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

Jeremy Keith Barrientes,  
Plaintiff,  
vs.  
Tara L. Kramer, et al.,  
Defendants.

No. CV 13-2626-PHX-DGC (MEA)

**ORDER**

Plaintiff Jeremy Keith Barrientes, who is confined in the Arizona State Prison-Kingman, has filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 (Doc. 1) and an Application to Proceed *In Forma Pauperis* (Doc. 2). Plaintiff has also filed a Motion for Appointment of Counsel (Doc. 5). The Court will deny the Motion and will dismiss the Complaint with leave to amend.

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

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

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

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

8             A pleading must contain a “short and plain statement of the claim *showing* that the  
9 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8  
10 does not demand detailed factual allegations, “it demands more than an unadorned, the-  
11 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
12 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
13 conclusory statements, do not suffice.” *Id.*

14             “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
15 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
16 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual  
17 content that allows the court to draw the reasonable inference that the defendant is liable  
18 for the misconduct alleged.” *Id.* “Determining whether a complaint states a plausible  
19 claim for relief [is] . . . a context-specific task that requires the reviewing court to draw  
20 on its judicial experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s  
21 specific factual allegations may be consistent with a constitutional claim, a court must  
22 assess whether there are other “more likely explanations” for a defendant’s conduct. *Id.*  
23 at 681.

24             But as the United States Court of Appeals for the Ninth Circuit has instructed,  
25 courts must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338,  
26 342 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less  
27 stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v.*  
28 *Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*)).

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

### 10 **III. Complaint**

#### 11 **A. Allegations**

12           In his two-count Complaint, Plaintiff sues the following Defendants: Tara L.  
13 Kramer, Certified Reporter #50439 in the Superior Court; Steven C. Tucker, Legal  
14 Advocate in the Office of the Legal Advocate; Utiki Spurling-Lainge, Public Defender;  
15 and Carolyn J. Robinson, Prosecutor/Deputy Maricopa County Attorney. Plaintiff seeks  
16 a declaratory judgment, damages and court costs.

17           In Count I, Plaintiff alleges that his Fourteenth Amendment rights were violated  
18 by a “conspiracy.” He alleges the following: Defendant Kramer “edited and/or falsified  
19 the transcript of proceeding of 11/09/2012 and filed the falsified transcript on 02/02/2013  
20 in CR2010-138881-003 and CR2003-036001-001.” Defendant Robinson “made  
21 additions to a plea agreement that I signed without my knowledge. She then filed the  
22 plea agreement in CR2010-138881-003 and CR2003-036001-001 on 02/18/2011.”  
23 Defendant Robinson “has ignored and/or not answered a Brady Request that I sent her.”  
24 Also, Defendant Robinson “had a duty to file for dismissal in CR2010-138881-003 and  
25 CR2003-036001-00. She ignored that duty.” Plaintiff alleges that he has been “denied  
26 the right to a fair and impartial hearing and/or the proper evidence.” He has been  
27 sentenced to 21 years’ imprisonment “based on a plea agreement [he] did not agree to  
28 because it was altered without [his] knowledge before it was filed.”

1 In Count II, Plaintiff alleges that this “conspiracy” violated his Sixth Amendment  
2 rights by the following: Defendant Tucker “gave testimony against” Plaintiff in a hearing  
3 to change counsel on September 28, 2010. After requesting a competency determination,  
4 Tucker filed a stipulation for competency after Plaintiff told him he “would do anything  
5 to get out of Maricopa County Jail,” and “no competency determination was made,” to  
6 Plaintiff’s knowledge. In cases CR2010-138881-003 and CR2003-036001-001,  
7 Defendant Tucker: did not investigate Plaintiff’s alibis; did not request a Deseralt  
8 hearing; would not defend Plaintiff; did not file a motion for dismissal, despite his duty to  
9 do so; represented “conflicting interests” in Plaintiff’s case; and advised Plaintiff that his  
10 only option was to sign a plea. Defendant Spurling-Lainge “attended ex parte  
11 communication before resentencing”; did not file a motion “to withdraw guilty plea” as  
12 Plaintiff requested; and did not file a notice of post-conviction relief as Plaintiff  
13 requested.

14 **B. Additional Background**

15 According to records available on-line, on February 2, 2011, Plaintiff pled guilty  
16 in Maricopa County Superior Court case #CR2010-138881-003 to two counts of armed  
17 robbery, and one count of misconduct involving weapons.<sup>1</sup> Plaintiff was sentenced on  
18 March 21, 2011 to a total term of imprisonment of 21 years, which was to run  
19 concurrently with the sentence in CR2003-036001-001.<sup>2</sup> On April 8, 2011, the trial court  
20 received Plaintiff’s Notice of Post-Conviction Relief and ordered the Office of the Public  
21 Defender to represent Plaintiff.<sup>3</sup> On May 27, 2012, the court received counsel’s notice of  
22 completion of post-conviction review and granted Plaintiff 45 days to file a pro per  
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25 <sup>1</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/022011/m4604460.pdf>  
26 and <http://www.courtminutes.maricopa.gov/docs/Criminal/042011/m4660782.pdf> (last  
visited April 10, 2014).

27 <sup>2</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/032011/m4649192.pdf>  
(last visited April 10, 2014).

28 <sup>3</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/042011/m4674166.pdf>  
(last visited April 10, 2014).

1 Petition for Post-Conviction Relief (“PCR Petition”).<sup>4</sup> On July 2, 2012, Plaintiff filed his  
2 PCR Petition.<sup>5</sup> The court denied Plaintiff’s PCR Petition on October 16, 2012 as to all  
3 issues raised except for a sentencing error “relating to omitting to state the aggravating  
4 factors on the record that supported the imposition of the stipulated aggravated  
5 sentence.”<sup>6</sup> The error was corrected at a re-sentencing on November 9, 2012.<sup>7</sup> The Court  
6 denied Petitioner’s second PCR Petition on January 14, 2014.<sup>8</sup>

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

8 To state a claim under § 1983, a plaintiff must allege facts supporting that (1) the  
9 conduct about which he complains was committed by a person acting under the color of  
10 state law and (2) the conduct deprived her of a federal constitutional or statutory right.  
11 *Wood v. Ostrander*, 879 F.2d 583, 587 (9th Cir. 1989). A plaintiff must also allege that  
12 he suffered a specific injury as a result of the conduct of a particular defendant and he  
13 must allege an affirmative link between the injury and the conduct of that defendant.  
14 *Rizzo v. Goode*, 423 U.S. 362, 371-72, 377 (1976).

#### 15 **A. Tucker and Spurling-Lainge**

16 Plaintiff sues Tucker and Spurling-Lainge, who both appear to be public  
17 defenders. A prerequisite for any relief under § 1983 are allegations to support that a  
18 defendant acted under the color of state law. The “under color of state law” component is  
19 the equivalent of the “state action” requirement under the Constitution. *Lugar v.*  
20 *Edmondson Oil Co, Inc.*, 457 U.S. 922, 928 (1982); *Jensen v. Lane County*, 222 F.3d

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22 <sup>4</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/052012/m5247473.pdf>  
23 (last visited April 10, 2014).

24 <sup>5</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/072012/m5317875.pdf>  
25 (last visited April 10, 2014).

26 <sup>6</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/102012/m5472471.pdf>  
27 (last visited April 10, 2014).

28 <sup>7</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/112012/m5506123.pdf>  
(last visited April 10, 2014).

<sup>8</sup>See <http://www.courtminutes.maricopa.gov/docs/Criminal/012014/m6121955.pdf>  
(last visited April 10, 2014).

1 570, 574 (9th Cir. 2000) (citing *West v. Atkins*, 487 U.S. 42, 49 (1988); *Rendell-Baker v.*  
2 *Kohn*, 457 U.S. 830, 838 (1982)). “Acting under color of state law is ‘a jurisdictional  
3 requisite for a § 1983 action.’” *Gritchen v. Collier*, 254 F.3d 807, 812 (9th Cir. 2001)  
4 (quoting *West*, 487 U.S. at 46). Whether an attorney representing a criminal defendant is  
5 privately retained, a public defender, or court-appointed counsel, he or she does not act  
6 under color of state law. *See Polk County v. Dodson*, 454 U.S. 312, 317-18 (1981);  
7 *Miranda v. Clark County, Nevada*, 319 F.3d 465, 468 (9th Cir. 2003) (*en banc*). Because  
8 Defendants Tucker and Spurling-Lainge were not acting under color of state law,  
9 Plaintiff fails to state a claim against them, and Tucker and Spurling-Lainge will be  
10 dismissed.

11 **B. Robinson**

12 Plaintiff sues Deputy County Attorney Robinson. A prosecutor is absolutely  
13 immune from liability under § 1983 for conduct in “‘initiating a prosecution and in  
14 presenting the State’s case’” insofar as that conduct is “‘intimately associated with the  
15 judicial phase of the criminal process.’” *Buckley v. Fitzsimmons*, 509 U.S. 259, 270  
16 (1993) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)); *see also Burns v. Reed*,  
17 500 U.S. 478, 486 (1991); *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986). That  
18 is, “[a] prosecutor is protected by absolute immunity from liability for damages under  
19 § 1983 ‘when performing the traditional functions of an advocate.’” *Genzler v.*  
20 *Longanbach*, 410 F.3d 630, 636 (9th Cir. 2005) (quoting *Kalina v. Fletcher*, 522 U.S.  
21 118, 131 (1997)). Absolute immunity extends to a prosecutor “eliciting false or  
22 defamatory testimony from witnesses” or for making false or defamatory statements  
23 during, and related to judicial proceedings. *Buckley*, 509 U.S. at 270 (citations omitted).  
24 “However, ‘the actions of a prosecutor are not absolutely immune merely because they  
25 are performed by a prosecutor.’” *Genzler*, 410 F.3d at 636 (quoting *Buckley*, 509 U.S. at  
26 273). Rather, prosecutorial immunity depends on “the nature of the function performed,  
27 not the identity of the actor who performed it.” *Id.* (quoting *Kalina*, 522 U.S. at 127). A  
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1 prosecutor is only entitled to qualified immunity, rather than absolute immunity, when he  
2 performs administrative or investigative functions. *Id.*

3 Plaintiff alleges in Count I that Defendant Robinson “made additions to a plea  
4 agreement” and filed the agreement. He also alleges that Robinson has not answered a  
5 “Brady Request” he sent her and had a duty to file for dismissal of the cases against him.  
6 Plaintiff fails to state what additions Robinson allegedly made to the plea agreement that  
7 he signed, why Robinson was under a duty to file for dismissal of the cases against him,  
8 or why she was required to respond to his “Brady Request,” or any other facts to support  
9 that any act of Robinson fell outside the scope of absolute prosecutorial immunity.  
10 Defendant Robinson is immune from the claims Plaintiff attempts to allege and will be  
11 dismissed.

### 12 **C. Kramer**

13 Plaintiff makes one allegation against Defendant Kramer—that she “edited and/or  
14 falsified the transcript of proceeding of 11/09/2012 and filed the falsified transcript on  
15 02/02/2013.” Plaintiff fails to allege any facts against Kramer such as what in the  
16 transcript was “edited and/or falsified,” how he was harmed by Kramer’s alleged acts, or  
17 any other facts to support an alleged conspiracy or Fourteenth Amendment violation.  
18 Although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519, 520-  
19 21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey v.*  
20 *Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a  
21 liberal interpretation of a civil rights complaint may not supply essential elements of the  
22 claim that were not initially pled. *Id.* Plaintiff’s claims against Kramer are vague and  
23 conclusory and, therefore, fail to state a claim. Accordingly, Kramer will be dismissed.

### 24 **V. Leave to Amend**

25 Because Plaintiff has failed to state a claim against any properly named  
26 Defendant, Plaintiff’s Complaint will be dismissed for failure to state a claim upon which  
27 relief may be granted. Within 30 days, Plaintiff may submit a first amended complaint to  
28 cure the deficiencies outlined above. The Clerk of Court will mail Plaintiff a court-

1 approved form to use for filing a first amended complaint. If Plaintiff fails to use the  
2 court-approved form, the Court may strike the amended complaint and dismiss this action  
3 without further notice to Plaintiff.<sup>9</sup>

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

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

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17 <sup>9</sup> To the extent Plaintiff is attempting to challenge his state court conviction, he  
18 must seek federal habeas relief under 28 U.S.C. § 2254; he cannot challenge his  
19 conviction or sentence under 42 U.S.C. § 1983. *See Muhammad v. Close*, 540 U.S. 749,  
20 750 (2004) (“Challenges to the validity of any confinement or to particulars affecting its  
21 duration are the province of habeas corpus . . . ; requests for relief turning on the  
22 circumstances of confinement may be presented in a § 1983 action.”); *Badea v. Cox*, 931  
23 F.2d 573, 574 (9th Cir. 1994) (citing *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) and  
24 holding that a civil rights action is the proper method to challenge conditions of  
25 confinement)).

26 Under 28 U.S.C. § 2254, a federal court “shall entertain an application for a writ  
27 of habeas corpus in behalf of a person in custody pursuant to the judgment of a State  
28 court only on the ground that he is in custody in violation of the Constitution or laws or  
treaties of the United States.” 28 U.S.C. § 2254(a). Before an inmate may seek habeas  
relief pursuant to § 2254, he must first have exhausted available state remedies. 28  
U.S.C. § 2254(c), (e). Exhaustion requires that a petitioner’s claims be fairly presented to  
the highest state court within a state’s standard review process in order to provide the  
state with an opportunity to rule on the merits of his federal claims. *See Swoopes v.*  
*Sublett*, 196 F.3d 1008, 1010 (9th Cir. 1999); *see McQuown v. McCartney*, 795 F.2d 807,  
809 (9th Cir. 1986); *Middleton v. Cupp*, 768 F.2d 1083, 1086 (9th Cir. 1985). An  
Arizona petitioner sentenced to less than life in prison or the death penalty may exhaust  
his federal claims by presenting them in a procedurally proper way to the Arizona Court  
of Appeals, either on direct appeal or in post-conviction proceedings, without seeking  
discretionary review in the Arizona Supreme Court. *Swoopes*, 196 F.3d at 1010; *accord*  
*Castillo v. McFadden*, 399 F.3d 993, 998 n.3 (9th Cir. 2005).

1 **VI. Motion for Appointment of Counsel**

2 In his Motion, Plaintiff states that he is unable to afford counsel, his imprisonment  
3 will greatly limit his ability to litigate, the issues involved are complex, and counsel  
4 would be better able to present evidence and cross examine witnesses.

5 There is no constitutional right to the appointment of counsel in a civil case. *See*  
6 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In  
7 proceedings *in forma pauperis*, the court may request an attorney to represent any person  
8 unable to afford one. 28 U.S.C. § 1915(e)(1). Appointment of counsel under 28 U.S.C.  
9 § 1915(e)(1) is required only when “exceptional circumstances” are present. *Terrell v.*  
10 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to  
11 exceptional circumstances requires an evaluation of the likelihood of success on the  
12 merits as well as the ability of Plaintiff to articulate his claims *pro se* in light of the  
13 complexity of the legal issue involved. *Id.* “Neither of these factors is dispositive and  
14 both must be viewed together before reaching a decision.” *Id.* (quoting *Wilborn v.*  
15 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

16 Having considered both factors, it does not appear at this time that exceptional  
17 circumstances are present that would require the appointment of counsel in this case.  
18 Plaintiff’s Complaint has been dismissed. Moreover, Plaintiff is in no different position  
19 than many *pro se* prisoner litigants. Thus, the Court will deny without prejudice  
20 Plaintiff’s Motion for Appointment of Counsel.

21 **VII. Warnings**

22 **A. Release**

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

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**B. Address Changes**

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

**C. Copies**

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

**D. Possible “Strike”**

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

**E. Possible Dismissal**

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

**IT IS ORDERED:**

- (1) Plaintiff’s Application to Proceed *In Forma Pauperis* (Doc. 2) is **granted**.

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

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

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

(5) Plaintiff’s Motion for Appointment of Counsel (Doc. 5) is **denied** without prejudice.

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

Dated this 28th day of April, 2014.



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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.**

**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.

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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 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.

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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.