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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TONY H. MORGAN,
#05011-748

Plaintiff,

vs.

CITY OF HENDERSON DETENTION
CENTER, *et al.*,

Defendants.

2:09-cv-01392-GMN-PAL

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. The court now reviews the complaint.

I. Screening Standard

Pursuant to the Prisoner Litigation Reform Act (PLRA), federal courts must dismiss a prisoner’s claims, “if the allegation of poverty is untrue,” or if the action “is frivolous or malicious,” “fails to state a claim on which relief may be granted,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2). A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Nietzke v. Williams*, 490 U.S. 319, 325 (1989). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. *See Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same standard under Section 1915(e)(2) when reviewing the adequacy of a complaint or amended complaint. Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of America*,

1 232 F.3d 719, 723 (9th Cir. 2000). A complaint must contain more than a “formulaic recitation of the
2 elements of a cause of action;” it must contain factual allegations sufficient to “raise a right to relief
3 above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1965
4 (2007). “The pleading must contain something more...than...a statement of facts that merely creates a
5 suspicion [of] a legally cognizable right of action.” *Id.* In reviewing a complaint under this standard, the
6 court must accept as true the allegations of the complaint in question, *Hospital Bldg. Co. v. Rex Hospital*
7 *Trustees*, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to plaintiff and
8 resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969).

9 Allegations in a *pro se* complaint are held to less stringent standards than formal
10 pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980); *Haines v. Kerner*, 404 U.S.
11 519, 520-21 (1972) (*per curiam*); *see also Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th
12 Cir. 1990). All or part of a complaint filed by a prisoner may be dismissed *sua sponte*, however, if the
13 prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on legal
14 conclusions that are untenable (*e.g.* claims against defendants who are immune from suit or claims of
15 infringement of a legal interest which clearly does not exist), as well as claims based on fanciful factual
16 allegations (*e.g.* fantastic or delusional scenarios). *See Neitzke*, 490 U.S. at 327-28; *see also McKeever*
17 *v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

18 To sustain an action under section 1983, a plaintiff must show (1) that the conduct
19 complained of was committed by a person acting under color of state law; and (2) that the conduct
20 deprived the plaintiff of a federal constitutional or statutory right.” *Hydrick v. Hunter*, 466 F.3d 676, 689
21 (9th Cir. 2006).

22 **II. Instant Complaint**

23 Plaintiff, who is currently incarcerated at the Federal Correctional Complex in Forrest
24 City, Arkansas, filed this suit when he was a federal pre-trial detainee in Henderson Detention Center
25 (“HDC”), in Henderson, Nevada in July 2009. He names as defendants HDC as well as police captain
26 R. Avrett. Plaintiff alleges that HDC policy, as set and enforced by HDC and Captain Avrett, does not

1 allow inmates any outdoors or outside-of-cell exercise, despite the availability of an outdoor recreation
2 area. Plaintiff claims that since his arrival at HDC on February 19, 2009, he had been held in “22-23
3 hr. a day lock-down/isolation” and never been afforded the opportunity for outdoor or out-of-cell
4 exercise. He seeks compensatory damages for violations of his Eighth and Fourteenth Amendment
5 rights.

6 At the outset, the court notes that, “Where a particular amendment ‘provides an explicit
7 textual source of constitutional protection’ against a particular sort of government behavior, ‘that
8 Amendment, not the more generalized notion of “substantive due process,” must be the guide for
9 analyzing [a plaintiff’s] claims.’” *Albright v. Oliver*, 510 U.S. 266, 273-74 (1994) (Rehnquist, C.J., for
10 plurality) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)). Therefore, plaintiff’s claims will be
11 analyzed under the Eighth Amendment right to be free from cruel and unusual punishment rather any
12 generalized notions of substantive due process under the Fourteenth Amendment, and his Fourteenth
13 Amendment due process claim must be dismissed.

14 With respect to his remaining claim, the Eighth Amendment prohibits the imposition of
15 cruel and unusual punishments and “embodies broad and idealistic concepts of dignity, civilized
16 standards, humanity and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). “Deprivation of outdoor
17 exercise violates the Eighth Amendment rights of inmates confined to continuous and long-term
18 segregation.” *Keenan v. Hall*, 83 F.3d 1083, 1089 (9th Cir. 1996) (citing *Spain v. Proconier*, 600 F.2d
19 189, 199 (9th Cir. 1979)), *amended by* 135 F.3d 1318 (9th Cir. 1998); *see also Hearn v. Terhune*, 413
20 F.3d 1036, 1042 (9th Cir. 2005); *Lopez v. Smith*, 203 F.3d 1122, 1133 (9th Cir. 2000) (*en banc*); *Allen*
21 *v. Sakai*, 48 F.3d 1082, 1087 (9th Cir. 1995); *Allen v. City of Honolulu*, 39 F.3d 936, 938-939 (9th Cir.
22 1994); *LeMaire v. Maass*, 12 F.3d 1444, 1457-58 (9th Cir. 1993); *Toussaint v. Yockey*, 722 F.2d 1490-
23 1492-93 (9th Cir. 1984). “[A] temporary denial of outdoor exercise with no medical effects[, however,]
24 is not a substantial deprivation.” *May v. Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997); *see also Frost v.*
25 *Agos*, 152 F.3d 1124, 1130 (9th Cir. 1998). Prison officials may restrict outdoor exercise on the basis
26 of weather, unusual circumstances, or disciplinary needs. *See Spain*, 600 F.2d at 199. “The cost or

1 inconvenience of providing adequate [exercise] facilities [, however,] is not a defense to the imposition
2 of cruel punishment.” *Id.* at 200. Plaintiff states an Eighth Amendment claim.

3 **III. Conclusion**

4 **IT IS THEREFORE ORDERED** that the Clerk of Court shall detach and **FILE** the
5 complaint (docket #1-1).

6 **IT IS FURTHER ORDERED** that plaintiff’s Eighth Amendment claim **may proceed**.

7 **IT IS FURTHER ORDERED** that plaintiff’s Fourteenth Amendment due process claim
8 is **DISMISSED** with prejudice.

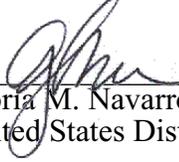
9 **IT IS FURTHER ORDERED** that the Clerk of Court shall issue summons for
10 defendants Henderson Detention Center and R. Avrett, and deliver same, along with the complaint, to
11 the U.S. Marshal for service. Plaintiff shall have twenty (20) days in which to furnish to the U.S.
12 Marshal the required Forms USM-285. Within twenty (20) days after receiving from the U.S. Marshal
13 a copy of the Form USM-285 showing whether service has been accomplished, plaintiff must file a
14 notice with the court identifying which defendants were served and which were not served, if any. If
15 plaintiff wishes to have service again attempted on an unserved defendant(s), then a motion must be filed
16 with the court identifying the unserved defendant(s) and specifying a more detailed name and/or address
17 for said defendant(s), or whether some other manner of service should be attempted.

18 **IT IS FURTHER ORDERED** that henceforth, plaintiff shall serve upon defendants, or,
19 if an appearance has been made by counsel, upon their attorney(s), a copy of every pleading, motion, or
20 other document submitted for consideration by the court. Plaintiff shall include with the original paper
21 submitted for filing a certificate stating the date that a true and correct copy of the document was mailed
22 to the defendants or counsel for defendants. If counsel has entered a notice of appearance, the plaintiff
23 shall direct service to the individual attorney named in the notice of appearance, at the address stated
24 therein. The court may disregard any paper received by a district judge or a magistrate judge that has
25 not been filed with the Clerk, and any paper which fails to include a certificate showing proper service.

26 **IT IS FURTHER ORDERED** that plaintiff’s “motion requesting stamped/filed copy

1 of original 1983 civil complaint, receipt for filing fee payment” (docket #4) is **GRANTED**. The Clerk
2 of Court shall send to plaintiff a file-stamped copy of his complaint as well as a receipt for payment of
3 filing fee to his current address as reflected in docket #7.

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5 DATED this 20th day of August, 2010.

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9 Gloria M. Navarro
10 United States District Judge
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