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7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE DISTRICT OF ARIZONA  
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10 Jerrod Len B. B. Booth,

11 Plaintiff,

12 v.

13 Inmate Legal Services; Joseph M. Arpaio;  
14 Timothy Overton,

15 Defendants.

No. CV-12-982-PHX-GMS

**ORDER**

16  
17 Pending before the Court is Plaintiff's Application to Proceed in District Court  
18 Without Prepaying Fees or Costs (Doc. 2), which will be granted. The Court will screen  
19 Plaintiff's complaint pursuant to 28 U.S.C. § 1915(e)(2) before it is allowed to be served.  
20 Pursuant to that screening Plaintiff's complaint is dismissed.

21 **I. Screening Complaint Under 28 U.S.C. § 1915(e)(2)**

22 **A. Legal Standards**

23 **1. 28 U.S.C. § 1915(e)(2)**

24 Congress provided with respect to in forma pauperis cases that a district court  
25 "shall dismiss the case at any time if the court determines" that the "allegation of poverty  
26 is untrue" or that the "action or appeal" is "frivolous or malicious," "fails to state a claim  
27 on which relief may be granted," or "seeks monetary relief against a defendant who is  
28 immune from such relief." 28 U.S.C. § 1915(e)(2). While much of § 1915 outlines how

1 §prisoners can file proceedings in forma pauperis, section 1915(e) applies to all in forma  
2 pauperis proceedings not just those filed by prisoners. *Lopez v. Smith*, 203 F.3d 1122,  
3 1127 (9th Cir. 2000). “It is also clear that section 1915(e) not only permits but requires a  
4 district court to dismiss an in forma pauperis complaint if it fails to state a claim or if it is  
5 frivolous or malicious.

6 “[A] complaint, containing both factual allegations and legal conclusions is  
7 frivolous where it lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*,  
8 490 U.S. 319, 325 (1989). Furthermore, “a finding of factual frivolousness is appropriate  
9 when the facts alleged rise to the level of the irrational or wholly incredible, whether or  
10 not there are judicially recognized facts available to contradict them.” *Denton v.*  
11 *Hernandez*, 504 U.S. 25, 33 (1992). “A case is malicious if it was filed with the intention  
12 or desire to harm another.” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).

## 13 **2. As Pleaded Plaintiff’s Complaint Fails to State a Claim**

14 Plaintiff in this case has filed the Complaint on his own behalf. Reading the  
15 Complaint liberally, as this Court is obliged to do, it brings § 1983 claims against  
16 Timothy Overton, Sheriff Joe Arpaio and Inmate Legal Services. The claims are based  
17 on the alleged denial to Plaintiff of his access to the Court by refusing to mail two letters  
18 Plaintiff sent to Volunteer Lawyers Program of Southern Az., and Southern Arizona  
19 Legal Aid. Plaintiff alleges that in mailing these letters he was seeking legal advice and  
20 that the Defendants’ failure to mail them “resulted in Plaintiff’s being convicted and  
21 sentenced to 3.75 years in prison,” for which he seeks “monetary damages in whatever  
22 amount the Court deems appropriate.”

23 Plaintiff cannot bring any § 1983 causes of action against state actors based on any  
24 conduct or proceedings that would imply the invalidity of his criminal conviction unless  
25 that conviction has been otherwise invalidated.

26 When a state prisoner seeks damages in a § 1983 suit, the  
27 district court must consider whether a judgment in favor of  
28 the plaintiff would necessarily imply the invalidity of his  
conviction or sentence; if it would, the complaint must be  
dismissed unless the plaintiff can demonstrate that the

1 conviction or sentence has already been invalidated. But if the  
2 district court determines that the plaintiff's action, even if  
3 successful, will *not* demonstrate the invalidity of any  
4 outstanding criminal judgment against the plaintiff, the action  
5 should be allowed to proceed.

6 *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

7 To the extent that in the context of this § 1983 action Plaintiff now contests that he  
8 was deprived of his right to access the Courts, and that such deprivation resulted in his  
9 wrongful conviction(s) for which he seeks compensation, such claims necessarily imply  
10 the invalidity of Plaintiff's conviction. According to the law, therefore, Plaintiff cannot  
11 raise such claims in a § 1983 action absent the invalidation of Plaintiff's convictions.  
12 Thus, for the reasons stated above, the complaint fails to state a claim and, as such, is  
13 dismissed.

### 14 **3. Leave to Amend**

15 Plaintiff will be given an opportunity, if he so chooses, to amend his complaint. In  
16 the amended complaint, Plaintiff must state claims for which he has a right to recovery.  
17 He must state what rights he believes were violated, the name of the person, persons, or  
18 entities who committed each violation, exactly what that individual did or failed to do,  
19 how the action or inaction of that person is connected to the violation of Plaintiff's rights,  
20 and what specific injury Plaintiff suffered because of the other person's conduct. *See*  
21 *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976), Each claim of an alleged violation  
22 must be set forth in a separate count. The complaint must also state why the federal court  
23 has jurisdiction over Plaintiff's claims. Any amended complaint filed by Plaintiff must  
24 conform to the requirements of Rule 8(a) and (d)(1) of the Federal Rules of Civil  
25 Procedure.

26 Plaintiff is advised that if he elects to file an amended complaint and if he fails to  
27 comply with the Court's instructions explained in this order, the action will be dismissed  
28 pursuant to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil  
Procedure. *See McHenry*, 84 F.3d at 1177 (affirming dismissal with prejudice of  
amended complaint that did not comply with rule 8(a)); *Nevijel v. North Coast Life Ins.*

1 Co., 651 F.2d 671, 673-74 (9th Cir. 1965)(affirming dismissal without leave to amend  
2 second complaint that was “so verbose, confused and redundant that its true substance, if  
3 any, [was] well disguised”).

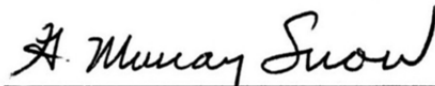
4 **IT IS THEREFORE ORDERED** that Plaintiff’s Application to Proceed in  
5 District Court Without Prepaying Fees or Costs (Doc. 2) is granted.

6 **IT IS FURTHER ORDERED** that pursuant to 28 U.S.C. § 1915(e)(2) Plaintiff’s  
7 Complaint is dismissed for failure to comply with Rule 8, with leave to file an amended  
8 complaint by **June 15, 2012**.

9 **IT IS FURTHER ORDERED** that, if Plaintiff elects not to file an amended  
10 complaint by **June 15, 2012**, the Clerk shall dismiss this action without further Order of  
11 the Court.

12 **IT IS FURTHER ORDERED** that, if Plaintiff elects to file an amended  
13 complaint the complaint may not be served until and unless the Court screens the  
14 amended complaint pursuant to 18 U.S.C. § 1915(e)(2).

15 Dated this 16th day of May, 2012.

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18 G. Murray Snow  
19 United States District Judge  
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