



1 another. Id.

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3 II

4 Federal courts must engage in a preliminary screening of  
5 cases in which prisoners seek redress from a governmental entity or  
6 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).  
7 The court must identify cognizable claims or dismiss the complaint,  
8 or any portion of the complaint, if the complaint "is frivolous,  
9 malicious, or fails to state a claim upon which relief may be  
10 granted," or "seeks monetary relief from a defendant who is immune  
11 from such relief." Id. § 1915A(b). Pleadings filed by pro se  
12 litigants, however, must be liberally construed. Balistreri v.  
13 Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

14 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
15 allege two essential elements: (1) that a right secured by the  
16 Constitution or laws of the United States was violated, and (2) that  
17 the alleged violation was committed by a person acting under the  
18 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

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20 III

21 Plaintiff, classified by CDCR as a "Southern Mexican,"  
22 claims that CTF Warden Ben Curry has violated his rights by  
23 initiating lock-downs that are based on race. Liberally construed,  
24 Plaintiff's allegations appear to state a cognizable claim under §  
25 1983 and CTF Warden Ben Curry will be served. See Johnson v.  
26 California, 543 U.S. 499, 508-09 (2005) (unwritten prison policy of  
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1 segregating prisoners based on race subject to strict scrutiny  
2 standards such that prison must demonstrate policy is narrowly  
3 tailored to serve a compelling state interest).

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5 IV

6 For the foregoing reasons and for good cause shown:

7 1. The Clerk shall issue summons and the United States  
8 Marshal shall serve, without prepayment of fees, copies of the First  
9 Amended Complaint in this matter, all attachments thereto, and  
10 copies of this Order, on CTF Warden Ben Curry. All other parties  
11 named as Defendants are DISMISSED. The Clerk also shall serve a  
12 copy of this Order on Plaintiff.

13 2. In order to expedite the resolution of this case, the  
14 Court orders as follows:

15 a. No later than 90 days from the date of this  
16 Order, Defendant shall file a Motion for Summary Judgment or other  
17 dispositive motion. A Motion for Summary Judgment shall be  
18 supported by adequate factual documentation and shall conform in all  
19 respects to Federal Rule of Civil Procedure 56, and shall include as  
20 exhibits all records and incident reports stemming from the events  
21 at issue. If Defendant is of the opinion that this case cannot be  
22 resolved by summary judgment or other dispositive motion, he shall  
23 so inform the Court prior to the date his motion is due. All papers  
24 filed with the Court shall be served promptly on Plaintiff.

25 b. Plaintiff's Opposition to the dispositive motion  
26 shall be filed with the Court and served upon Defendant no later  
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1 than 30 days after Defendant serves Plaintiff with the motion.

2 c. Plaintiff is advised that a Motion for Summary  
3 Judgment under Rule 56 of the Federal Rules of Civil Procedure will,  
4 if granted, end your case. Rule 56 tells you what you must do in  
5 order to oppose a motion for summary judgment. Generally, summary  
6 judgment must be granted when there is no genuine issue of material  
7 fact - that is, if there is no real dispute about any fact that  
8 would affect the result of your case, the party who asked for  
9 summary judgment is entitled to judgment as a matter of law, which  
10 will end your case. When a party you are suing makes a Motion for  
11 Summary Judgment that is properly supported by declarations (or  
12 other sworn testimony), you cannot simply rely on what your  
13 Complaint says. Instead, you must set out specific facts in  
14 declarations, depositions, answers to interrogatories, or  
15 authenticated documents, as provided in Rule 56(e), that contradict  
16 the facts shown in Defendant's declarations and documents and show  
17 that there is a genuine issue of material fact for trial. If you do  
18 not submit your own evidence in opposition, summary judgment, if  
19 appropriate, may be entered against you. If summary judgment is  
20 granted, your case will be dismissed and there will be no trial.  
21 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App  
22 A).

23 Plaintiff also is advised that a Motion to Dismiss for  
24 failure to exhaust administrative remedies under 42 U.S.C. §  
25 1997e(a) will, if granted, end your case, albeit without prejudice.  
26 You must "develop a record" and present it in your opposition in  
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1 order to dispute any "factual record" presented by the Defendant in  
2 his Motion to Dismiss. Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14  
3 (9th Cir. 2003).

4 d. Defendant shall file a Reply Brief within 15  
5 days of the date on which Plaintiff serves him with the Opposition.

6 e. The motion shall be deemed submitted as of the  
7 date the Reply Brief is due. No hearing will be held on the motion  
8 unless the Court so orders at a later date.

9 3. Discovery may be taken in accordance with the Federal  
10 Rules of Civil Procedure. No further court order is required before  
11 the parties may conduct discovery.

12 4. All communications by Plaintiff with the Court must  
13 be served on Defendant, or Defendant's counsel once counsel has been  
14 designated, by mailing a true copy of the document to Defendant or  
15 Defendant's counsel.

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5. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the Court and all parties informed of any change of address and must comply with the Court's orders in a timely fashion. Failure to do so may result in the dismissal of this action pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

DATED

04/24/09



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THELTON E. HENDERSON  
United States District Judge