

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

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

Adrien Joshua Espinoza,
Plaintiff,
v.
Phillip Irby, et al.,
Defendants.

No. CV-17-00236-TUC-DCB
ORDER

On November 19, 2018, this Court entered an Order, noting the Defendants’ Motion for Summary Judgment had been pending since July 16, 2018, but Plaintiff had been unable to file a Response because his access to his legal materials had been delayed by his repeatedly being moved from one facility to another. The Court noted that in October it had ordered the Defendants to arrange for him to access his legal materials immediately, but when that day came the prison officials reported he had refused to get out of bed to go view them. The Court directed the Plaintiff to file a Response and that no further extensions of time would be granted. Thereafter, the Plaintiff again complained about a lack of access to his legal materials, but the Court reaffirmed the deadline, December 24, 2018, for filing the Response and that no further extensions of time would be granted.

Undaunted, Plaintiff sent a “letter” to the Court. He asks the Court to reconsider its findings that he has been responsible for delaying access to his legal materials and for not granting him further extensions of time to access them and file a Response. He complains that the Court disbelieved him and sided with the Warden and prison officials, who were lying. The Court is not persuaded by the Plaintiff’s letter.

1 The Court is, however, persuaded by the attachment: Inmate Letter to Espino dated
2 November 14, 2018. The attachment appears to reflect a request for an exchange of legal
3 materials dated November 14, 2018, for: box labeled 5 and 6; both boxes labeled 1; box 10
4 and boxes 3 and 4. On December 6, the Plaintiff filed an emergency motion reflecting this
5 same request for legal materials being re-urged on November 29 and December 3. He
6 noted that he did not have a copy of the Motion for Summary Judgment and attachments.
7 On December 7, the Defendant re-sent him a copy of their motion. On December 10, he
8 filed a Notice with the Court that he had requested a copy of the motion from Defendants,
9 which suggests that he may not yet have received the copy they sent on December 7, 2018.

10 It is the intent of this Court to decide this case on the merits. The Defendant shall
11 file with the Court the Plaintiff's signed receipts for the above requested legal materials
12 and the copy of the motion they sent on December 7, 2018. Otherwise, the Court must
13 grant a further extension of time for the Plaintiff to prepare his Response to their Motion
14 for Summary Judgment.

15 **Accordingly,**

16 **IT IS ORDERED** that the emergency motions (Docs. 50 and 52) are GRANTED
17 IN PART AND DENIED IN PART as follows below.

18 **IT IS FURTHER ORDERED** that within 3 days of the filing date of this Order
19 the Defendants shall provide proof of access by Plaintiff to the above requested legal
20 materials and receipt of the copy of the Motion for Summary Judgment

21 **IT IS FURTHER ORDERED** that unless the above proof is filed, the Plaintiff is
22 GRANTED AN EXTENSION OF TIME to file the Response to Defendants' Motion for
23 Summary Judgment.

24 **IT IS FURTHER ORDERED** that no more than 3 days shall be allowed between
25 the legal box exchange which will be necessary to complete access to the 6 legal boxes that
26 he seeks and which he has been requesting since November 14, 2018.

27 **IT IS FURTHER ORDERED** that access shall be commenced within 3 days of
28 the filing date of this Order and completed no later than 30 days from the filing date of this

1 Order. THERE SHALL BE NO FURTHER EXTENSIONS OF TIME GRANTED.


2 **IT IS FURTHER ORDERED** that Defendants shall file a Notice of Access,
3 including the documentation of Plaintiff's legal material exchange request for boxes 3 and
4 4 and Plaintiff's signed receipts for the legal box exchanges and the copy of the Motion for
5 Summary Judgment sent by Defendants on December 7, 2018.

6 **IT IS FURTHER ORDERED** that within 30 days of the filing of the Notice of
7 Access, the Plaintiff shall prepare and file a Response to the Defendants' Motion for
8 Summary Judgment. THERE SHALL BE NO FURTHER EXTENSIONS OF TIME
9 GRANTED FOR FILING THE RESPONSE.

10 **IT IS FURTHER ORDERED** that failure to comply with the directives of this Order
11 may result in sanctions.

12 Dated this 17th day of December, 2018.

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Honorable David C. Bury
United States District Judge