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

Edwin M. Jaramillo,  
Plaintiff,  
vs.  
Glendale County, et al.,  
Defendants.

No. CV 13-1713-PHX-DGC (JFM)

**ORDER**

On August 19, 2013, Plaintiff Edwin M. Jaramillo, who is confined in the Yavapai County Detention Center in Camp Verde, Arizona, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis*. In an Order dated October 16, 2013, the Court denied the deficient Application to Proceed and gave Plaintiff 30 days to pay the filing and administrative fees or file a complete Application to Proceed *In Forma Pauperis*. On October 28, 2013, Plaintiff submitted a new Application to Proceed *In Forma Pauperis*, which was also deficient. In an Order dated December 30, 2013, the Court denied the Application to Proceed and gave Plaintiff an additional 30 days to pay the filing and administrative fees or file a complete Application to Proceed *In Forma Pauperis*.

On January 14, 2013, Plaintiff filed a new Application to Proceed *In Forma Pauperis* (Doc. 8). The Court will grant the Application to Proceed and will dismiss the Complaint with leave to amend.

....

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

2             Plaintiff’s Application to Proceed *In Forma Pauperis* will be granted. 28 U.S.C.  
3     § 1915(a). Plaintiff must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1).  
4     The Court will not assess an initial partial filing fee. *Id.* The statutory filing fee will be  
5     collected monthly in payments of 20% of the previous month’s income credited to  
6     Plaintiff’s trust account each time the amount in the account exceeds \$10.00. 28 U.S.C.  
7     § 1915(b)(2). The Court will enter a separate Order requiring the appropriate government  
8     agency to collect and forward the fees according to the statutory formula.

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

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

16            A pleading must contain a “short and plain statement of the claim *showing* that the  
17     pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8  
18     does not demand detailed factual allegations, “it demands more than an unadorned, the-  
19     defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
20     (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
21     conclusory statements, do not suffice.” *Id.*

22            “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
23     claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
24     550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
25     content that allows the court to draw the reasonable inference that the defendant is liable  
26     for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
27     claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
28     on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s

1 specific factual allegations may be consistent with a constitutional claim, a court must  
2 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
3 at 681.

4 But as the United States Court of Appeals for the Ninth Circuit has instructed,  
5 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,  
6 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less  
7 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
8 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

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

### 18 **III. Complaint**

19 Plaintiff alleges three counts, all Eighth Amendment violations, surrounding the  
20 death of his son, Gabriel C. Jaramillo. Plaintiff sues “Glendale County, AZ,” the City of  
21 Glendale, the State of Arizona and “Phoenix, AZ, A.D.P.S., Etc.” Plaintiff seeks  
22 declaratory relief as well as monetary damages.

23 Plaintiff designates Count I as an Eighth Amendment claim of excessive force by  
24 an officer. He alleges that “officers acted out of malice and their actions were not  
25 reasonable. Therefor[e], they took my son’s life when my son was at a halt. They shot  
26 him[,] but did not have any reason to because he was not armed at all.”

27 Plaintiff designates Count II as an Eighth Amendment claim of cruel and unusual  
28 punishment and excessive force by an officer. Plaintiff alleges: “The state of mind of the

1 officials were not competent because the seriousness of the challenged condition. I  
2 believe that their actions were harsh and uncalled for, which was unnecessary to inflict  
3 pain.”

4 Plaintiff designates Count III as an Eighth Amendment claim of “deliberate  
5 indifference” and excessive force by an officer. Plaintiff alleges: “I tru[]ly feel that the  
6 officers acted very [u]nprofession[al]ly and careless and caused harm to my son and it  
7 was very reckless and showed bad motive and attitude.”

8 In an attachment to his Complaint, Plaintiff asserts that he believes his son’s rights  
9 were violated “by excessive punishment, excessive force, police brutality, mental anguish  
10 and negligence, malice, c[r]uel and unusual punishment, [and] deliberate indifference.”

11 Plaintiff asserts that he has been injured by the loss of his son.

#### 12 **IV. Failure to State a Claim**

13 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the  
14 conduct about which he complains was committed by a person acting under the color of  
15 state law and (2) the conduct deprived him of a federal constitutional or statutory right.  
16 *Wood v. Outlander*, 879 F.2d 583, 587 (9th Cir. 1989). Further, a “plaintiff generally  
17 must assert his own legal rights and interests, and cannot assert the legal rights or  
18 interests of third parties.” *Mothershed v. Justices of the Supreme Court*, 410 F.3d 602,  
19 610 (9th Cir. 2005) (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). Negligence is  
20 not sufficient to state a claim under § 1983. *Daniels v. Williams*, 474 U.S. 327, 330-31  
21 (1986). In addition, a plaintiff must allege that he suffered a specific injury as a result of  
22 the conduct of a particular defendant and he must allege an affirmative link between the  
23 injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377  
24 (1976).

25 Finally, although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404  
26 U.S. 519, 520-21 (1972), conclusory and vague allegations will not support a cause of  
27 action. *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

1 Further, a liberal interpretation of a civil rights complaint may not supply essential  
2 elements of the claim that were not initially pled. *Id.*

3 **A. State of Arizona and A.D.P.S**

4 Plaintiff names the State of Arizona and the A.D.P.S. (presumably referring to the  
5 Arizona Department of Public Safety) as Defendants. Ordinarily, under the Eleventh  
6 Amendment to the Constitution of the United States, neither a state nor a state agency  
7 may be sued in federal court without its consent. *Pennhurst Sate Sch. & Hosp.*, 465 U.S.  
8 89, 100 (1984); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Further, neither the  
9 State of Arizona nor any State agency is a “person” within the meaning of § 1983. *Will v.*  
10 *Michigan Dep’t of State Police*, 491 U.S. 58, 64 (1989) (holding that the term “person” as  
11 used in § 1983 did not include a State or State agency). For both reasons, the State of  
12 Arizona will be dismissed. To the extent Plaintiff is intending to sue the Arizona  
13 Department of Public Safety, it is also dismissed as a Defendant in this case.

14 **B. Cities of Glendale and Phoenix**

15 Plaintiff sues the cities of Glendale and Phoenix. A municipality is a “person” for  
16 purposes of § 1983, i.e., a municipality such as a city or county, may be sued. *See*  
17 *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S.  
18 163, 166 (1993); *Monell v. Dep’t of Soc. Servs. of the City of New York*, 436 U.S. 658,  
19 694 (1978). 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  
21 of the municipality. *Cortez v. County of Los Angeles*, 294 F.3d 1186, 1188 (9th Cir.  
22 2001) (citing *Monell*, 436 U.S. at 690-91); *Thompson v. City of Los Angeles*, 885 F.2d  
23 1439, 1443 (9th Cir. 1989)). Thus, a municipality may not be sued solely because an  
24 injury was inflicted by one of its employees or agents. *Long v. County of Los Angeles*,  
25 442 F.3d 1178, 1185 (9th Cir. 2006). Therefore, a § 1983 claim against a municipal  
26 defendant “cannot succeed as a matter of law” unless a plaintiff: (1) contends that the  
27 municipal defendant maintains a policy or custom pertinent to the plaintiff’s alleged  
28 injury; and (2) explains how such policy or custom caused the plaintiff’s injury. *Sadoski*

1 v. *Mosley*, 435 F.3d 1076, 1080 (9th Cir. 2006) (affirming dismissal of a municipal  
2 defendant pursuant to Fed. R. Civ. P. 12(b)(6)).

3 Plaintiff fails to allege facts to support that the cities of Glendale and Phoenix  
4 maintained policies or customs that resulted in the violation of Plaintiff's federal  
5 constitutional rights or to explain how his injuries were caused by any municipal policy  
6 or custom. Accordingly, Plaintiff fails to state a claim against the cities of Glendale and  
7 Phoenix and they will be dismissed as Defendants.

### 8 **C. Glendale County**

9 Plaintiff sues "Glendale County, AZ," however, there is no Glendale County in  
10 Arizona. Accordingly, "Glendale County, AZ" is dismissed as a Defendant. To the  
11 extent Plaintiff intended to sue Maricopa County, where the City of Glendale is located,  
12 such a claim would fail because Plaintiff has not alleged that Maricopa County  
13 maintained a policy or custom that resulted in the violation of Plaintiff's federal  
14 constitutional rights or to explain how his injuries were caused by any municipal policy  
15 or custom.

### 16 **D. Eighth Amendment Claims**

17 In addition to failing to name a proper Defendant, Plaintiff has failed to state an  
18 Eighth Amendment claim. The Eighth Amendment bars government-imposed  
19 punishment of crimes that is cruel and unusual. *See Fontana v. Haskin*, 262 F.3d 871,  
20 (9th Cir. 2001) ("The 'Fourth Amendment's prohibition against unreasonable seizures of  
21 the person, or the Eighth Amendment's ban on cruel and unusual punishments . . . are the  
22 primary sources of constitutional protection against physically abusive governmental  
23 conduct.'" (quoting *Graham v. Connor*, 490 U.S. 386, 394 (1989)); *Snipes v. DeTella*, 95  
24 F.3d 586, 590 (7th Cir. 1996) (the Eighth Amendment limits the type of punishment that  
25 can be imposed by government).

26 In this case, it is not clear if Plaintiff is asserting that his own rights were violated  
27 by his son's death or if he is asserting claims on behalf of his son or his son's estate. It  
28 does not appear that Plaintiff is asserting that the allegedly wrongful death of his son was

1 the result of any government-imposed punishment on Plaintiff. If Plaintiff is asserting a  
2 claim on behalf of his son or his son's estate, Plaintiff fails to provide basic facts about  
3 his son's death such as when he died, how, or who was allegedly responsible for his son's  
4 death.<sup>1</sup> Accordingly, Plaintiff fails to state a claim in Counts I, II or III and they will be  
5 dismissed.

## 6 **V. Leave to Amend**

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

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

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17  
18 <sup>1</sup> "In § 1983 actions, . . . the survivors of an individual killed as a result of an  
19 officer's excessive use of force may assert a Fourth Amendment claim on that  
20 individual's behalf if the relevant state's law authorizes a survival action." *Hayes v.*  
21 *County of San Diego*, 736 F.3d 1223, 1228 (quoting *Moreland v. Las Vegas Metro.*  
*Police Dept.*, 159 F.3d 365, 369 (9th Cir. 1998)) (deletions in the original). The plaintiff  
22 bringing a survival action "bears the burden of demonstrating that a particular state's law  
23 authorizes a survival action and that the plaintiff meets that state's requirements for  
24 bringing a survival action." *Id.* Arizona's survival statute provides:

25 Every cause of action, except a cause of action for damages for breach of  
26 promise to marry, seduction, libel, slander, separate maintenance, alimony,  
27 loss of consortium or invasion of the right of privacy, shall survive the  
28 death of the person entitled thereto or liable therefor, and may be asserted  
by or against the personal representative of such person, provided that upon  
the death of the person injured, damages for pain and suffering of such  
injured person shall not be allowed.

A.R.S. § 15-3110. Under Arizona's survival statute, "[t]he claim passes from the  
decendent to the personal representatives, and becomes an asset of the estate." *Gandy v.*  
*United States*, 437 F.Supp.2d 1083, 1087 (D. Ariz. 2006) (citing *Barragan v. Superior*  
*Court of Pima County*, 470 P.2d 722, 724 (Ariz. Ct. App. 1970)) (distinguishing between  
a survival claim and a wrongful death claim pursuant to A.R.S. § 12-611, which  
compensates statutory beneficiaries for their injuries.).

1           A first amended complaint supersedes the original complaint. *Ferdik v. Bonzelet*,  
2 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896  
3 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat an original  
4 complaint as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised  
5 in the original complaint and that was voluntarily dismissed or was dismissed without  
6 prejudice is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa*  
7 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

## 8 **VI. Warnings**

### 9 **A. Release**

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

### 14 **B. Address Changes**

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

### 19 **C. Copies**

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

### 23 **D. Possible “Strike”**

24           Because the Complaint has been dismissed for failure to state a claim, if Plaintiff  
25 fails to file an amended complaint correcting the deficiencies identified in this Order, the  
26 dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g).  
27 Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil  
28 judgment *in forma pauperis* under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more

1 prior occasions, while incarcerated or detained in any facility, brought an action or appeal  
2 in a court of the United States that was dismissed on the grounds that it is frivolous,  
3 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner  
4 is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

5 **E. Possible Dismissal**

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

10 **IT IS ORDERED:**

11 (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 8) is **granted**.

12 (2) As required by the accompanying Order to the appropriate government  
13 agency, Plaintiff must pay the \$350.00 filing fee and is not assessed an initial partial  
14 filing fee.

15 (3) The Complaint (Doc. 1) is **dismissed** for failure to state a claim. Plaintiff  
16 has **30 days** from the date this Order is filed to file a first amended complaint in  
17 compliance with this Order.

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

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

23 Dated this 18th day of March, 2014.

24  
25  
26 

27 \_\_\_\_\_  
28 David G. Campbell  
United States District Judge

**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 and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, 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 \$400 filing and administrative fees 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.**





**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.

\_\_\_\_\_  
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\_\_\_\_\_.

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:

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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)

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\_\_\_\_\_  
(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.