

APPENDIX A
NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 21 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

WADE TRAVIS WEBB,

No. 18-16659

Plaintiff-Appellant,

D.C. No. 4:18-cv-00268-FRZ

v.

MEMORANDUM*

COUNTY OF PIMA; et al.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Arizona Frank R. Zapata, District Judge, Presiding

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Wade Travis Webb appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging due process and equal protection claims. We review de novo a dismissal for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii). *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

(order). We affirm.

The district court properly dismissed Webb's claims against defendants Dupnik, Nanos, Napier, and LaWall in their individual capacities because Webb failed to allege facts sufficient to show that any of these defendants personally participated in the alleged deprivations. *See Starr v. Baca*, 652 F.3d 1202, 1207-08 (9th Cir. 2011) (elements for supervisory liability under § 1983).

The district court properly dismissed Webb's claims against defendants Pima County, and Dupnik, Nanos, Napier, and LaWall in their official capacities, because Webb failed to allege facts sufficient to show that a policy or custom of Pima County caused his alleged injury. *See Castro v. County of Los Angeles*, 833 F.3d 1060, 1073-76 (9th Cir. 2016) (en banc) (discussing requirements to establish municipal liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978)).

The district court properly dismissed Webb's claims against defendant Castillo, the investigating officer, because Webb failed to allege facts sufficient to show he was not provided with the process he was due, or that Castillo acted with "an intent or purpose to discriminate against him based upon his membership in a protected class." *Serrano v. Francis*, 345 F.3d 1071, 1082 (9th Cir. 2003)

(explaining elements of an equal protection claim); *see also Ingraham v. Wright*, 430 U.S. 651, 672 (1977) (explaining the elements of a due process claim).

We lack jurisdiction to consider the district court's denial of Webb's motion for relief from a final judgment because Webb failed to file a separate or amended notice of appeal. *See Fed. R. App. P. 4(a)(4)(B)(ii).*

AFFIRMED.

APPENDIX B

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Wade Travis Webb,

No. CV-18-00268-TUC-FRZ

Plaintiff,

ORDER

. V.

County of Pima, et al.,

Defendants.

Plaintiff simultaneously filed a Notice of Appeal and a Rule 60 Motion for Relief From Judgment. *See* Doc. 14 (Notice of Appeal) and Doc. 15 (alleging a “fundamental right to hold the defendants accountable”).

A Notice of Appeal generally divests a District Court of jurisdiction. *See Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (“The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). However, a District Court retains limited jurisdiction to resolve a “motion for relief filed under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.” Fed. R. App. P. 4(a)(4). Further, the Ninth Circuit has authorized this Court to determine whether Plaintiff’s appeal is “frivolous or taken in bad-faith” or if Plaintiff’s “in forma pauperis status should continue.” *See* Doc. 18.

In this case, Plaintiff, a citizen of Kentucky, alleges that Jill Shaw, an Arizona citizen, contacted him in January of 2014, and over the subsequent two month period they exchanged numerous phone calls and messages. *See Doc. 10 at pgs. 5–8.* Plaintiff and

1 Ms. Shaw had had a romantic relationship that started when Ms. Shaw was in high school
2 and Plaintiff was in college. *See id.* at pg. 15 (stating that “Ms. Shaw and Mr. Webb dated
3 off and on throughout the 1990s when they were mostly in college”).

4 Plaintiff alleges that Ms. Shaw was “mentally unstable,” and that Ms. Shaw’s
5 2014 text messages included a photo of Plaintiff’s “handwritten love note” from the
6 1990s and recent photos of Ms. Shaw’s bleeding wrists. *See Doc. 10* at pgs. 6–7. Plaintiff
7 claims the two had “communication issues for 3 weeks at the end of February,” but once
8 resolved, Ms. Shaw convinced Plaintiff to fly out to Tucson, AZ. *See id.* at pgs. 7–8.
9 Plaintiff left his job the next day and then purchased a one-way ticket to Arizona. *See id.*
10 at pgs. 8–9.

11 Further “communication issues” apparently prevented Plaintiff from contacting
12 Ms. Shaw once Plaintiff arrived in Tucson. *Id.* So when Plaintiff showed-up,
13 unannounced, at the Shaw’s residence on March 15, 2014, Ms. Shaw’s husband called
14 the police *Id.* at pg. 9.

15 Plaintiff claimed he was only there to check on Ms. Shaw’s health, but Ms. Shaw
16 told the responding officer that “she had not been suicidal or had suicidal thoughts since
17 June 2013 and any pictures [Plaintiff] would have would be from June of 2013.” *Id.* at
18 pg. 10. Pima County officials then contacted Plaintiff and requested he meet with them
19 in-person to further assess the situation, and “based on that in-person meeting and the 9-
20 1-1 call, Plaintiff was arrested on a felony stalking charge.” Doc. 6 (Order of the Court).

21 Pima County Detective Castillo was assigned to investigate the matter. *See Doc.*
22 10 at pg. 16. Detective Castillo attempted to meet with Jill Shaw in-person before the
23 matter was set for a Grand Jury Hearing, but was only able to interview Ms. Shaw over
24 the phone due to scheduling conflicts. *Id.*

25 Plaintiff complains that because Detective Castillo did not meet with Ms. Shaw in-
26 person, the investigation was “unacceptable” and that an in-person meeting would have
27 revealed Ms. Shaw’s “deceptive communication.” *Id.* at pg. 17. Plaintiff also complains
28 that Detective Castillo’s Grand Jury testimony mischaracterized the true relationship

1 between Plaintiff and Ms. Shaw because Detective Castillo only presented Ms. Shaw's
2 side of the story (which Plaintiff alleges was fabricated). *Id.* at pgs. 18-20.

3 The jurors eventually indicted Plaintiff on a felony stalking charge, but after a
4 number of pretrial motions — including Plaintiff's motion to Remand to Grand Jury for
5 Redetermination of Probable Cause — the government voluntarily moved to dismiss the
6 case. *Id.* at pgs. 20-25.

7 Plaintiff's Complaint alleged a violation of 42 U.S.C. § 1983 against a number of
8 Pima County officials, including Detective Castillo. *See* Doc. 1 at pgs. 26-35. This Court
9 dismissed the original Complaint for failure to state a cognizable claim, and subsequently
10 closed the case after Plaintiff failed to correct the deficiencies in an Amended Complaint.
11 *See* Docs. 6 & 12 (Orders of the Court).

12 Plaintiff's pending Rule 60 motion now claims that Pima County has an official
13 policy regarding "a mentally unstable person already known to the [Pima County
14 Sheriff's Department]". *See* Doc. 15 at pg. 6. The motion cites to just one isolated
15 incident that gave rise to two separate, yet related, federal cases. *See id.* (citing *Larson v.*
16 *Napier*, No. 16-16259, at pg. 4 (9th Cir. June 27, 2017), and *Jackson v. Nanos*, 15-CV-52
17 (D. Ariz.)). In *Larson v. Napier*, the Ninth Circuit affirmed that "the record reflects that
18 the district court based its ruling on the specific custom or practice of the Pima County
19 Sheriff's Department – namely, seizing individuals and searching their homes before
20 establishing a factual basis for doing so." The case makes no mention or finding of any
21 official County policy regarding "mentally unstable persons" like Plaintiff argues. *See*
22 *Larson v. Napier*. The related case, *Jackson v. Nanos*, eventually settled after the Ninth
23 Circuit's ruling in *Larson*, and also does not mention any policy, custom, or practice
24 regarding "mentally unstable persons." *See* Doc. 15 at pg. 7.

25 Plaintiff has not established that Pima County had any unconstitutional policy,
26 custom or practice that caused the deprivation of Plaintiff's rights. Nor has Plaintiff
27 alleged that Detective Castillo was improperly trained to conduct investigations. Further,
28 Plaintiff has not established — nor does there exist — a constitutional right to have state

1 investigators interview key witnesses *in-person* before a Grand Jury proceeding occurs.
2 Finally, Detective Castillo's Grand Jury testimony itself is protected by common law
3 immunity. *See Rehberg v. Paulk*, 566 U.S. 356, 375 (2012) (holding that "a grand jury
4 witness has absolute immunity from any § 1983 claim based on the witness' testimony").

5 In conclusion, the Court understands that Plaintiff had limited means, and that
6 Plaintiff's arrest and indictment required state imposed non de minimis expenses, such as
7 securing temporary housing for the 84 days from when Plaintiff was arrested until the
8 indictment was dismissed. *See Doc. 15* at pg. 2. However, Plaintiff has not shown that
9 any of the Defendants' actions rose to the level of a constitutional violation.¹ Plaintiff
10 was arrested and indicted, despite claims of innocence; but Plaintiff was also exonerated
11 according to the due process of law. Plaintiff alleges that Pima County's justice "system
12 is inherently flawed ... and dangerous to United States citizens as they have no means of
13 defending themselves until they are actually indicted on a felony charge." *See Doc. 15* at
14 pg. 5. The Federal Courts' co-equal role in our constitutional system of governance does
15 not include mandating the witness interviewing procedure that local state officials must
16 follow when conducting their criminal investigations.²

17 Accordingly, IT IS DETERMINED that although Plaintiff's appeal may lack a
18 realistic probability of success, the appeal is not "frivolous or taken in bad faith."

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¹ *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (guiding that the Fourteenth Amendment protects "fundamental rights" so "deeply rooted in this Nation's history and tradition, and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would exist if they were sacrificed' ") (quoting *Moore v. City of E. Cleveland, Ohio*, 431 U.S. 494 (1977), and *Palko v. State of Connecticut*, 302 U.S. 319 (1937)).

² *See, e.g., Missouri v. Jenkins*, 515 U.S. 70, 132–138 (1995) (Thomas, J., concurring) ("Article III courts are constrained by the inherent constitutional limitations on their powers. There simply are certain things that courts, in order to remain courts, cannot and should not do.... [W]e must recognize that the judiciary is not omniscient, and that all problems do not require a remedy of constitutional proportions.").

1 Further, IT IS ORDERED that Plaintiff's Rule 60 Motion (Doc. 15) is DENIED,
2 and the Clerk of the Clerk send a certified copy of this Order to the Ninth Circuit
3 pursuant to the REFERRAL NOTICE.

4 Dated this 12th day of September, 2018.

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8 Honorable Frank R. Zapata
9 Senior United States District Judge

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APPENDIX C

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3 **IN THE UNITED STATES DISTRICT COURT**
4 **FOR THE DISTRICT OF ARIZONA**
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6 Wade Travis Webb,

No. CV-18-00268-TUC-FRZ

7 Plaintiff,

ORDER

8 v.

9 County of Pima, et al.,

10 Defendants.

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12 Plaintiff has filed an Amended Complaint that fails to correct the deficiencies
13 pointed out by this Court in the original Complaint. *See* Doc. 10.

14 The Court had already informed Plaintiff that a complaint “must plead that each
15 Government official defendant, *through the official’s own individual actions*, has violated
16 the Constitution.” *See* Doc. 6 at pg. 3 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009))
17 (emphasis added). Further, the Court alerted Plaintiff that the Complaint must allege
18 “which specific rights Detective Castillo allegedly violated or how any of the Detective’s
19 actions render the County or [its Attorney and Sheriffs] liable — personally or in their
20 official capacity.” *See id.* at pg. 4.

21 Here, the Amended Complaint still fails to state *which* constitutional right was
22 abridged by a state actor. Instead, the Amended Complaint makes conclusory allegations
23 couched in the general terms of the Fourteenth Amendment. *See* Doc. 10 at pgs. 35–43.
24 The Amended Complaint also fails to connect any direct actions by the Pima County
25 Attorney, or any former and current Sheriffs, to any alleged constitutional violation. *See*
26 *id.* Finally, the Complaint crucially omits any indication that an official Pima County policy
27 or custom existed that caused a deprivation of Plaintiff’s rights. *See, e.g., Monell v. Dep’t*
28 *of Soc. Servs. of City of New York*, 436 U.S. 658, 694 (1978) (holding that: “a local

1 government may not be sued under § 1983 for an injury inflicted solely by its employees
2 or agents. Instead, it is when execution of a government's policy or custom, whether
3 made by its lawmakers or by those whose edicts or acts may fairly be said to
4 represent official policy, inflicts the injury that the government as an entity is responsible
5 under § 1983").

6 Ultimately, the Amended Complaint still fails to allege facts that would render
7 either Pima County, the County's Attorney, or current and former County Sheriffs liable
8 under 42 U.S.C. § 1983.

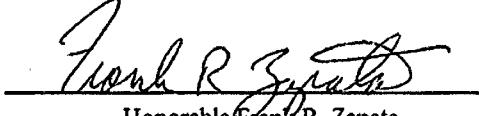
9 Accordingly, IT IS ORDERED that Plaintiff's Amended Complaint (Doc. 10) is
10 DISMISSED.

11 IT IS FURTHER ORDERED that Plaintiff's pending motion requesting "the
12 Court order service of the Summons to each Defendant" (Doc. 11) is DENIED as "moot."

13 IT IS FURTHER ORDERED that the Clerk of the Court enter judgment and close
14 this civil action.

15 Dated this 6th day of August, 2018.

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Honorable Frank R. Zapata
Senior United States District Judge

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Wade Travis Webb,

Plaintiff,

No. 18-CV-00268-TUC-FRZ

ORDER

v.

County of Pima, et al.,

Defendants.

13 *Pro se* Plaintiff has filed a Complaint against Pima County, the County's current
14 Sheriff Mark Napier, former Sheriffs Clarence Dupnik and Chris Nanos, County Attorney
15 Barbara LaWall, and Detective Jeffrey Castillo. See Doc. 1.

16 The Complaint — 280 paragraphs long — alleges a “Fourteenth Amendment
17 Violation” against all named Defendants based on allegations stemming from an encounter
18 with law enforcement officials that resulted in Plaintiff’s arrest, brief incarceration, and
19 indictment on felony stalking charges. *See id.* at pgs. 9–34.

20 The Complaint alleges¹ that Plaintiff flew from Kentucky to Arizona to contact Jill
21 K. Shaw, a former romantic acquaintance; and that police responded to a 9-1-1 call after
22 Plaintiff showed up uninvited at Jill Shaw's residence (where Ms. Shaw lived with her
23 husband) on the evening of March 15, 2014. *See id.* at pgs. 5-9.

24 Plaintiff was then contacted by a Pima County Deputy Sheriff who requested a
25 meeting, and — based on that in-person meeting and the 9-1-1 call — Plaintiff was arrested
26 on a felony stalking charge. *Id.* at pg. 11.

¹ When adjudicating the sufficiency of a complaint, the Court must strike all conclusory statements and accept the remaining allegations as true. See *Eagle Eye v. Faader*, 16-CV-103 (D. Ariz., June 6, 2016) (expounding the *Twombly/Iqbal* pleading standard) (citing *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 995 (9th Cir. 2014)).

1 The Complaint alleges that the County's subsequent investigation into the case by
2 Detective Castillo was based on false information provided by Jill Shaw, and that
3 government officials ignored or discredited Plaintiff's evidence and pleas of innocence.
4 *Id.* at pgs. 11–16. The Complaint further alleges that Detective Castillo failed to meet
5 with Jill Shaw in-person — only conducting an interview to obtain a victim statement
6 from Jill Shaw over the telephone. *Id.* at pg. 17.

7 The County presented its case to a Grand Jury on March 25, 2018. *Id.* at pg. 16.
8 The Complaint alleges that "Detective Castillo was the sole witness for the State at the
9 Grand Jury Hearing." *Id.* The Complaint also alleges that Detective Castillo presented the
10 Grand Jury with the false information that Jill Shaw had provided to the Detective as
11 "fact." *Id.* The Complaint further alleges that Detective Castillo's vague answers to
12 questions about Plaintiff and Jill Shaw's past relationship "incorrect[ly]" characterized
13 the truth, and that a sufficient investigation into the matter would have revealed the actual
14 extent of Plaintiff and Jill Shaw's relationship, and their contact over the years. *Id.*
15 Ultimately, "the jurors returned a true bill by a 14-2 vote" and Plaintiff was indicted on
16 the felony stalking charge. *Id.* at pg. 19.

17 After several pretrial proceedings in state court — including Plaintiff's
18 arraignment, multiple case management conferences, and Plaintiff's motion to remand
19 the case back to the Grand Jury for a redetermination of Probable Cause — the state court
20 granted the County's motion to dismiss the case against Plaintiff. *Id.* at pgs. 20–25. On
21 May 25, 2018, Plaintiff submitted this pending action against the named Defendants
22 pursuant to 42 U.S.C. § 1983. *Id.* at pg. 35.

23 The relevant text of 42 U.S.C. § 1983 reads: Every person who, under color of any
24 statute, ordinance, regulation, custom, or usage, of any State [...] subjects, or causes to be
25 subjected, any citizen of the United States [...] to the deprivation of any rights, privileges,
26 or immunities secured by the Constitution and laws, shall be liable to the party injured in
27 an action at law.

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1 However, Plaintiff doesn't state with any specificity which constitutional rights
2 any of the Defendants allegedly violated nor does Plaintiff present any theory of the case
3 that would satisfy Rule 8(a)(2)'s requirement of "a short and plain statement of the claim
4 showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a).

5 And although *pro se* pleadings are liberally construed, *Haines v. Kerner*, 404 U.S.
6 519, 520-21 (1972), conclusory and vague allegations do not support a cause of action.
7 *See Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)
8 (explaining that a liberal interpretation of a civil rights complaint may not supply
9 essential elements of the claim that were not initially pled).

10 To state a valid claim under § 1983, a plaintiff must allege that they suffered a
11 specific injury as a result of specific conduct of a defendant and show an affirmative link
12 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,
13 371-72, 377 (1976). Further, there is no *respondeat superior* liability under § 1983, and a
14 defendant's position as the supervisor of persons who allegedly violated a plaintiff's
15 constitutional rights does not impose liability. *See Monell v. Dep't of Soc. Servs. of New*
16 *York*, 436 U.S. 658 (1978). *See also, Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir.
17 1992); and *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). Instead, "a plaintiff must
18 plead that each Government official defendant, through the official's own individual
19 actions, has violated the Constitution." *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009). "A
20 plaintiff must allege facts, not simply conclusions, that show that an individual was
21 personally involved in the deprivation of [the] civil rights." *Barren v. Harrington*, 152
22 F.3d 1193, 1194 (9th Cir. 1998).

23 Plaintiff has failed to meet this pleading requirement. Instead — liberally
24 construed — Plaintiff second-guesses how Detective Castillo investigated the incident
25 and the manner in which that investigation proceeded. *See* Doc. 1 (alleging that Detective
26 Castillo may have misinformed the Grand Jury on relevant facts, which Plaintiff
27 attributes to the Detective's subpar investigation and Jill Shaw's fabrications.)

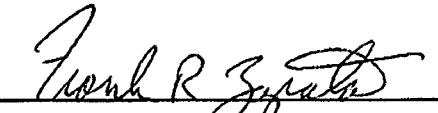
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1 Ultimately, Plaintiff has not plead, with any sufficiency, *which* specific rights
2 Detective Castillo allegedly violated or how any of the Detective's actions render the
3 County or Defendants Mark Napier, Clarence Dupnik, Chris Nanos or Barbara LaWall
4 liable — personally or in their official capacity.²

5 Accordingly, IT IS ORDERED that Plaintiff has 30 days to file an amended
6 complaint that states a claim upon which relief may be granted.³ If Plaintiff fails to timely
7 comply with this Order, the Court may dismiss this action without further notice.⁴

8 IT IS FURTHER ORDERED that Plaintiff's Motion to Proceed In Forma Pauperis
9 (Doc. 2) is GRANTED.

10 Dated this 6th day of June, 2018.

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14 Honorable Frank R. Zapata
15 Senior United States District Judge

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24 ² *See Bd. of Cty. Comm'r's of Bryan Cty., Okl. v. Brown*, 520 U.S. 397, 404 (1997) (holding "a plaintiff
25 must show that the municipal action was taken with the requisite degree of culpability and must
demonstrate a direct causal link between the municipal action and the deprivation of federal rights").

26 ³ *See, e.g., Stowe v. Arizona Workforce Connection*, 16-CV-533 (D. Ariz., Aug. 11, 2016) (dismissing
27 a Complaint filed pursuant to 42 U.S.C. § 1983 that "failed to even specify *which* 'civil right' Plaintiff
was allegedly deprived of by Defendants") (emphasis in original).

28 ⁴ *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an
action for failure to comply with any order of the Court).

**Additional material
from this filing is
available in the
Clerk's Office.**