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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

San Francisco Division

MARTIN MONICA,

Plaintiff,

v.

XAVIER BECERRA, et al.,

Defendants.

Case No. [17-cv-05103-LB](#)

**ORDER GRANTING
MOTION TO DISMISS**

Re: ECF No. 8

INTRODUCTION

Martin Monica filed a *quo warranto* application for the removal of Laurie Smith, the Sheriff of Santa Clara County.¹ He claims that Sheriff Smith unlawfully took office and continues to serve as Sheriff despite residing outside of Santa Clara County.² When the Attorney General of California refused to pursue *quo warranto* proceedings to oust Sheriff Smith at Mr. Monica's behest, Mr. Monica sued the Attorney General and the State of California.³ They move to dismiss the complaint under Federal Rule of Civil Procedure Rule 12(b)(6).⁴ The court holds that Mr. Monica does not state plausible claims where relief can be granted because his claims are barred by the

¹ See generally Compl. – ECF No. 1. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of the documents.

² See *id.* at 8 (¶ 51), 15.

³ See *id.* at 6–9.

⁴ See Motion – ECF No. 8-1.

1 Eleventh Amendment and the applicable statutes of limitations. The court grants the motion to
2 dismiss the complaint without leave to amend.

3
4 **STATEMENT**

5 Mr. Monica alleges Sheriff Smith unlawfully holds public office because she is not domiciled
6 in Santa Clara County.⁵ Mr. Monica wanted to pursue *quo warranto* proceedings to challenge
7 Sheriff Smith’s unlawful holding of public office.⁶

8 In a cover letter dated January 11, 2014, Mr. Monica purported to enclose for the Attorney
9 General his application for consent to pursue a *quo warranto* action, including a proposed
10 complaint, verified statement of facts, memorandum of points and authorities, and notice to the
11 proposed defendant.⁷ He attaches the documents he submitted to his present complaint.⁸ These
12 documents include a complaint with an unsigned verification,⁹ a statement of facts without
13 verification or signature,¹⁰ a memorandum of points and authorities,¹¹ and an unsigned
14 declaration¹² to which he attached various public records, online directory search results, police
15 reports, news articles, real estate records, and election filings that he believes show that Sheriff
16 Smith resides in South Lake Tahoe and not in Santa Clara County.¹³

17 The Office of the Attorney General sent Mr. Monica a letter stating that it received his
18 materials “[o]n or about February 3, 2014,” identifying deficiencies in the documents he
19 submitted, suggesting that he seek the assistance of an attorney, and stating that it “will reconsider
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22 ⁵ Compl. – ECF No. 1 at 6 (¶¶ 36–37), 8 (¶ 51).

23 ⁶ *Id.* at 6 (¶ 41).

24 ⁷ Compl., Ex. 1– ECF No. 1-5 at 3 (cover letter); Compl., Exs. 2–4, ECF No. 1-5 at 5–47 (application
25 materials).

26 ⁸ Compl. – ECF No. 1 at 6 (¶ 41).

27 ⁹ Compl., Ex. 2 – ECF No. 1-5 at 5–9.

28 ¹⁰ Compl., Ex. 3 – ECF No. 1-5 at 11–21.

¹¹ Compl., Ex. 4 – ECF No. 1-5 at 23–47.

¹² Compl., Ex. 5 – ECF No. 1-6 at 2–12.

¹³ Compl., Exs. 6–36 – ECF Nos. 1-6, 1-7, 1-8, 1-9, 1-10, 1-11.

1 the matter if these deficiencies are corrected, and [the application] is resubmitted over the
2 signature of an attorney.”¹⁴ The letter stated that Mr. Monica’s application was deficient because
3 his complaint sought to change venue to San Francisco County without good cause and asked to
4 appoint him as Sheriff in Sheriff Smith’s place. His complaint also contained irrelevant allegations
5 about wrongdoing by Sheriff Smith, her spouse, and her daughter, including allegations relating to
6 improper tax exemptions and misconduct in office that were beyond the scope of Sheriff Smith’s
7 domicile and residence.¹⁵

8 Mr. Monica does not allege he submitted a revised application, but he claims the defendants
9 wrongfully rejected his request to pursue a *quo warranto* action because his evidence shows that
10 Sheriff Smith unlawfully holds public office despite residing in South Lake Tahoe and not Santa
11 Clara County.¹⁶

12 Mr. Monica asserts claims under 42 U.S.C. § 1983 for violation of his Fourteenth Amendment
13 rights (claims one and two), 42 U.S.C. § 1981 (claim three), the Supremacy Clause (claim four),
14 and the Fifteenth Amendment (claim five).¹⁷

GOVERNING LAW

17 A complaint must contain a “short and plain statement of the claim showing that the pleader is
18 entitled to relief” to give the defendant “fair notice” of what the claims are and the grounds upon
19 which they rest. *See* Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).
20 A complaint does not need detailed factual allegations, but “a plaintiff’s obligation to provide the

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22 ¹⁴ Compl., Ex. K – ECF No. 1-4 at 44–45.

23 ¹⁵ *Id.*

24 ¹⁶ Compl. – ECF No. 1 at 6 (¶¶ 37–42), 8 (¶ 51).

25 ¹⁷ *Id.* at 10–15 (¶¶ 66–110). Mr. Monica does not designate his claims for violation of the Supremacy
26 Clause and the Fifteenth Amendment as § 1983 claims. A “[p]laintiff has no cause of action directly
27 under the United States Constitution.” *Azul-Pacifico, Inc. v. City of L.A.*, 973 F.2d 704, 705 (9th Cir.
28 1992). He or she “must utilize 42 U.S.C. § 1983.” *Arpin v. Santa Clara Valley Transp. Agency*, 261
F.3d 912, 925 (9th Cir. 2001). Therefore, the court liberally construes these claims as § 1983 claims
for purposes of this motion. *See, e.g., Darkins v. Snowden*, 649 F. App’x 492, 492–93 (9th Cir. 2016)
(district court properly dismissed bare constitutional claims liberally construed as § 1983 claims for
failure to plead a plausible claim).

1 ‘grounds’ of his ‘entitlement to relief’ requires more than labels and conclusions, and a formulaic
2 recitation of the elements of a cause of action will not do. Factual allegations must be enough to
3 raise a claim for relief above the speculative level” *Id.* (internal citations omitted).

4 To survive a motion to dismiss, a complaint must contain sufficient factual allegations,
5 accepted as true, “to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*,
6 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility
7 when the plaintiff pleads factual content that allows the court to draw the reasonable inference that
8 the defendant is liable for the misconduct alleged.” *Id.* “The plausibility standard is not akin to a
9 ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted
10 unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at 557). “Where a complaint pleads facts that are
11 ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and
12 plausibility of “entitlement to relief.”’” *Id.* (quoting *Twombly*, 550 U.S. at 557).

13 If a court dismisses a complaint, it should give leave to amend unless the “the pleading could
14 not possibly be cured by the allegation of other facts.” *Cook, Perkiss & Liehe, Inc. v. N. Cal.*
15 *Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990).

17 ANALYSIS

18 The defendants advance three arguments in support of their motion to dismiss. First, they
19 argue that Eleventh Amendment immunity precludes Mr. Monica’s claims against the State of
20 California.¹⁸ Second, they argue that Mr. Monica fails to plead plausible claims.¹⁹ Finally, they
21 argue that the applicable statutes of limitations bar Mr. Monica’s claims.²⁰

23 1. Eleventh Amendment Immunity

24 The first issue is whether the Eleventh Amendment bars Mr. Monica’s claims against the State

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27 ¹⁸ Motion – ECF No. 8-1 at 18.

28 ¹⁹ *Id.* at 13–16.

²⁰ *Id.* at 12–13.

1 of California. It does. The defendants point out that the Eleventh Amendment bars a lawsuit
2 against a state or its instrumentalities absent the state’s consent or abrogation of immunity by
3 Congress.²¹ *Papasan v. Allain*, 478 U.S. 265, 276–77 (1986). “This bar exists whether the relief
4 sought is legal or equitable.” *Id.* Section 1983 did not abrogate a state’s Eleventh Amendment
5 immunity. *Quern v. Jordan*, 440 U.S. 332, 345 (1979). California has not waived its immunity
6 generally for Section 1983 claims like the ones here. *Atascadero State Hosp. v. Scanlon*, 473 U.S.
7 234, 241 (1985).

8 Although the defendants do not specifically address Mr. Monica’s claim under Section 1981,
9 the Ninth Circuit has held that states are immune from suit (absent waiver) and that, in fact,
10 “§ 1981 does not contain a cause of action against states.” *Pittman v. Oregon Emp’t Dep’t*, 509
11 F.3d 1065, 1071, 1074 (9th Cir. 2007); *accord Binum v. Warner*, 314 F. App’x 914, 914–15 (9th
12 Cir. 2008) (plaintiff could not sue state agency or its official under Section 1981). Mr. Monica
13 cannot assert a Section 1981 claim against the State of California.

14 As for the Attorney General in his official capacity, *Ex parte Young* allows some lawsuits for
15 prospective declaratory and injunctive relief against state officers sued in their official capacities
16 to enjoin an ongoing violation of federal law. *See* 209 U.S. 123, 156–57 (1908). While it is not
17 obvious that the injunctive relief Mr. Monica seeks is prospective, Mr. Monica raises the *Ex parte*
18 *Young* exception as grounds to sue Attorney General Xavier Becerra.²² The *Ex parte Young*
19 exception removes official capacity from a state official so they can face the “consequences of
20 [their] individual conduct.” *See* 209 U.S. at 160. But Mr. Becerra’s individual conduct has no
21 relation to the *quo warranto* application filed by Mr. Monica because the decision to not pursue
22 the proceedings was made well before Mr. Becerra was elected to office. Furthermore, Mr.
23 Monica has not identified any behavior of Mr. Becerra that would qualify for this exception.

24 The Eleventh Amendment bars Mr. Monica’s Section 1983 claims against the State of
25 California.

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28 ²¹ Motion – ECF No. 8-1 at 18.

²² Opposition – ECF No. 18 at 8.

1 **2. Plausibility of Claims**

2 **2.1 Section 1983 Claims**

3 The second issue is whether Mr. Monica states plausible Section 1983 claims. He does not.
4 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right
5 secured by the Constitution or laws of the United States was violated, and (2) that the violation
6 was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48
7 (1988). The focus of the defendants’ motion, and thus the analysis here, is whether Mr. Monica
8 alleges a plausible violation of his constitutional rights or federal law.

9 **2.1.1 Fourteenth Amendment**

10 Mr. Monica’s first two claims for relief are for violations of his right to equal protection and
11 procedural due process under the Fourteenth Amendment,²³ which states in Section 1 that:

12 All persons born or naturalized in the United States, and subject to the jurisdiction
13 thereof, are citizens of the United States and of the State wherein they reside. No
14 State shall make or enforce any law which shall abridge the privileges or
15 immunities of citizens of the United States; nor shall any State deprive any person
16 of life, liberty, or property, without due process of law; nor deny to any person
17 within its jurisdiction the equal protection of the laws.

16 **2.1.1.1 Equal Protection**

17 The issue here is whether Mr. Monica plausibly claims a violation of the equal protection
18 clause of the Fourteenth Amendment. He does not. “The equal protection clause forbids the
19 establishment of laws which arbitrarily and unreasonably create dissimilar classifications of
20 individuals when, looking to the purpose of those laws, such individuals are similarly situated.”
21 *Williams v. Field*, 416 F.2d 483, 486 (9th Cir. 1969). Mr. Monica does not claim the statute
22 governing *quo warranto* proceedings is discriminatory on its face. *See* Cal. Civ. Proc. Code § 803.

23 “[The equal protection clause] also forbids unequal enforcement of valid laws, where such
24 unequal enforcement is the product of improper motive.” *Williams*, 416 F.2d at 486. “To state a
25 claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth
26 Amendment a plaintiff must show that the defendants acted with an intent or purpose to

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28 ²³ *See* Compl. – ECF No. 1 at 10–12 (¶¶ 66–87).

1 discriminate against the plaintiff based upon membership in a protected class.” *Lee v. City of*
 2 *L.A.*, 250 F.3d 668, 686 (9th Cir. 2001) (quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th
 3 Cir. 1998)); accord *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005). A
 4 plaintiff “must plead intentional unlawful discrimination or allege facts that are at least susceptible
 5 of an inference of discriminatory intent.” *Monteiro v. Tempe Union High Sch. Dist.*, 158 F.3d
 6 1022, 1026 (9th Cir. 1998); accord, e.g., *Caddell v. Helena Elder Hous., Inc.*, 494 F. App’x 809,
 7 810 (9th Cir. 2012) (mem.) (“The district court properly dismissed . . . equal protection claims . . .
 8 because [the plaintiff] failed to allege facts demonstrating a discriminatory intent.”); see also
 9 *Village of Willowbrook v. Olech*, 528 U.S. 562, 564–65 (2000) (per curiam) (holding that, even as
 10 a “class of one,” the plaintiff must allege intentional, disparate treatment). “[B]are assertions” and
 11 “conclusory allegations” of discrimination will not suffice. See *Moss v. U.S. Secret Serv.*, 572 F.3d
 12 962, 969 (9th Cir. 2009) (discussing *Iqbal*, 556 U.S. at 680–81); accord *Rogers v. Cnty. of*
 13 *Riverside*, 139 F.3d 907 (9th Cir. 1998) (mem.) (district court properly dismissed equal-protection
 14 claim when the plaintiff failed to plead facts showing discriminatory intent).

15 Here, Mr. Monica pleads only bare assertions and conclusory allegations that he was denied
 16 equal protection.²⁴ He does not allege facts to support those allegations. For example, Mr. Monica
 17 does not allege that the defendants intentionally treated him differently when he requested that the
 18 Attorney General pursue a *quo warranto* action or that he was treated differently at all. The
 19 complaint is also silent as to any discriminatory intent. Consequently, because Mr. Monica does
 20 not state a plausible Section 1983 claim based on a denial of equal protection, the court dismisses
 21 this claim.

22 **2.1.1.2 Procedural Due Process**

23 To state a procedural-due-process claim, the plaintiff must allege the government deprived him
 24 or her of a protectable liberty or property interest and denied him or her adequate procedural
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 27 ²⁴ See, e.g., Compl. – ECF No. 1 at 12 (¶¶ 83–85) (“Defendants denied Plaintiff an equal
 28 opportunity . . .”; “Plaintiff’s right to equal protection of the laws under the Fourteenth
 Amendment . . . was violated by this denial of equal access to a remedy.”; “denial of the right remedy
 — quo warranto — is a denial of equal protection of the law . . .”)

1 protections. *See Foss v. Nat’l Marine Fisheries Serv.*, 161 F.3d 584, 588 (9th Cir. 1998). The
2 threshold inquiry is whether the plaintiff has “‘a legitimate claim of entitlement’ as opposed to a
3 ‘unilateral expectation’ or an ‘abstract need or desire. . . .’” *Id.* (quoting *Bd. of Regents of State*
4 *Coll. v. Roth*, 408 U.S. 564, 577 (1972)). If the plaintiff satisfies this threshold burden, the court
5 then considers whether he or she received all the process that was due. *Id.* at 589. For a liberty
6 interest, the court has broadly construed liberty under the Fourteenth Amendment to cover “the
7 full range of conduct which the individual is free to pursue, and it cannot be restricted except for a
8 proper governmental objective.” *Bolling v. Sharpe*, 347 U.S. 497, 499–500 (1954). For a property
9 interest, the court considers “all the process that he [or she] was ‘due’” by weighing “(1) [the
10 plaintiff’s] private property interest, (2) the risk of an erroneous deprivation of such interest
11 through the procedures used, as well as the value of additional safeguards, and (3) the
12 Government’s interest in maintaining its procedures, including the burdens of additional
13 procedural requirements.” *Foss*, 161 F.3d at 589.

14 In opposition to the motion to dismiss, Mr. Monica refers to a deprivation of liberty and
15 suggests that was the aim of his Fourteenth Amendment claim. Mr. Monica has never alleged any
16 restriction of his personal conduct and instead alleges only governmental inaction on his deficient
17 *quo warranto* application. Because he pleads no facts to support a deprivation-of-liberty claim, the
18 court will look to whether a property interest is the source of the due-process claim.

19 Mr. Monica does not identify any property interest. Instead he merely expresses his unilateral
20 desire to oust and replace Ms. Smith. But as the Ninth Circuit has explained, “a losing candidate in
21 a state election . . . has no property interest in the elected position.” *D’agostino v. Delgadillo*, 111
22 F. App’x 885, 886 (9th Cir. 2004). Moreover, “California provides an adequate procedure to
23 satisfy procedural due process” — a *quo warranto* action — to challenge “any person allegedly
24 holding or exercising public office unlawfully.” *Id.* (citing Cal. Civ. Proc. Code § 803). And so
25 Mr. Monica cannot state a procedural-due process claim based on his desire to hold public office.

26 Mr. Monica otherwise alleges that he has a protectable interest in the Attorney General’s
27 consent to *quo warranto* proceedings. But California Code of Civil Procedure § 803 does not
28 explicitly grant a private party the right to obtain consent to pursue and participate in *quo*

1 *warranto* proceedings; rather, it vests the Attorney General, in the absence of a direct order from
2 the governor, with the authority to decide whether to pursue *quo warranto* proceedings based on a
3 “reasonable belief” standard. Courts have interpreted Section 803 as giving the Attorney General
4 broad discretion, subject to judicial intervention only in the event a refusal is “extreme and clearly
5 indefensible.” *Lamb v. Webb*, 91 P. 102, 104 (Cal. 1907). Moreover, once commenced, the
6 Attorney General may “withdraw, discontinue or dismiss the [action], as to him [or her] may seem
7 fit and proper. . . .” Cal. Code Regs. tit. 11, § 8. No court has recognized a protectable interest in
8 consent to or maintenance of *quo warranto* proceedings. Indeed, the Ninth Circuit has held that a
9 plaintiff does not possess a protectable interest in maintaining a *qui tam* action, which, like a *quo*
10 *warranto* action, is brought and pursued on behalf of the public by the government. *See United*
11 *States ex rel. Mateski v. Mateski*, 634 F. App’x 192, 195 (9th Cir. 2015); *see also Brooks v.*
12 *Dunlop Mfg., Inc.*, No. 10-CV-04341-CRB, 2011 WL 6140912, at *6 (N.D. Cal. Dec. 9, 2011)
13 (relator did not acquire constitutionally-protected interest in *qui tam* litigation). In sum, Mr.
14 Monica does not allege he possesses a protectable interest in the Attorney General’s decision on
15 whether to pursue a *quo warranto* action.

16 Furthermore, Mr. Monica fails to allege facts showing the procedures leading up to the
17 Attorney General’s decision were inadequate. He alleges in a conclusory manner that “[u]pon
18 information and belief, no appreciable procedure was observed at any time leading up to
19 Defendant’s promulgation of the Quo Warranto Denial.”²⁵ Yet, “[t]he Attorney General has an
20 established procedure, embodied in regulations, for approving applications by private parties for
21 leave to sue in *quo warranto*.” *Nicolopulos v. City of Lawndale*, 91 Cal. App. 4th 1221, 1229
22 (2001). A person instigating a *quo warranto* claim must first serve an application on the proposed
23 defendant and file it with the Attorney General within five days. Cal. Code Regs. tit. 11, § 1. The
24 application must include:

- 25 (a) Original verified complaint, together with one copy thereof, and a verified
26 statement of facts. The proposed complaint shall be prepared for the signature of
27 the Attorney General, a deputy attorney general and the attorney for the relator, as

28 ²⁵ Compl. – ECF No. 1 at 10 (¶ 67).

1 attorneys for plaintiff.

2 (b) Points and authorities showing why the proposed proceeding should be brought
3 in the name of the people, and supporting the contention of relator that a public
4 office or franchise is usurped, intruded into or unlawfully held or exercised by the
5 proposed defendant.

6 (c) A notice directed to the proposed defendant to the effect that relator is about to
7 apply to the Attorney General for “leave to sue” in the proceeding therein named,
8 and that the proposed defendant may, within the period provided in Section 3
9 hereof, show cause, if any he have, why “leave to sue” should not be granted in
10 accordance with the application therefor.

11 (d) Proof of service of such application, complaint, statement of facts, points and
12 authorities and notice upon the proposed defendant.

13 *Id.* § 2. The regulations then provide the proposed defendant with an opportunity to show cause
14 why the Attorney General should not commence the proceedings and the relator an opportunity to
15 respond. *Id.* §§ 3, 4.

16 Mr. Monica attaches documents to the complaint that show he knew of these procedures and
17 that contradict his allegation that the Attorney General observed “no appreciable procedure.”²⁶ In a
18 cover letter dated January 11, 2014, Mr. Monica purported to enclose for the Attorney General his
19 application, proposed complaint, verified statement of facts, memorandum of points and
20 authorities, and notice to the proposed defendant.²⁷ He attaches the documents he submitted to his
21 present complaint.²⁸ These documents include a complaint with an unsigned verification,²⁹ a
22 statement of facts without verification or signature,³⁰ a memorandum of points and authorities,³¹
23 and an unsigned declaration³² to which he attached various public records, online directory search
24 results, police reports, news articles, real estate records, and election filings that he believes show
25 that Sheriff Smith resides in South Lake Tahoe and not in Santa Clara County.³³ He does not

26 Compl. – ECF No. 1 at 10 (¶ 67).

27 Compl., Ex. 1– ECF No. 1-5 at 3 (cover letter).

28 Compl. – ECF No. 1 at 6 (¶ 41).

29 Compl., Ex. 2 – ECF No. 1-5 at 5–9.

30 Compl., Ex. 3 – ECF No. 1-5 at 11–21.

31 Compl., Ex. 4 – ECF No. 1-5 at 23–47.

32 Compl., Ex. 5 – ECF No. 1-6 at 2–12.

33 Compl., Exs. 6–36 – ECF Nos. 1-6, 1-7, 1-8, 1-9, 1-10, 1-11.

1 allege or attach to the complaint a notice to Sheriff Smith, or proof that he served Sheriff Smith
2 with these documents. In fact, the Attorney General’s letter rejecting the *quo warranto* application
3 states that Sheriff Smith will not be required to respond because of the deficiencies in Mr.
4 Monica’s application. Furthermore, Mr. Monica does not allege he attempted to cure the
5 deficiencies after the Attorney General’s office rejected the application.

6 In sum, Mr. Monica does not allege facts showing an absence of procedural safeguards.
7 Furthermore, he does not allege the procedures in the California Code of Regulations are
8 unconstitutional or that the Attorney General effectively denied him due process by failing to
9 adhere to those procedures.

10 Mr. Monica’s grievance is not with the process: it is with the outcome. Mr. Monica disagrees
11 with the Attorney General, alleging that he is “mistaken” and that his reasons for not pursuing the
12 *quo warranto* action are “flawed.”³⁴ But the complaint and accompanying exhibits show that the
13 *quo warranto* application was rejected because it was deficient, not because of the merits of the
14 application. Mr. Monica never claimed he submitted a code-compliant application or remedied the
15 deficiencies identified in his application. If Mr. Monica had, and the application was again
16 rejected, a state mandamus action (as opposed to an action in federal court) would be the
17 appropriate process to pursue any remedy. As the Ninth Circuit has explained, “an arbitrary denial
18 of permission by the Attorney General can be challenged in a state mandamus action.” *D’agostino*,
19 111 F. App’x at 887 (holding the plaintiff failed to state a procedural-due-process claim based on
20 Attorney General’s declination to pursue *quo warranto* action); *see also Tomlinson v. Cnty. of*
21 *Monterey*, No. 07-CV-0990-RMW, 2007 WL 2298038, at *2 (N.D. Cal. Aug. 8, 2007)
22 (mandamus proceedings “are uniquely in the interest and domain of state courts”) (internal
23 quotations and citations omitted). Mr. Monica does not allege the application process for state
24 mandamus proceedings are in any way inadequate. He merely concludes without providing
25 rationale “[t]he idea . . . is flawed[.]”³⁵

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27 ³⁴ Compl. ECF No. 1 at 8 (¶ 52).

28 ³⁵ Opp. – ECF No. 18 at 5.

1 In sum, because Mr. Monica does not state any plausible procedural-due-process claim, the
2 court dismisses this claim.

3 **2.1.2 Supremacy Clause**

4 Mr. Monica alleges that the defendants refused to accept his evidence in support of his *quo*
5 *warranto* application, “fail to understand what constitutes evidence,” and required him to get the
6 assistance of a lawyer.³⁶ He claims that this “was making a judicial decision” and that “[t]he
7 decision above violates the Supremacy Clause”³⁷ “[T]he Supremacy Clause is not the source
8 of any federal rights, and certainly does not create a cause of action.” *Armstrong v. Exceptions*
9 *Child Ctr., Inc.*, 135 S. Ct. 1378, 1383 (2015) (internal quotations and citations omitted). Rather,
10 “[i]t instructs courts what to do when state and federal law clash” *Id.* Although courts often
11 apply the Supremacy Clause and consider whether federal law preempts state law, it does not give
12 rise “to a cause of action for its violation.” *Id.* at 1384. For this reason, and because Mr. Monica
13 does not allege any federal law that preempts any particular state statute, he does not plead a
14 plausible claim for violation of the Supremacy Clause.

15 **2.1.3 Fifteenth Amendment**

16 “The Fifteenth Amendment commands that the right to vote shall not be denied or abridged on
17 account of race or color, and it gives Congress the power to enforce that command.” *Shelby Cnty.*,
18 *Ala. v. Holder*, 133 S. Ct. 2612, 2629 (2013). It prohibits race-based voting restrictions. *See, e.g.*,
19 *Davis v. Commonwealth Election Comm’n*, 844 F.3d 1087, 1088 (9th Cir. 2016). Mr. Monica does
20 not identify any race-based voting restrictions in the complaint. He simply concludes that the
21 Attorney General’s rejection of his application “opened the door to influencing the election by
22 permitting [an] unqualified candidate for the office of Santa Clara County Sheriff.”³⁸ Because Mr.
23 Monica does not allege any restrictions on voting, there is no plausible violation of the Fifteenth
24 Amendment.

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26 _____
27 ³⁶ Compl. ECF No. 1 at 13–14 (¶¶ 98–101).

28 ³⁷ *Id.* at 14 (¶¶ 101–02).

³⁸ Compl. – ECF No. 1 at 14 (¶ 106).

1 **2.2 Section 1981 Claim**

2 The issue here is whether Mr. Monica has stated a plausible Section 1981 claim. He has not.
3 This statute prohibits racial discrimination. *Pittman*, 509 F.3d at 1068. Mr. Monica does not allege
4 any racial discrimination. He states that the defendants violated Section 1981 by “denying Quo
5 Warranto evidence to be presented to a court”³⁹ But Section 1981 does not grant an
6 individual a categorical right to give evidence or, as Mr. Monica suggests, to pursue a *quo*
7 *warranto* action. *See Runyon v. McCrary*, 427 U.S. 160, 168 (1976). It states that individuals of
8 color have the right to make and enforce contracts and give evidence “on equal terms with
9 whites.” *Id.* at 170–71. Mr. Monica’s interpretation of Section 1981 is not cognizable. Because he
10 does not allege any racial discrimination, he does not state a plausible claim under Section 1981.
11

12 **3. Statutes of Limitations**

13 The final issue is whether, as the defendants argue, all of Mr. Monica’s claims are barred by
14 the applicable statutes of limitations. They are.

15 “In determining the proper statute of limitations for actions brought under 42 U.S.C. § 1983,
16 [courts] look to the statute of limitations for personal injury actions in the forum state.”
17 *Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). The Ninth Circuit has held that
18 California’s two-year “statute of limitations for personal injury actions applies to § 1983 actions in
19 federal court.” *Id.* (citing Cal. Civ. Proc. Code § 335.1). Mr. Monica’s Section 1983 claims,
20 asserted for the first time in 2017, more than two years after the Attorney General rejected his
21 application in 2014, are time barred.

22 With respect to Mr. Monica’s Section 1981 claim, the applicable statute of limitations depends
23 on whether his claim arises from the statute as originally enacted or as amended in 1991. *See*
24 *Johnson v. Lucent Tech., Inc.*, 653 F.3d 1000, 1006 (9th Cir. 2011). Mr. Monica’s § 1981 claim is
25 based on the right to give evidence. This basis predates the 1991 amendments that once again
26 made it possible to assert employment retaliation claims under Section 1981. *Id.* Consequently,
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28

³⁹ *Id.* at 13 (¶ 93).

1 California’s two-year statute of limitations for personal injury actions applies, see *id.*, and the
2 four-year, catch-all statute of limitations applicable to claims “arising under an Act of Congress
3 enacted after” 1990 does not apply. See 28 U.S.C. § 1658. Mr. Monica argues in opposition to the
4 motion to dismiss that the statute of limitations does not apply to quo warranto proceedings, and
5 therefore should not apply to his claims.⁴⁰ But Mr. Monica’s claim arises from the rejection of his
6 quo warranto application and is not itself a quo warranto claim. The Attorney General rejected
7 Mr. Monica’s quo warranto application in 2014, and so his 2017 claim under Section 1981 is
8 barred by the statute of limitations.

9
10 **CONCLUSION**

11 In conclusion, because Mr. Monica does not plead any plausible claims, and his claims are
12 otherwise barred by the Eleventh Amendment and the applicable statutes of limitations, the court
13 grants the motion to dismiss. The court dismisses the complaint without leave to amend because
14 Mr. Monica cannot cure the complaint’s deficiencies.

15 **IT IS SO ORDERED.**

16 Dated: November 16, 2017



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18 LAUREL BEELER
19 United States Magistrate Judge

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⁴⁰ Opposition – ECF No. 18 at 4.