

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL GRIFFITH, et al.

Plaintiffs,

V.

STATE OF IDAHO, et al.,

Defendants.

CASE NO. 3:17-CV-05708-BHS-JRC

REPORT AND RECOMMENDATION

NOTED FOR: OCTOBER 13, 2017

This 42 U.S.C. § 1983 civil rights matter has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. §§ 636 (b)(1)(A) and (B) and Local Magistrate Judge Rules MJR 1, MJR 3, and MJR 4. Before the Court is plaintiffs' complaint. Dkt. 1-1.

Plaintiffs Michael Griffith, Michael Aaron Bonner, Detrick Curtis Conerly, and John Cruz Meno filed this action, stating that their convictions and ongoing incarceration violate their 5th, 8th, and 14th Amendment rights. They argue that, because they are “sovereign with none to govern but themselves,” the trial court and department of corrections had no jurisdiction to prosecute them and incarcerate them. However, plaintiffs have not named any defendants

1 residing in the Western District of Washington and none of their alleged Constitutional
 2 violations occurred in Washington. Therefore, the Court recommends dismissing the action
 3 without prejudice for lack of proper venue. The Court also recommends denying plaintiffs'
 4 motion to proceed *in forma pauperis* and plaintiffs' five other outstanding motions.

5 **BACKGROUND**

6 Plaintiffs are all currently housed in the Idaho State Correctional Center. They filed this §
 7 1983 action and motions to proceed *in forma pauperis* on September 5, 2017. Dkt. 1. They claim
 8 that "the Constitution was an AGREEMENT between the government . . . and the people of that
 9 time," and that because later generations of Americans did not similarly agree to the
 10 Constitution, it is not binding on them. Dkt. 1-1 at 7. They argue that, because they have not
 11 consented to be bound by the Constitution and have "none to govern but themselves,, their
 12 prosecutions and continued incarcerations violate their civil rights. *Id.* at 7-8. The Court has not
 13 granted their motion to proceed *in forma pauperis*.

14 Plaintiffs request combined damages of \$5,531,385,000.00. Dkt. 1-1 at 15. They also
 15 seek a declaration by the Court stating that plaintiffs are sovereigns "with none to govern but
 16 themselves" and that the Court recognize the trial court had no jurisdiction to incarcerate. *Id.* at
 17 1.

18 **DISCUSSION**

19 Venue may be raised by the Court *sua sponte* where the defendant has not filed a
 20 responsive pleading and the time for doing so has not run. *See Costlow v. Weeks*, 790 F.2d 1486,
 21 1488 (9th Cir. 1986). When jurisdiction is not founded solely on diversity, venue is proper in (1)
 22 the district in which any defendant resides, if all of the defendants reside in the same state; (2)
 23 the district in which a substantial part of the events or omissions giving rise to the claim

1 occurred, or a substantial part of the property that is the subject of the action is situated; or (3) a
2 judicial district in which any defendant may be found, if there is no district in which the action
3 may otherwise be brought. *See* 28 U.S.C. § 1391(b). When venue is improper, the district court
4 has the discretion to either dismiss the case or transfer it “in the interest of justice.” *See* 28
5 U.S.C. § 1406(a).

6 Here, it is clear from plaintiff’s complaint that their claims arise out of conduct occurring
7 outside the Western District of Washington. *See* Dkt. 1-1. Plaintiffs are currently housed in
8 Idaho, and they have not named any defendants who appear to be located in the Western District
9 of Washington. Therefore, the Court concludes venue is improper.

10 Because venue is improper, the Court has the discretion to dismiss or transfer the case.
11 *See* 28 U.S.C. § 1406(a). Having reviewed plaintiffs’ complaint and supporting materials, it
12 appears venue would be proper in the District of Idaho. However, because of the nature of
13 plaintiffs’ argument, the Court does not believe transferring the case to the District of Idaho
14 would serve the ends of justice, as plaintiffs may choose a different forum where proper venue
15 can be established.

16 Accordingly, the Court recommends this case be dismissed without prejudice, so that
17 plaintiffs may choose a different, and yet appropriate, forum for their complaint.

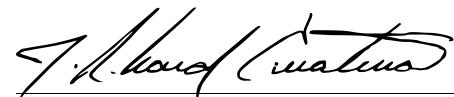
18 **CONCLUSION**

19 The Court recommends the action be dismissed without prejudice for improper venue.
20 The Court further recommends denying plaintiffs’ motion to proceed *in forma pauperis* (Dkt. 1)
21 and plaintiffs’ five other outstanding motions (Dkts. 2-6).

22 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have
23 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.
24

1 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*
2 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit
3 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on
4 October 13, 2017, as noted in the caption.

5 Dated this 26th day of September, 2017.

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8 
9 J. Richard Creatura
10 United States Magistrate Judge