

**APPENDIX A**

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Wade Travis Webb,  
Plaintiff,  
v.  
County of Pima, et al.,  
Defendants.

No. CV-18-00268-TUC-FRZ  
**ORDER**

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 Sherriff'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.<sup>1</sup> 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.<sup>2</sup>

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.”

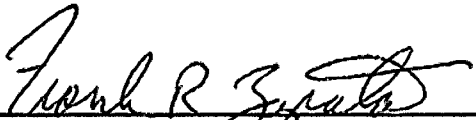
19  
20 ...  
21 ...  
22 ...

23  
24 <sup>1</sup> *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (guiding that the Fourteenth  
25 Amendment protects “fundamental rights” so “deeply rooted in this Nation’s history and tradition,  
26 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)).

27 <sup>2</sup> *See, e.g., Missouri v. Jenkins*, 515 U.S. 70, 132–138 (1995) (Thomas, J., concurring) (“Article  
28 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.

5  
6  
7 

8 Honorable Frank R. Zapata  
9 Senior United States District Judge  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



**APPENDIX C**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Wade Travis Webb,  
Plaintiff,  
v.  
County of Pima, et al.,  
Defendants.

No. CV-18-00268-TUC-FRZ  
**ORDER**

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

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

Here, the Amended Complaint still fails to state *which* constitutional right was abridged by a state actor. Instead, the Amended Complaint makes conclusory allegations couched in the general terms of the Fourteenth Amendment. *See* Doc. 10 at pgs. 35–43. The Amended Complaint also fails to connect any direct actions by the Pima County Attorney, or any former and current Sheriffs, to any alleged constitutional violation. *See id.* Finally, the Complaint crucially omits any indication that an official Pima County policy or custom existed that caused a deprivation of Plaintiff’s rights. *See, e.g., Monell v. Dep’t 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").

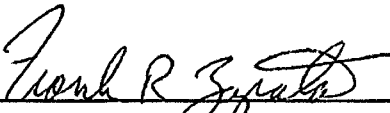
6 Ultimately, the Amended Complaint still fails to allege facts that would render  
7 either Pima County, the County's Attorney, or current and former County Sheriffs liable  
8 under 42 U.S.C. § 1983.

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.

16  
17  
18   
19 \_\_\_\_\_  
20 Honorable Frank R. Zapata  
21 Senior United States District Judge  
22  
23  
24  
25  
26  
27  
28

**APPENDIX D**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

Wade Travis Webb,  
Plaintiff,  
v.  
County of Pima, et al.,  
Defendants.

No. 18-CV-00268-TUC-FRZ  
**ORDER**

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

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

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

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

---

<sup>1</sup> 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)).







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