail. Plaintiff fails, however, to allege facts to
26 support that he had a state-created liberty interest in such participation or that he was
27 otherwise subjected to atypical and significant hardships in relation to ordinary incidents of
28 incarceration. Inmates have no constitutional right to participate in prison work programs.

1 See Coakley v. Murphy, 884 F.2d 1218, 1221 (9th Cir. 1989). Further, Plaintiff fails to
2 allege how and when Arpaio, or anyone else, denied him due process. For both reasons,
3 Plaintiff fails to state a due process claim.

4 **D. Count III**

5 In Count III, Plaintiff alleges that he was subjected to unconstitutional conditions of
6 confinement. A prison inmate’s claim for unconstitutional conditions of confinement arises
7 under the Eighth Amendment, Bell v. Wolfish, 441 U.S. 520 (1979), while a pretrial
8 detainee’s claim for unconstitutional conditions arises under the Fourteenth Amendment,
9 Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir. 1998), the same standard is applied. See Frost,
10 152 F.3d at 1128. To state a claim for unconstitutional conditions of confinement, a plaintiff
11 must allege that a defendant’s acts or omissions have deprived the inmate of “the minimal
12 civilized measure of life’s necessities” and that the defendant acted with deliberate
13 indifference to an excessive risk to inmate health or safety. Allen v. Sakai, 48 F.3d 1082,
14 1087 (9th Cir. 1994) (citing Farmer, 511 U.S. at 834); see Estate of Ford v. Ramirez-Palmer,
15 301 F.3d 1043, 1049-50 (9th Cir. 2002). Whether conditions of confinement rise to the level
16 of a constitutional violation may depend, in part, on the duration of an inmate’s exposure to
17 those conditions. Keenan v. Hall, 83 F.3d 1083, 1089, 1091 (9th Cir. 1996) (citing Hutto v.
18 Finney, 437 U.S. 678, 686-87 (1978)). ““The circumstances, nature, and duration of a
19 deprivation of [] necessities must be considered in determining whether a constitutional
20 violation has occurred.”” Hearns v. Terhune, 413, F.3d 1036, 1042 (9th Cir. 2005) (quoting
21 Johnson v. Lewis, 217 F.3d 726, 731 (9th Cir. 2000)).

22 To adequately allege deliberate indifference, a plaintiff must allege facts to support
23 that a defendant knew of, but disregarded, an excessive risk to inmate safety. Farmer, 511
24 U.S. at 832–33. That is, “the official must both [have been] aware of facts from which the
25 inference could be drawn that a substantial risk of serious harm exist[ed], and he must also
26 [have] draw[n] the inference.” Id.

27 Plaintiff complains of various conditions. However, he fails to allege when he
28 endured those conditions. He also fails to allege facts to support that Arpaio, or anyone else,

1 acted with deliberate indifference, including specifically when and how. For that reason,
2 Plaintiff fails to state a claim in Count III and it will be dismissed.

3 **IV. Leave to Amend**

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

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

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

22 **V. Warnings**

23 **A. Release**

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

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

20 **E. Possible Dismissal**

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

25 **IT IS ORDERED:**

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

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

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

6 DATED this 30th day of July, 2012.

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9 _____
G. Murray Snow
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.