



1 both Defendants violated his constitutional rights and seeks  
2 damages. Doc. #1.

3 The Court takes judicial notice that on November 19, 2010,  
4 Plaintiff was convicted by a jury of possession of cocaine base with  
5 intent to distribute in violation of 18 U.S.C. §§ 841(a)(1) and  
6 841(b)(1)(B)(iii) and possession of a firearm and ammunition by a  
7 felon in violation of 18 U.S.C. § 922(g)(1). See United States v.  
8 McCoy, CR 09-0337-CW (Crim. Case), Docket #246. Plaintiff's  
9 eventual trial and conviction on charges stemming from his  
10 encounters with Defendants requires that the action be dismissed  
11 because the conviction renders Plaintiff's § 1983 claims not  
12 cognizable under Heck v. Humphrey, 512 U.S. 477 (1994).

13 I

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

24 To state a claim under 42 U.S.C. § 1983, a plaintiff must  
25 allege two essential elements: (1) that a right secured by the  
26 Constitution or laws of the United States was violated, and (2) that  
27 the alleged violation was committed by a person acting under the

1 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

2 II

3 To recover damages for an allegedly unconstitutional  
4 conviction or prison sentence, or for other harm caused by actions  
5 whose unlawfulness would render a conviction or sentence invalid, a  
6 plaintiff in a 42 U.S.C. § 1983 action must prove that the  
7 conviction or sentence has been reversed on direct appeal, expunged  
8 by executive order, declared invalid by a state tribunal authorized  
9 to make such determination, or called into question by a federal  
10 court's issuance of a writ of habeas corpus. Heck, 512 U.S. at  
11 486-87. A claim for damages bearing that relationship to a  
12 conviction or sentence that has not been so invalidated is not  
13 cognizable under 42 U.S.C. § 1983. Id. at 487.

14 In Plaintiff's criminal case, he was charged, in a  
15 superceding indictment, with four counts: (1) possession with intent  
16 to distribute a controlled substance, namely, cocaine base, on  
17 February 3, 2009; (2) possession with intent to distribute a  
18 controlled substance, namely, methodone pills, on February 28, 2009;  
19 (3) possession of a firearm in relation to a drug trafficking crime  
20 on February 28, 2009; and (4) possession of a firearm and ammunition  
21 by a felon on February 28, 2009. Crim. Case, Docket #38. Plaintiff  
22 moved to suppress on the ground that the searches and seizures by  
23 Officers Wong and Anderson were unconstitutional and, after an  
24 evidentiary hearing, the Court denied the motion. Crim. Case Docket  
25 #63. Plaintiff was tried by a jury which found him guilty on counts  
26 one and four. Crim. Case Docket #246. Plaintiff appealed to the  
27 Ninth Circuit Court of Appeals which affirmed the conviction. Crim.

