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

Gerald Vaughn Gwen,  
Plaintiff,  
v.  
Scott Mascher, et al.,  
Defendants.

No. CV 20-08225-PCT-JAT (JFM)

**ORDER**

On August 27, 2020, Plaintiff Gerald Vaughn Gwen, who is confined in the Yavapai County Detention Center, filed a pro se civil rights Complaint pursuant to 42 U.S.C. §§ 1983 and 1985 (Doc. 1), a Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 2), a Declaration to TRO Application, and a Motion for Expedited Processing (Doc. 5). The Court will give Plaintiff thirty days to pay the filing and administrative fees or file a complete Application to Proceed In Forma Pauperis, dismiss the Complaint with leave to amend, deny without prejudice the Motion for a Temporary Restraining Order and Preliminary Injunction, and deny as moot the Motion for Expedited Processing.

**I. Payment of Filing Fee**

When bringing an action, a prisoner must either pay the \$350.00 filing fee and a \$50.00 administrative fee in a lump sum or, if granted the privilege of proceeding in forma pauperis, pay the \$350.00 filing fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed in forma pauperis requires an affidavit of indigence and a

1 certified copy of the inmate’s trust account statement for the six months preceding the filing  
2 of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must submit statements from each  
3 institution where he was confined during the six-month period. Id. To assist prisoners in  
4 meeting these requirements, the Court requires use of a form application. LRCiv 3.4.

5 If a prisoner is granted leave to proceed in forma pauperis, the Court will assess an  
6 initial partial filing fee of 20% of either the average monthly deposits or the average  
7 monthly balance in Plaintiff’s account, whichever is greater. 28 U.S.C. § 1915(b)(1). An  
8 initial partial filing fee will only be collected when funds exist. 28 U.S.C. § 1915(b)(4).  
9 The balance of the \$350.00 filing fee will be collected in monthly payments of 20% of the  
10 preceding month’s income credited to an inmate’s account, each time the amount in the  
11 account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).

12 Because Plaintiff has not paid the \$400.00 filing and administrative fees or filed an  
13 Application to Proceed In Forma Pauperis, Plaintiff will be permitted thirty days from the  
14 filing date of this Order to submit a properly executed and certified Application to Proceed  
15 In Forma Pauperis, using the form included with this Order, or pay the \$400.00 filing and  
16 administrative fees.

## 17 **II. Statutory Screening of Prisoner Complaints**

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

24 Local Rule of Civil Procedure 3.4 requires in part that “[a]ll complaints and  
25 applications to proceed in forma pauperis by incarcerated persons shall be signed and  
26 legibly written or typewritten on forms approved by the Court and in accordance with the  
27 instructions provided with the forms.” The court-approved form Complaint is six pages  
28 long and both the form Complaint and accompanying instructions permit an inmate to

1 attach “**no more than fifteen additional pages**” of standard letter-sized paper. (Emphasis  
2 in original.) A document that complies with Local Rule of Civil Procedure 3.4, therefore,  
3 would be filed on the court-approved form and would be no longer than 21 pages.

4 Plaintiff’s 31-page Complaint is not on a court-approved form as required by Local  
5 Rule of Civil Procedure 3.4 and does not meet the page requirement. Plaintiff’s Complaint  
6 will therefore be dismissed without prejudice, with leave to amend, in order for Plaintiff to  
7 file an amended complaint on a court-approved form.

### 8 **III. Leave to Amend**

9 Within 30 days, Plaintiff may submit a first amended complaint on a court-approved  
10 form. The Clerk of Court will mail Plaintiff a court-approved form to use for filing a first  
11 amended complaint. If Plaintiff fails to use the court-approved form, the Court may strike  
12 the amended 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.

17 A first amended complaint supersedes the original Complaint. *Ferdik v. Bonzelet*,  
18 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v. Richard Feiner & Co.*, 896 F.2d  
19 1542, 1546 (9th Cir. 1990). After amendment, the Court will treat the original Complaint  
20 as nonexistent. *Ferdik*, 963 F.2d at 1262. Any cause of action that was raised in the  
21 original Complaint and that was voluntarily dismissed or was dismissed without prejudice  
22 is waived if it is not alleged in a first amended complaint. *Lacey v. Maricopa County*, 693  
23 F.3d 896, 928 (9th Cir. 2012) (en banc).

24 If Plaintiff files an amended complaint, he should be aware of the following:

#### 25 **A. Vague and Conclusory Allegations**

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

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

3 **B. Factual Specificity**

4 To state a valid claim under § 1983, plaintiffs must allege that they suffered a  
5 specific injury as a result of specific conduct of a defendant and show an affirmative link  
6 between the injury and the conduct of that defendant. See *Rizzo v. Goode*, 423 U.S. 362,  
7 371-72, 377 (1976). A lack of factual specificity as to what any particular defendant did  
8 or failed to do is insufficient. See *Marcilis v. Twp. of Redford*, 693 F.3d 589, 596 (6th Cir.  
9 2012) (upholding dismissal of Bivens complaint that referred to all defendants “generally  
10 and categorically” because the plaintiff had failed to “‘allege, with particularity, facts that  
11 demonstrate what each defendant did to violate the asserted constitutional right.’” (quoting  
12 *Lanman v. Hinson*, 529 F.3d 673, 684 (6th Cir. 2008))); *Robbins v. Oklahoma*, 519 F.3d  
13 1242, 1250 (10th Cir. 2008) (“Given the complaint’s use of either the collective term  
14 ‘Defendants’ or a list of the defendants named individually but with no distinction as to  
15 what acts are attributable to whom, it is impossible for any of these individuals to ascertain  
16 what particular unconstitutional acts they are alleged to have committed.”).

17 **C. Respondeat Superior Liability**

18 There is no respondeat superior liability under § 1983, and therefore, a defendant’s  
19 position as the supervisor of persons who allegedly violated Plaintiff’s constitutional rights  
20 does not impose liability. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658 (1978); *Hamilton*  
21 *v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th  
22 Cir. 1989). “Because vicarious liability is inapplicable to . . . § 1983 suits, a plaintiff must  
23 plead that each Government-official defendant, through the official’s own individual  
24 actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676. A plaintiff must allege  
25 facts, not simply conclusions, that show that an individual was personally involved in the  
26 deprivation of his civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

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1           **D.     Official Capacity Claims Against State Employees**

2           A claim against an individual in his or her official capacity is “only another way of  
3 pleading an action against an entity of which an officer is an agent.” *Monell*, 436 U.S. at  
4 690 n.55. “[A] suit against a state official in his or her official capacity is not a suit against  
5 the official but rather is a suit against the official’s office. As such, it is no different from  
6 a suit against the State itself.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989)  
7 (internal citation omitted).

8           A plaintiff cannot maintain a lawsuit for damages against Arizona employees in  
9 their official capacities. See *Hafer v. Melo*, 502 U.S. 21, 27 (1991) (“State officials sued  
10 for damages in their official capacity are not ‘persons’ for purposes of the suit because they  
11 assume the identity of the government that employs them.”); see also *Gilbreath v. Cutter*  
12 *Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991) (“[A] state is not a ‘person’ for  
13 purposes of section 1983. Likewise[,] ‘arms of the State’ . . . are not ‘persons’ under section  
14 1983.”) (citation omitted). State superior courts are “arms of the State” for Eleventh  
15 Amendment purposes. See *Lucas v. Ariz. Sup. Ct. Fiduciary Certification Program*, 457  
16 Fed. Appx. 689, 690 (9th Cir. 2011) (“The Arizona Supreme Court . . . is an ‘arm of the  
17 state’ for Eleventh Amendment purposes.”); *Greater Los Angeles Council on Deafness,*  
18 *Inc. v. Zolin*, 812 F.2d 1103, 1110 (9th Cir. 1987) (“[A] suit against the Superior Court is  
19 a suit against the State, barred by the eleventh amendment.”).

20           A plaintiff may maintain a lawsuit against Arizona employees in their official  
21 capacity for prospective declaratory and injunctive relief because, under the doctrine set  
22 forth in *Ex parte Young*, 209 U.S. 123 (1908), the Eleventh Amendment “does not . . . bar  
23 actions for prospective declaratory or injunctive relief against state officers in their official  
24 capacities for their alleged violations of federal law.” *Coal. to Defend Affirmative Action*  
25 *v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012). The exception is intended to prevent  
26 continuing violations of federal law and “does not permit judgments against state officers  
27 declaring that they violated federal law in the past.” *P.R. Aqueduct & Sewer Auth. v.*  
28 *Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993); see also *Hindes v. FDIC*, 137 F.3d 148,

1 166 (3d Cir. 1998) (“The type of prospective relief permitted under Young is relief intended  
2 to prevent a continuing violation of federal law.”).

3 Moreover, “in an official-capacity suit the entity’s ‘policy or custom’ must have  
4 played a part in the violation of federal law.” *Kentucky v. Graham*, 473 U.S. 159, 166  
5 (1985); see also *Los Angeles County v. Humphries*, 562 U.S. 29, 39 (2010) (the “‘policy  
6 or custom’ requirement [in Monell] applies in § 1983 cases irrespective of whether the  
7 relief sought is monetary or prospective.”). A plaintiff must allege, as a matter of law, that  
8 a specific policy or custom caused him to suffer constitutional injury. *Sadoski v. Mosley*,  
9 435 F.3d 1076, 1080 (9th Cir. 2006).

#### 10 **E. Defense Attorneys**

11 A prerequisite for any relief under § 1983 is a showing that the defendant has acted  
12 under the color of state law. An attorney representing a criminal defendant does not act  
13 under color of state law. See *Polk County v. Dodson*, 454 U.S. 312, 325 (1981); see also  
14 *Szjarto v. Legeman*, 466 F.2d 864, 864 (9th Cir. 1972) (per curiam) (“[A]n attorney,  
15 whether retained or appointed, does not act ‘under color of’ state law.”).

#### 16 **F. Immunity for Judges, Prosecutors, and Witnesses**

17 Judges are absolutely immune from § 1983 suits for damages for their judicial acts  
18 except when they are taken “in the ‘clear absence of all jurisdiction.’” *Stump v. Sparkman*,  
19 435 U.S. 349, 356-57 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871));  
20 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). An act is “judicial” when it is a  
21 function normally performed by a judge and the parties dealt with the judge in his or her  
22 judicial capacity. *Stump*, 435 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th Cir.  
23 1990). This immunity attaches even if the judge is accused of acting maliciously and  
24 corruptly, *Pierson v. Ray*, 386 U.S. 547, 554 (1967), or of making grave errors of law or  
25 procedure. See *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988).

26 Prosecutors are absolutely immune from liability for damages under § 1983 for their  
27 conduct in “initiating a prosecution and in presenting the State’s case” insofar as that  
28 conduct is “intimately associated with the judicial phase of the criminal process.” *Buckley*

1 v. Fitzsimmons, 509 U.S. 259, 270 (1993) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430-  
2 31 (1976)). Immunity even extends to prosecutors for “eliciting false or defamatory  
3 testimony from witnesses or for making false or defamatory statements during, and related  
4 to, judicial proceedings.” *Buckley*, 509 U.S. at 270; see also *Broam v. Bogan*, 320 F.3d  
5 1023, 1029-30 (9th Cir. 2003) (prosecutor absolutely immune from liability for failure to  
6 investigate the accusations against a defendant before filing charges; for knowingly using  
7 false testimony at trial; and for deciding not to preserve or turn over exculpatory material  
8 before trial, during trial, or after conviction); *Roe v. City & County of S.F.*, 109 F.3d 578,  
9 583-84 (9th Cir. 1997) (absolute immunity for decision to prosecute and for professional  
10 evaluation of a witness and evidence assembled by the police).

11         Witnesses in judicial proceedings, including police officers, are also shielded by  
12 absolute immunity, even if they committed perjury. *Briscoe v. LaHue*, 460 U.S. 325, 326  
13 (1983); *Paine v. City of Lompoc*, 265 F.3d 975, 981 (9th Cir. 2001).

#### 14         **G.     Conspiracies**

15         To state a claim under 42 U.S.C. § 1985(3), a complaint must allege (1) a  
16 conspiracy, (2) to deprive any person or a class of persons of the equal protection of the  
17 laws, or of equal privileges and immunities under the laws, (3) an act by one of the  
18 conspirators in furtherance of the conspiracy, and (4) a personal injury, property damage  
19 or a deprivation of any right or privilege of a citizen of the United States. *Griffin v.*  
20 *Breckenridge*, 403 U.S. 88, 102-103 (1971). Additionally, there must be some “racial or  
21 perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators’  
22 action.” *Id.* at 102.

23         To state a conspiracy claim, a plaintiff must show “an agreement or ‘meeting of the  
24 minds’ to violate constitutional rights.” *Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002)  
25 (citation omitted). The Court “need not, however, accept as true allegations that . . . are  
26 merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell*  
27 *v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), amended on other grounds, 275  
28 F.3d 1187 (9th Cir. 2001); see also *Woodrum v. Woodward County*, 866 F.2d 1121, 1126

1 (9th Cir. 1989) (conclusory allegations of conspiracy did not support a § 1983 claim);  
2 *Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 626 (9th Cir. 1988) (“A mere allegation  
3 of conspiracy without factual specificity is insufficient.”). There is not a “conspiracy”  
4 simply because defendants engaged in the same conduct. See *Myers v. City of Hermosa*  
5 *Beach*, 299 F. App’x 744, 747 (9th Cir. 2008) (“Before a conspiracy claim can be sustained,  
6 a plaintiff must show a meeting of the minds by the so-called conspirators. . . . [T]he  
7 evidence adduced must demonstrate more than the mere fact that two people did or said  
8 the same thing; the evidence must actually point to an agreement.”) (citations omitted); cf.  
9 *Ting v. United States*, 927 F.2d 1504, 1512-13 (9th Cir. 1991) (finding insufficient  
10 evidence that defendants “conspired” to distort the facts surrounding a shooting, although  
11 the agents had a post-shooting meeting to discuss the plaintiff’s arrest, failed to explain an  
12 injury to the plaintiff’s arm, and allegedly made false statements regarding the  
13 circumstances of the shooting).

14 Finally, “[t]he absence of a section 1983 deprivation of rights precludes a section  
15 1985 conspiracy claim predicated on the same allegations.” *Thornton v. City of St. Helens*,  
16 425 F.3d 1158, 1168 (9th Cir. 2005) (quoting *Caldeira v. County of Kauai*, 866 F.2d 1175,  
17 1182 (9th Cir. 1989)).

#### 18 **H. Private Parties**

19 “Like the state-action requirement of the Fourteenth Amendment, the under-color-  
20 of-state-law element of § 1983 excludes from its reach ‘merely private conduct, no matter  
21 how discriminatory or wrongful.’” *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 50  
22 (1999) (quoting *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982)). “[S]tate action requires  
23 both an alleged constitutional deprivation ‘caused by the exercise of some right or privilege  
24 created by the State or by a rule of conduct imposed by the State or by a person for whom  
25 the State is responsible,’ and that ‘the party charged with the deprivation must be a person  
26 who may fairly be said to be a state actor.’” *Id.* (quoting *Lugar v. Edmondson Oil Co.*, 457  
27 U.S. 922, 937 (1982)).

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1           Moreover, although private parties who are jointly engaged with state officials in  
2 the challenged action are acting under color of law, *Collins v. Womancare*, 878 F.2d 1145,  
3 1154 (9th Cir. 1989), “merely complaining to the police does not convert a private party  
4 into a state actor. Nor is execution by a private party of a sworn complaint which forms  
5 the basis of an arrest enough to convert the private party’s acts into state action.” *Id.* at  
6 1155 (internal citations omitted).

7           **I. Statute of Limitations**

8           The applicable statute of limitations in an action under § 1983 is the forum state’s  
9 statute of limitations for personal injury actions. *Wilson v. Garcia*, 471 U.S. 261,  
10 276 (1985). The Arizona statute of limitations for personal injury actions is two years. See  
11 *Ariz. Rev. Stat. § 12-542(1)*.

12           Accrual of § 1983 claims is governed by federal law. *Wallace v. Kato*, 549 U.S.  
13 384, 388 (2007). Under federal law, a claim accrues when the plaintiff “knows or has  
14 reason to know of the injury that is the basis of the action.” *Pouncil v. Tilton*, 704 F.3d  
15 568, 574 (9th Cir. 2012); *Cabrera v. City of Huntington Park*, 159 F.3d 374, 381 (9th Cir.  
16 1998). The statute of limitations for false arrest/false imprisonment claims begins to run  
17 when the plaintiff has been detained pursuant to legal process, *Wallace*, 549 U.S. at 397,  
18 and unlawful search and seizure claims “accrue[] when the wrongful act occurs,” *Belanus*  
19 *v. Clark*, 796 F.3d 1021,1026 (9th Cir. 2015). See also *Rollin v. Cook*, 466 F. App’x 665,  
20 666-67 (9th Cir. 2012) (claims related to plaintiff’s false arrest accrue on date plaintiff was  
21 arraigned and bound over for trial; claims related to illegal search and seizure accrued on  
22 the search date).

23           **J. Heck v. Humphrey**

24           A prisoner’s claim for damages cannot be brought under 42 U.S.C. § 1983 if “a  
25 judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction  
26 or sentence,” unless the prisoner demonstrates that the conviction or sentence has  
27 previously been reversed, expunged, or otherwise invalidated. *Heck v. Humphrey*, 512  
28 U.S. 477, 486-87 (1994); see *Guerrero v. Gates*, 442 F.3d 697, 703 (9th Cir. 2006)

1 (“Wrongful arrest, malicious prosecution, and a conspiracy among . . . officials to bring  
2 false charges against [plaintiff]” were barred by Heck); Cabrera, 159 F.3d at 380 (Heck  
3 barred plaintiff’s civil rights claims for false arrest and false imprisonment until conviction  
4 was invalidated); Smithart v. Towery, 79 F.3d 951, 952 (9th Cir. 1996) (per curiam) (“There  
5 is no question that Heck bars [plaintiff’s] claims that defendants lacked probable cause to  
6 arrest him and brought unfounded criminal charges against him.”); Trimble v. City of Santa  
7 Rosa, 49 F.3d 583, 584-85 (9th Cir. 1995) (per curiam) (claim that officers failed to read  
8 Miranda warnings was barred by Heck); Channer v. Mitchell, 43 F.3d 786, 787 (2d Cir.  
9 1994) (per curiam) (claims that police officers committed perjury and coerced witnesses to  
10 wrongfully identify plaintiff were barred by Heck).

11 **K. Release Unavailable in a § 1983 Action**

12 The Court cannot order a plaintiff’s release in a § 1983 action. See Preiser v.  
13 Rodriguez, 411 U.S. 475, 488-90 (1973) (if a prisoner seeks relief that would result in  
14 immediate or speedier release, his exclusive remedy is a petition for habeas corpus).

15 **IV. Motion for a Temporary Restraining Order and Preliminary Injunction**

16 Whether to grant or deny a motion for a temporary restraining order or preliminary  
17 injunction is within the Court’s discretion. See Miss Universe, Inc. v. Flesher, 605 F.2d  
18 1130, 1132-33 (9th Cir. 1979). An injunction or restraining order is appropriate to grant  
19 “intermediate relief of the same character as that which may be granted finally,” but relief  
20 is not proper when it is requested on matters lying wholly outside the issues in the suit.  
21 DeBeers Consol. Mines v. United States., 325 U.S. 212, 220 (1945). To obtain injunctive  
22 relief, the party “must necessarily establish a relationship between the injury claimed in the  
23 party’s motion and the conduct asserted in the complaint.” Devose v. Herrington, 42 F.3d  
24 470, 471 (8th Cir. 1994) (per curiam). In other words, Plaintiff must seek injunctive relief  
25 related to the merits of his underlying claims. Because the Court has dismissed the  
26 Complaint, the Court will deny without prejudice Plaintiff’s Motion for a Temporary  
27 Restraining Order and Preliminary Injunction.

28 . . . .

1 **V. Motion for Expedited Processing**

2 Plaintiff requests the Court “grant a[n] expedited processing on his Application for  
3 Temporary Restraining Order and Preliminary Injunction.” Because this Order dismisses  
4 the Motion for a Temporary Restraining Order and Preliminary Injunction, the Court will  
5 deny as moot the Motion for Expedited Processing.

6 **VI. Warnings**

7 **A. Address Changes**

8 Plaintiff must file and serve a notice of a change of address in accordance with Rule  
9 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other  
10 relief with a notice of change of address. Failure to comply may result in dismissal of this  
11 action.

12 **B. Possible Dismissal**

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

17 **IT IS ORDERED:**

18 (1) Within **30 days** of the date this Order is filed, Plaintiff must either pay the  
19 \$350.00 filing fee and \$50.00 administrative fee **or** file a complete Application to Proceed  
20 In Forma Pauperis and a certified six-month trust account statement.

21 (2) If Plaintiff fails to either pay the \$350.00 filing fee and \$50.00 administrative  
22 fee or file a complete Application to Proceed In Forma Pauperis within 30 days, the Clerk  
23 of Court must enter a judgment of dismissal of this action without prejudice and without  
24 further notice to Plaintiff and deny any pending unrelated motions as moot.

25 (3) The Complaint (Doc. 1) is **dismissed** for failure to comply with Local Rule  
26 of Civil Procedure 3.4. Plaintiff has **30 days** from the date this Order is filed to file a first  
27 amended complaint in compliance with this Order.

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(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 without prejudice and deny any pending unrelated motions as moot.

(5) Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 2) is **denied without prejudice**.

(6) Plaintiff's Motion for Expedited Processing (Doc. 5) is **denied as moot**.

(7) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil rights complaint by a prisoner **and** a court-approved form for filing an Application to Proceed In Forma Pauperis (Non-Habeas).

Dated this 8th day of September, 2020.



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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.

<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)

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

**Instructions for Prisoners Applying for Leave to Proceed In Forma Pauperis  
Pursuant to 28 U.S.C. § 1915 in a Civil Action (Non-habeas) in Federal Court**

You must pay the \$350.00 filing fee plus the \$50.00 administrative fees for a civil action. If you later file an appeal, you will be obligated to pay the \$505.00 filing fee for the appeal.

If you have enough money to pay the full \$400.00 filing and administrative fees, you should send a cashier's check or money order payable to the Clerk of the Court with your complaint.

If you do not have enough money to pay the full \$400.00 filing and administrative fees, you can file the action without prepaying the fees. However, the Court will assess an initial partial filing fee. The initial partial filing fee will be the greater of 20% of the average monthly deposits or 20% of the average monthly balance in your prison or jail account for the six months immediately preceding the filing of the lawsuit. The Court will order the agency that has custody of you to withdraw the initial partial filing fee from your prison or jail account as soon as funds are available and to forward the money to the Court.

After the initial partial filing fee has been paid, you will owe the balance of the \$350.00 filing fee (you will not be required to pay the \$50.00 administrative fee). Until the filing fee is paid in full, each month you will owe 20% of your preceding month's income. The agency that holds you in custody will collect that money and forward it to the Court any time the amount in your account exceeds \$10.00. These installment fees are calculated on a per-case basis. This means that you will be required to pay 20% of your preceding month's income for **each** civil non-habeas corpus case in which you have an outstanding filing fee balance. For example, if you are making payments toward filing fee balances in two civil non-habeas corpus cases, 40% of your preceding month's income will be collected each month. The balance of the filing fee may be collected even if the action is later dismissed, summary judgment is granted against you, or you fail to prevail at trial.

To file an action without prepaying the filing fee, and to proceed with an action in forma pauperis, you must complete the attached form and return it to the Court with your complaint. You must have a prison or jail official complete the certificate on the bottom of the form and attach a certified copy of your prison or jail account statement for the last six months. If you were incarcerated in a different institution during any part of the past six months, you must attach a certificate and a certified copy of your account statement from each institution at which you were confined. If you submit an incomplete form or do not submit a prison or jail account statement with the form, your request to proceed in forma pauperis will be denied.

Even if some or all of the filing fee has been paid, the Court is required to dismiss your action if: (1) your allegation of poverty is untrue; (2) the action is frivolous or malicious; (3) your complaint does not state a claim upon which relief can be granted; or (4) your complaint makes a claim against a defendant for money damages and that defendant is immune from liability for money damages.

If you file more than three actions or appeals which are dismissed as frivolous or malicious or for failure to state a claim on which relief can be granted, you will be prohibited from filing any other action in forma pauperis unless you are in imminent danger of serious physical injury.

\_\_\_\_\_  
Name and Prisoner/Booking Number

\_\_\_\_\_  
Place of Confinement

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
City, State, Zip Code

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

\_\_\_\_\_,  
Plaintiff,  
v.  
\_\_\_\_\_,  
Defendant(s).

CASE NO. \_\_\_\_\_

**APPLICATION TO PROCEED  
IN FORMA PAUPERIS  
BY A PRISONER  
CIVIL (NON-HABEAS)**

I, \_\_\_\_\_, declare, in support of my request to proceed in the above entitled case without prepayment of fees under 28 U.S.C. § 1915, that I am unable to pay the fees for these proceedings or to give security therefor and that I believe I am entitled to relief.

In support of this application, I answer the following questions under penalty of perjury:

1. Have you ever before brought an action or appeal in a federal court while you were incarcerated or detained? Yes No If "Yes," how many have you filed? \_\_\_\_\_.  
Were any of the actions or appeals dismissed because they were frivolous, malicious, or failed to state a claim upon which relief may be granted? Yes No If "Yes," how many of them? \_\_\_\_\_.  
\_\_\_\_\_  
\_\_\_\_\_
2. Are you currently employed at the institution where you are confined? Yes No  
If "Yes," state the amount of your pay and where you work. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
3. Do you receive any other payments from the institution where you are confined? Yes No  
If "Yes," state the source and amount of the payments. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Do you have any other sources of income, savings, or assets either inside or outside of the institution where you are confined? Yes No  
If "Yes," state the sources and amounts of the income, savings, or assets. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I declare under penalty of perjury that the above information is true and correct.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF APPLICANT

**ACKNOWLEDGEMENT OF COLLECTION OF FILING FEES FROM TRUST ACCOUNT**

I, \_\_\_\_\_, acknowledge that upon granting this Application, the Court will order designated correctional officials at this institution, or any other correctional institution to which I am transferred, to withdraw money from my trust account for payment of the filing fee, as required by 28 U.S.C. § 1915(b).

The Court will require correctional officials to withdraw an initial partial payment equal to 20% of the greater of:

- (A) the average monthly deposits to my account for the six-month period preceding my filing of this action, or
- (B) the average monthly balance in my account for the six-month period preceding my filing of this action.

After the initial payment, if the amount in my account is at least \$10.00, the Court will require correctional officials to withdraw from my account 20% of each month's income and forward it to the Court until the required filing fee is paid in full. I understand that I am required to pay the entire fee, *even if my case is dismissed by the Court before the fee is fully paid.*

I further understand that if I file more than one action, correctional officials will be ordered to withdraw 20% of each month's income, for each action, simultaneously. Accordingly, if I have filed two actions, correctional officials will withdraw 40% of my income each month; three actions will require 60% of my income each month, etc.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE OF APPLICANT

**CERTIFICATE OF CORRECTIONAL OFFICIAL  
AS TO STATUS OF APPLICANT'S TRUST ACCOUNT**

I, \_\_\_\_\_, certify that as of the date applicant signed this application:  
(Printed name of official)

The applicant's trust account balance at this institution is: \$ \_\_\_\_\_  
The applicant's average monthly deposits during the prior six months is: \$ \_\_\_\_\_  
The applicant's average monthly balance during the prior six months is: \$ \_\_\_\_\_  
The attached certified account statement accurately reflects the status of the applicant's account.

\_\_\_\_\_  
DATE

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
TITLE/ID NUMBER

\_\_\_\_\_  
INSTITUTION