

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RAMON M. DEL CAMPO,

Plaintiff,

v.

No. 20-cv-00636 SMV

**DOÑA ANA COUNTY DETENTION CENTER
and BRYAN BAKER,**

Defendants.

MEMORANDUM OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS
AND GRANTING LEAVE TO FILE AMENDED COMPLAINT

THIS MATTER is before the Court on Plaintiff's Complaint [Doc. 1], filed on June 29, 2020, and Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 2], filed on June 29, 2020. The Court has considered the relevant portions of the record and the relevant law. Being otherwise fully advised in the premises, the Court will grant Plaintiff's Application to Proceed Without Prepaying Fees or Costs and grant Plaintiff leave to amend the Complaint no later than **August 21, 2020**.

BACKGROUND

Plaintiff proceeds pro se. He alleges that the Doña Ana County Detention Center ("DACDC") and its Executive Director, Baker, violated his constitutional rights. [Doc. 1] at 1, 7. DACDC allegedly has a kiosk system with documents detailing civil-rights violations that it failed to address. *Id.* at 7. He appears to believe that these documents, surveillance cameras, and other documents perhaps related to the detention center's medical contractor will show that civil-rights violations occurred. *See id.* Plaintiff also takes issue DACDC's "allowing [of] several young

[l]adies to locate in [r]estricted areas” of the detention center. *Id.* He requests that the Court view the record in another case where he presumably is or was the plaintiff, *Ramon M. del Campo v. City of Las Cruces Police Department*. *Id.* Plaintiff has moved to proceed *in forma pauperis*. [Doc. 2].

ANALYSIS

1. The Court will grant Plaintiff’s request to proceed *in forma pauperis*.

28 U.S.C. § 1915(a) provides that the Court may authorize the commencement of any suit without prepayment of fees by a person who submits an affidavit that includes a statement of all assets the person possesses and that the person is unable to pay such fees. 28 U.S.C. § 1915(a) (2018).

When a district court receives an application for leave to proceed *in forma pauperis*, it should examine the papers and determine if the requirements of [28 U.S.C.] § 1915(a) are satisfied. If they are, leave should be granted. Thereafter, if the court finds that the allegations of poverty are untrue or that the action is frivolous or malicious, it may dismiss the case[.]

Menefee v. Werholtz, 368 F. App’x 879, 884 (10th Cir. 2010) (alterations in original) (quoting *Ragan v. Cox*, 305 F.2d 58, 60 (10th Cir. 1962). Section 1915 “was intended for the benefit of those too poor to pay or give security for costs” *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 344 (1948). While a litigant need not be “absolutely destitute,” “an affidavit is sufficient which states that one cannot because of his poverty ‘pay or give security for the costs . . . and still be able to provide’ himself and dependents with the ‘necessities of life.’” *Id.* at 339.

The Court grants Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs. Plaintiff avers that he is unable to pay the costs of these proceedings, providing the

following information: (i) Plaintiff's total monthly income is \$805; (ii) and Plaintiff's monthly expenses total \$400. *See* [Doc. 2] at 1–5. The Court finds that these facts warrant proceeding *in forma pauperis*.

2. The Court will grant Plaintiff leave to amend his Complaint to state a claim.

Plaintiff's Complaint fails to state a claim under 42 U.S.C. § 1983 for three reasons. First, it does not clearly allege that Defendants violated the federal Constitution or federal law. He does not mention any specific constitutional amendment, and his brief references to a kiosk and surveillance footage, without more, do not plausibly allege a constitutional violation. *See* [Doc. 1] at 7. Therefore, the Complaint fails to state a claim under § 1983 because it does not allege a violation of a right secured by the Constitution or the laws of the United States. *See Hogan v. Winder*, 762 F.3d 1096, 1112 (10th Cir. 2014).

Second, the Complaint fails to state a claim upon which relief can be granted against Defendant DACDC because it is not a separate suable entity. “Generally, governmental sub-units are not separate suable entities that may be sued under § 1983.” *Hinton v. Dennis*, 362 F. App'x 904, 907 (10th Cir. 2010) (citing *Martinez v. Winner*, 771 F.2d 424, 444 (10th Cir. 1985) (holding that City and County of Denver would remain as a defendant and dismissing complaint as to the City of Denver Police Department because it is not a separate suable entity)).

Third, the Complaint fails to state a claim upon which relief can be granted against Defendant Baker because there are no factual allegations regarding Baker. *See Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1163 (10th Cir. 2007) (“[T]o state a claim in federal court, a complaint must explain what each defendant did to him or her; when the defendant did it;

how the defendant's action harmed him or her; and[] what specific legal right the plaintiff believes the defendant violated."); [Doc. 1]. For the above reasons, the Complaint fails to state a claim.

Finally, Plaintiff asks the Court to "view" another case: *Ramon M. del Campo vs. City of Las Cruces Police Department*. [Doc. 1] at 7. The Court will not comb the record of other cases and act as an advocate for Plaintiff. *See Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991) ("[I]t is [not] the proper function of the district court to assume the role of advocate for the pro se litigant.").


Rather than dismissing Plaintiff's Complaint, however, the Court will grant him leave to amend it. The statute governing proceedings *in forma pauperis* states that "the court shall dismiss the case at any time if the court determines that . . . the action . . . fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). Yet, "a pro se complaint filed under a grant of *ifp* can be dismissed under § 1915(e)(2)(B)(ii) 'for failure to state a claim . . . only where it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend.'" *Webb v. Caldwell*, 640 F. App'x 800, 802 (10th Cir. 2016) (quoting *Perkins v. Kan. Dep't of Corr.*, 165 F.3d 803, 806 (10th Cir. 1999)). While the Complaint can be dismissed under § 1915(e)(2)(B)(ii), it is not obvious that it would be futile to give Plaintiff an opportunity to amend. The Court therefore grants Plaintiff leave to file an amended complaint. Plaintiff's amended complaint must contain "a short and plain statement of the claim showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2); *see* [Doc. 1] at 3 (stating that Plaintiff must include in the Complaint "all facts [he] consider[s] important, including names of persons involved, places[,] and dates" and "[d]escribe exactly how each defendant is involved").

Section 1915 provides that the “officers of the court shall issue and serve all process, and perform all duties in [proceedings *in forma pauperis*].” § 1915(d). The Court will not order service of summons and the Complaint on Defendants at this time. Rather, the Court will decide whether to order service once Plaintiff files: (i) an amended complaint that states a claim over which the Court has jurisdiction; and (ii) a motion for service which provides Defendants’ addresses.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff’s Application to Proceed in District Court Without Prepaying Fees or Costs [Doc. 2] is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff may file an amended complaint no later than **August 21, 2020**. Failure to timely file an amended complaint may result in dismissal of this case.

IT IS SO ORDERED.



STEPHAN M. VIDMAR
United States Magistrate Judge