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

Micah Kanahele,  
  
Plaintiff,  
  
v.  
  
Micheal Gawlik, et al.,  
  
Defendants.

No. CV 20-02481-PHX-JAT (MTM)

**ORDER**

Plaintiff Micah Kanahele, who is confined in the Saguaro Correctional Center, 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). The Court will dismiss the Complaint with leave to amend.

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

The Court will grant Plaintiff’s Application to Proceed In Forma Pauperis. 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 assess an initial partial filing fee of \$6.67. The remainder of the 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 which  
6 relief may be granted, or that seek monetary relief from a defendant who is immune from  
7 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 does  
10 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 content  
17 that allows the court to draw the reasonable inference that the defendant is liable for the  
18 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for  
19 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
20 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual  
21 allegations may be consistent with a constitutional claim, a court must assess whether there  
22 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

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

28     . . . .

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).  
4 Plaintiff's Complaint will be dismissed for failure to state a claim, but because it may  
5 possibly be amended to state a claim, the Court will dismiss it with leave to amend.

6 **III. Complaint**

7 Plaintiff names Investigator Micheal Gawlik, Security Threat Group (STG) Officer  
8 Armando Perez, and Hawaii Contract Monitor Jennifer Bechler as Defendants in his three-  
9 count Complaint. Plaintiff seeks injunctive and declaratory relief and money damages.

10 In Count One, Plaintiff alleges his Eighth Amendment rights were violated by "false  
11 allegations." Plaintiff claims that on September 9,<sup>1</sup> he spoke with non-party Chief of  
12 Security Russell "about talking to Contract Monitor J. Bechler about (interstate compact)  
13 or early parole to Arizona." Plaintiff alleges Russell stated, "your co-defendant there and  
14 didn't you testify or ma[k]e a statement." Plaintiff claims this information is false and he  
15 "never made a statement or testified on [a] co-defendant or anyone ever." Plaintiff claims  
16 Russell told him to calm down and that he was just relaying information from Defendants  
17 Belcher, Gawlik, and Perez. Plaintiff states he immediately wrote to all Defendants and  
18 his attorney. Plaintiff contends his attorney sent him a copy of the grand jury indictment  
19 "with co-defendant[']s statement, and not [Plaintiff's]." Plaintiff gave copies to Russell  
20 and Defendant Gawlik. Gawlik "responded saying he [didn't] know where [Plaintiff was]  
21 getting information from, but . . . did not deny saying these false allegations, which he  
22 could have said." Plaintiff contends Defendants' actions "could have a major impact on  
23 one[']s life or anyone[']s life with these false allegations . . . , especially in a prison  
24 environment to defame ones character causing injury to the reputation of private  
25 individuals such as [Plaintiff]."

26 In Count Two, Plaintiff claims he has been retaliated against, in violation of the First  
27 Amendment. Plaintiff claims Defendants Gawlik, Perez, and Bechler lack "sufficient  
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<sup>1</sup> Plaintiff does not specify a year.

1 information to form a belief as to slandering/defaming one[’s] character with these false  
2 allegations and therefore denies same.” Plaintiff claims he “personally experienced  
3 Defendants’ harassment in retaliation due to past history” and that Defendants “abuse  
4 [their] authority by retaliating against Plaintiff as punishment by making false allegation[s]  
5 claims without documentary evidence provided by the courts.” Plaintiff further claims  
6 Defendant Perez violated his “1st Amendment rights/freedom of speech to speak a cultural  
7 language, claiming it is consider[ed] to be STG activity . . . and gang affiliated to speak or  
8 study our Polynesian cultural language.” Plaintiff argues “this is clearly a[n] ongoing  
9 pattern and a campaign of harassment in retaliation for past history.”

10 In Count Three, Plaintiff alleges violations of his First Amendment free speech  
11 rights. Plaintiff claims Defendant Perez wrote a disciplinary report stating that he  
12 “investigated a phone call on May 14th and discovered a phone number falsified on phone  
13 list and Plaintiff’s friend he claimed was a known prison gang USO family member which  
14 he falsely accused.” Plaintiff contends that “instead of giving a [disciplinary report] for  
15 falsifying a phone list number, which was reason for [a disciplinary report], . . . Officer  
16 Perez sanction[ed] Plaintiff on a [disciplinary report] for STG activity claiming friend is a  
17 known USO gang member.” Plaintiff asserts his friend was not a USO gang member and  
18 this fact was verified by Officer Aguilar. Plaintiff claims that at his disciplinary hearing  
19 he was told the report was issued because he had said, “wassup uce,” which he states is  
20 “short for uso which means brother in on[e] of [the] Polynesian cultural languages.”  
21 Plaintiff asked why he was given a disciplinary report for “speaking our cultural language,”  
22 and was told he could appeal. Plaintiff appealed the disciplinary conviction to Warden  
23 Fink, who denied the appeal “without looking into all the facts.”

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

25 To state a § 1983 claim, a plaintiff must show that (1) acts by the defendants  
26 (2) under color of state law (3) deprived him of federal rights, privileges or immunities and  
27 (4) caused him damage. *Thornton v. City of St. Helens*, 425 F.3d 1158, 1163-64 (9th Cir.  
28 2005) (quoting *Shoshone-Bannock Tribes v. Idaho Fish & Game Comm’n*, 42 F.3d 1278,

1 1284 (9th Cir. 1994)). In addition, a plaintiff must allege that he suffered a specific injury  
2 as a result of the conduct of a particular defendant and he must allege an affirmative link  
3 between the injury and the conduct of that defendant. *Rizzo v. Goode*, 423 U.S. 362, 371-  
4 72, 377 (1976).

5 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,  
6 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*  
7 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a  
8 civil rights complaint may not supply essential elements of the claim that were not initially  
9 pled. *Id.*

10 **A. Count One**

11 Plaintiff's allegations in Count One are too vague to state claim. To the extent  
12 Plaintiff intends to claim Defendant Gawlik defamed him by making "false accusations,"  
13 this claim is not actionable under § 1983. An action for damage to reputation ordinarily  
14 "lies . . . in the tort of defamation, not in [42 U.S.C. §] 1983." *Fleming v. Dep't of Public*  
15 *Safety*, 837 F.2d 401, 409 (9th Cir. 1988). "To recover damages for defamation under  
16 § 1983, a plaintiff must satisfy the 'stigma-plus test' . . . . Under that test, 'a plaintiff must  
17 allege loss of a recognizable property or liberty interest in conjunction with the allegation  
18 of injury to reputation.'" *American Consumer Pub. Ass'n, Inc. v. Margosian*, 349 F.3d  
19 1122, 1125-26 (9th Cir. 2003) (quoting *Cooper v. Dupnik*, 924 F.2d 1520, 1532 (9th Cir.  
20 1991), *rev'd on other grounds*, 963 F.2d 1220, 1235 n.6 (9th Cir. 1992) (en banc)). "There  
21 are two ways to state a cognizable § 1983 claim for defamation-plus: (1) allege that the  
22 injury to reputation was *inflicted in connection* with a federally protected right, or (2) allege  
23 that the injury to reputation *caused the denial* of a federally protected right." *Herb Hallman*  
24 *Chevrolet, Inc. v. Nash-Holmes*, 169 F.3d 636, 645 (9th Cir. 1999); *see Paul v. Davis*, 424  
25 U.S. 693, 703 (1976).

26 Plaintiff has not alleged facts showing that any injury to his reputation was inflicted  
27 in connection with a federally protected right or that it caused the denial of a federally  
28 protected right.

1 To the extent Plaintiff may intend to claim the “false accusations” threatened his  
2 safety in violation of the Eighth Amendment, he also fails to state a claim. To state an  
3 Eighth Amendment threat-to-safety claim, plaintiffs must meet a two-part test. “First, the  
4 alleged constitutional deprivation must be, objectively, sufficiently serious” such that the  
5 “official’s act or omission must result in the denial of the minimal civilized measure of  
6 life’s necessities.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (internal quotations  
7 omitted). Second, the prison official must have a “sufficiently culpable state of mind,” i.e.,  
8 he must act with “deliberate indifference to inmate health or safety.” *Id.* (internal  
9 quotations omitted). Deliberate indifference is a higher standard than negligence or lack  
10 of ordinary due care for the prisoner’s safety. *Id.* at 835. In defining “deliberate  
11 indifference” in this context, the Supreme Court has imposed a subjective test: “the official  
12 must both be aware of facts from which the inference could be drawn that a substantial risk  
13 of serious harm exists, *and* he must also draw the inference.” *Id.* at 837 (emphasis added).

14 Plaintiff has not alleged facts showing that the “false accusations” created a threat  
15 to his safety, or that any of the named Defendants was aware of such a threat but failed to  
16 act. Accordingly, Plaintiff has failed to state a claim in Count One.

## 17 **B. Count Two**

18 A viable claim of First Amendment retaliation contains five basic elements: (1) an  
19 assertion that a state actor took some adverse action against an inmate (2) because of  
20 (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise  
21 of his First Amendment rights (or that the inmate suffered more than minimal harm) and  
22 (5) did not reasonably advance a legitimate correctional goal. *Rhodes v. Robinson*, 408  
23 F.3d 559, 567-68 (9th Cir. 2005); *see also Hines v. Gomez*, 108 F.3d 265, 267 (9th Cir.  
24 1997) (retaliation claim requires an inmate to show (1) that the prison official acted in  
25 retaliation for the exercise of a constitutionally protected right, and (2) that the action  
26 “advanced no legitimate penological interest”). The plaintiff has the burden of  
27 demonstrating that his exercise of his First Amendment rights was a substantial or  
28 motivating factor behind the defendants’ conduct. *Mt. Healthy City Sch. Dist. Bd. of Educ.*

1 v. *Doyle*, 429 U.S. 274, 287 (1977); *Soranno's Gasco, Inc. v. Morgan*, 874 F.2d 1310, 1314  
2 (9th Cir. 1989).

3 Plaintiff's claims in Count Two are too vague to state a First Amendment retaliation  
4 claim. Plaintiff does not describe what Defendants did or failed to do to harass or retaliate  
5 against him. Further, although Plaintiff alleges that he suffered retaliation "due to past  
6 history," he does not describe the "past history" or allege facts showing his exercise of his  
7 First Amendment rights was a substantial or motivating factor behind Defendants' conduct.  
8 Finally, Plaintiff does not allege that he suffered more than minimal harm as a result of any  
9 alleged retaliation. Plaintiff has therefore failed to state a claim in Count Two.

### 10 C. Count Three

11 To the extent Plaintiff claims in Count Three that his disciplinary conviction  
12 violated his First Amendment rights, he fails to state a claim. "[A] prison inmate retains  
13 those First Amendment rights that are not inconsistent with his status as a prisoner or with  
14 the legitimate penological objectives of the corrections system." *Pell v. Procunier*, 417  
15 U.S. 817, 822 (1974); see also *Clement v. Cal. Dep't of Corr.*, 364 F.3d 1148, 1151 (9th  
16 Cir. 2004) (*per curiam*). A regulation that impinges on First Amendment rights "is valid  
17 if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S.  
18 78, 79 (1987); see also *Beard v. Banks*, 548 F.3d 521, 528 (2006). Legitimate penological  
19 interests include "the preservation of internal order and discipline, the maintenance of  
20 institutional security against escape or unauthorized entry, and the rehabilitation of the  
21 prisoners." *Procunier v. Martinez*, 416 U.S. 396, 412 (1974). Prison regulations may be  
22 content-based when the regulation is related to legitimate security concerns, but regulations  
23 must otherwise be content-neutral. See *Thornburgh v. Abbott*, 490 U.S. 401, 415-16  
24 (1989).

25 Plaintiff appears to claim that he was convicted of a disciplinary violation for using  
26 language associated with gang activity during a telephone conversation. The prevention  
27 of gang activity is a legitimate security concern and Plaintiff has not alleged facts showing  
28 he was convicted of the disciplinary violation without a legitimate penological purpose.

1 To the extent Plaintiff may intend to claim he was denied due process during  
2 disciplinary proceedings, the Court must first decide whether Plaintiff was entitled to any  
3 process, and if so, whether he was denied any constitutionally required procedural  
4 safeguard. Liberty interests that entitle an inmate to due process are “generally limited to  
5 freedom from restraint which, while not exceeding the sentence in such an unexpected  
6 manner as to give rise to protection by the Due Process Clause of its own force, nonetheless  
7 imposes atypical and significant hardship on the inmate in relation to the ordinary incidents  
8 of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995) (internal citations omitted).

9 To determine whether an inmate is entitled to the procedural protections afforded  
10 by the Due Process Clause, the Court must look to the particular restrictions imposed and  
11 ask whether they “present the type of atypical, significant deprivation in which a state  
12 might conceivably create a liberty interest.” *Mujahid v. Meyer*, 59 F.3d 931, 932 (9th Cir.  
13 1995) (quoting *Sandin*, 515 U.S. at 486). “Atypicality” requires not merely an empirical  
14 comparison, but turns on the importance of the right taken away from the prisoner. *See*  
15 *Carlo v. City of Chino*, 105 F.3d 493, 499 (9th Cir. 1997). To determine whether the  
16 sanctions are atypical and a significant hardship, courts look to prisoner’s conditions of  
17 confinement, the duration of the sanction, and whether the sanction will affect the duration  
18 of the prisoner’s sentence. *See Keenan v. Hall*, 83 F.3d 1083, 1088-89 (9th Cir. 1996).

19 Plaintiff does not describe the sanctions he received as a result of the disciplinary  
20 conviction and therefore does not show whether they constituted atypical and significant  
21 hardships. *See Sandin*, 515 U.S. at 475-76, 487 (30 days’ disciplinary segregation is not  
22 atypical and significant); *Smith v. Mensinger*, 293 F.3d 641, 654 (3rd Cir. 2002) (seven  
23 months of disciplinary confinement “does not, on its own, violate a protected liberty  
24 interest”); *Jones v. Baker*, 155 F.3d 810 (6th Cir. 1998) (two and one-half years’  
25 administrative segregation is not atypical and significant); *Rizzo v. Dawson*, 778 F.2d 527,  
26 530 (9th Cir. 1985) (prison authorities may change a prisoner’s “place of confinement even  
27 though the degree of confinement may be different and prison life may be more  
28 disagreeable in one institution than in another” without violating a prisoner’s due process

1 rights); *Lucero v. Russell*, 741 F.2d 1129 (9th Cir. 1984) (administrative transfer to  
2 maximum security without a hearing does not infringe on any protected liberty interest).

3 Accordingly, Plaintiff fails to state a claim in Count Three.

4 **V. Leave to Amend**

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

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

15 In each count, Plaintiff must write short, plain statements telling the Court: (1) the  
16 constitutional right Plaintiff believes was violated; (2) the name of the Defendant who  
17 violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or  
18 inaction of that Defendant is connected to the violation of Plaintiff’s constitutional right;  
19 and (5) what specific injury Plaintiff suffered because of that Defendant’s conduct. *See*  
20 *Rizzo v. Goode*, 423 U.S. at 371-72, 377.

21 Plaintiff must repeat this process for each person he names as a Defendant. If  
22 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific  
23 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for  
24 failure to state a claim. **Conclusory allegations that a Defendant or group of**  
25 **Defendants has violated a constitutional right are not acceptable and will be**  
26 **dismissed.**

27 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,  
28 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d

1 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint  
2 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the  
3 original Complaint and that was voluntarily dismissed or was dismissed without prejudice  
4 is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693  
5 F.3d 896, 928 (9th Cir. 2012) (en banc).

6 **VI. Warnings**

7 **A. Release**

8 If Plaintiff is released while this case remains pending, and the filing fee has not  
9 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court  
10 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or  
11 (2) file a *non*-prisoner application to proceed in forma pauperis. Failure to comply may  
12 result in dismissal of this action.

13 **B. Address Changes**

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

18 **C. Possible “Strike”**

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

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**D. 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**.

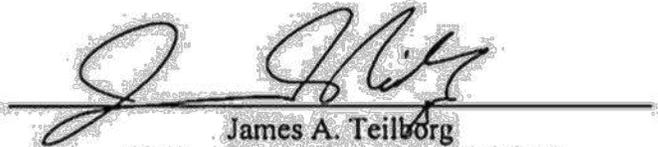
(2) As required by the accompanying Order to the appropriate government agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee of \$6.67.

(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) and deny any pending unrelated motions as moot.

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

Dated this 7th day of January, 2021.



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James A. Teilborg  
Senior 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. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
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. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

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 within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, 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,

v.

(1) \_\_\_\_\_,  
(Full Name of Defendant)

(2) \_\_\_\_\_,

(3) \_\_\_\_\_,

(4) \_\_\_\_\_,

Defendant(s).

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

**CASE NO.** \_\_\_\_\_  
(To be supplied by the Clerk)

**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.  
 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 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)

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