

Appendix A

Shavez Evans #315961  
Name and Prisoner/Booking Number

ASPC EYMAN/COOK  
Place of Confinement  
P.O. BOX  
3200

Mailing Address

Florence, AZ 85132  
City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Shavez Evans,  
(Full Name of Plaintiff)

Plaintiff,

v.

(1) Hon. Judge John Rea,  
(Full Name of Defendant)

(2) Com. Erin O'Brien,

(3) Nicholauw Poolsadlik,

(4) \_\_\_\_\_,

Defendant(s).

Check if there are additional Defendants and attach page I-A listing them.

CASE NO. \_\_\_\_\_

(To be supplied by the Clerk)

CIVIL RIGHTS COMPLAINT  
BY A PRISONER

Original Complaint  
 First Amended Complaint  
 Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

28 U.S.C. § 1343(a); 42 U.S.C. § 1983  
 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).  
 Other: 42 U.S.C § 1983

2. Institution/city where violation occurred: Phoenix

## B. DEFENDANTS

1. Name of first Defendant: Hon. Judge John Rea. The first Defendant is employed as: Judge at Maricopa County.  
(Position and Title) (Institution)
2. Name of second Defendant: Com. Erin O'Brien. The second Defendant is employed as: Judge at Maricopa County.  
(Position and Title) (Institution)
3. Name of third Defendant: Nicholas Podstadlik. The third Defendant is employed as: Appellant Counsel at Maricopa County Public Defender.  
(Position and Title) (Institution)
4. Name of fourth Defendant: \_\_\_\_\_ The fourth Defendant is employed as: \_\_\_\_\_  
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

## C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner?  Yes  No
2. If yes, how many lawsuits have you filed? 1. Describe the previous lawsuits:
  - a. First prior lawsuit:
    1. Parties: Evans # 315961 v. LOPEZ
    2. Court and case number: 2:19-cv-00167-DWL-BSB
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?)  
No jurisdiction
  - b. Second prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?)  
\_\_\_\_\_
  - c. Third prior lawsuit:
    1. Parties: \_\_\_\_\_ v. \_\_\_\_\_
    2. Court and case number: \_\_\_\_\_
    3. Result: (Was the case dismissed? Was it appealed? Is it still pending?)  
\_\_\_\_\_

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

**COUNT II****BAIL REFORM ACT**

1. State the constitutional or other federal civil right that was violated: 5th, 14th Amendment U.S. Constitution; A2 Constitution 4, 24, 30; Civil Rights Act; Privacy Act; ARS. CONST. Art 28; ARS Const. Art. 257; Art 28 13 (Equal privileges and immunities)

2. Count II. Identify the issue involved. Check only one. State additional issues in separate counts.

Basic necessities       Mail       Access to the court       Medical care  
 Disciplinary proceedings       Property       Exercise of religion       Retaliation  
 Excessive force by an officer       Threat to safety       Other: conspiracy; kidnapping; involuntary confinement

3. Supporting Facts. State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments. August 2010

Judge Erin O'Brien vacated my Evidentiary Hearing through email, outside of the presence of defense council, and the defendant. After the court of Appeals ruled in favor of Simpson and Martinez special action. The state's witness had just provided her supplemental report during the End of July. There was not any adversary hearing of any kind to put on record before trial. There were emails between the judge O'Brien and the state prosecutor and the defense council. (in the file of public defender). Thus in trial the defense attorney argues that the defendant 6th amendment was violated for Confrontation Clause not having an opportunity to cross the witness prior to trial. The objection is denied in Trial by Judge Reb, allowing a hearsay testimony. There is also evidence of the defendant contacting the defense, via email of her office assistant, request why was my hearing denied. (on file with public defenders office). The Arizona Supreme Court denies review for motion to review fundamental error while on DR. The email between Bianca Perez and Valeria Llewellyn on 8/5/2010 at 4:06 pm provides the defendant Evans requesting answer why the Evidentiary hearing was vacated.

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

loss of marriage; privacy of marriage violated; deprived of life and liberty; pain & suffering; loss of wages; loss of time; exposed to unbearable conditions in County jail and ADC prison; violation of wife's privacy exposed; my personal privacy exposed to public

**5. Administrative Remedies.**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No

b. Did you submit a request for administrative relief on Count II?  Yes  No

c. Did you appeal your request for relief on Count II to the highest level?  Yes  No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. NA

## D. CAUSE OF ACTION

### COUNT I

Fed. Rules of Crim. Pro Rule 7(c)(1)

1. State the constitutional or other federal civil right that was violated: 5th, 14th Amend US Constitution; Az Constitution 4, 24, and 30; Civil Right Act; Court Reporter Act; Privacy Act; Victim Bill of Rights; Oaths and Affirmations; Self-Incrimination; Rule of Prof. conduct Rule 42 ER 3.2(d)

2. Count I. Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input checked="" type="checkbox"/> Other: <u>Judicial Bias</u>	

3. Supporting Facts. State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

On Nov. 14 2016 Judge John Rea made a political statement against the defendant. He stated "Let's hope they are Trump supports!" Referencing this preference of the type of jury that he would like to see. These statements were omitted when transcribed, only the verbatim transcript (video) would display these comments. I was denied a motion from the Arizona Supreme Court during my petition for review to review the entire record for structural error. ALL of the judges rulings were bias and not on merits. THE Judge even allowed the state prosecutor, impeach the witness under the guise of Impeachment, Even when the defense [Mr Lenord] warned the judge of the evidence (affidavit) that the state's witness provided. Nov 16 2016 transcript citing page 12 Id 10-16. In the state's witness testimony she also mentions theres a report, a supplemental police report. Nov 21 2017 page 50 Id 7-8. This police report was never submitted to Bill Montgomery as a discovery. Both the affidavit and the police report was exculpatory/impeaching. On the direct examination the state's witness was cut off by the judge when she mention the police advised her how to have the defendant arrested on 4/29/16 @ 2442 S. 88th In the police came out with body cameras. The Judge also received emails from the states witness during sentencing about how DCS threatened her to divorce. He also had info of the defendant being denied a legal call documents on file in the public def. office

4. Injury. State how you were injured by the actions or inactions of the Defendant(s).

loss of marriage, privacy of marriage, depriviate of life and liberty, pain & suffering, loss of wages; loss of time, wife's victim/civil rights violated, exposed to un/veble conditions in county jail and prison, invasion of privacy exposed to public

5. Administrative Remedies:

- Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?  Yes  No
- Did you submit a request for administrative relief on Count I?  Yes  No
- Did you appeal your request for relief on Count I to the highest level?  Yes  No
- If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. No speedy remedy.

**COUNT III**

Rule 42 Rule of Prof. Conduct

1. State the constitutional or other federal civil right that was violated: 5th, 14th Amendment U.S. Constitution; Ar. Const. Art 4, 24, 30; Civil Rights Act; Equal Protection clause; Privacy Act. Ar.S. Const. Art 2 § 8; Oaths and affirmation Ar.S. Const. Art 2 § 7; Art 2 § 13

2. **Count III.** Identify the issue involved. Check only one. State additional issues in separate counts.

Basic necessities       Mail       Access to the court       Medical care  
 Disciplinary proceedings       Property       Exercise of religion       Retaliation  
 Excessive force by an officer       Threat to safety       Other: Contempt of Court

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

Nicholas Pedsiadlik denied me access to court. The appellate attorney refused to provide me the state's powerpoint, which was in a digital video format, that was not transcribed in the transcript. When Pedsiadlik request for the state power point to be supplement as a part of the record he mentioned that if it was not provided it would be a Brady issue; because there would be no way to determine if the state prejudiced the defendant during closing arguments with this video prop created through powerpoint. The power point was full of videos, the same video statements that was never cross-examine prior to trial, because the Evidentiary hearing was denied.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

loss of marriage; privacy of marriage violated; deprived of life and liberty; pain & suffering; loss of wages; loss of time; exposed to unlivable conditions in county jail and ADC prison

5. **Administrative Remedies.**

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution?       Yes       No

b. Did you submit a request for administrative relief on Count III?       Yes       No

c. Did you appeal your request for relief on Count III to the highest level?       Yes       No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. N/A

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

112

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

9 Shavez Evans,  
10 Plaintiff,  
11 v.  
12 John Rea, et al.,  
13 Defendants.

NO. CV-19-00709-PHX-DWL (JZB)

## JUDGMENT IN A CIVIL CASE

15        **Decision by Court.** This action came for consideration before the Court. The  
16        issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed June  
18 19, 2019, Plaintiff to take nothing, and the complaint and action are dismissed with  
19 prejudice for failure to state a claim. This dismissal may count as a "strike" under  
20 28 U.S.C. § 1915(g).

Brian D. Karth  
District Court Executive/Clerk of Court

23 || June 19, 2019

By s/ D. Draper  
Deputy Clerk

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MDR

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

7

8

9 Shavez Evans, No. CV 19-00709-PHX-DWL (JZB)

10 Plaintiff,

11 v.

**ORDER**

12 Honorable Judge John Rea, et al.,  
13 Defendants.

14

15 On February 4, 2019, Plaintiff Shavez Evans, who is confined in the Arizona State  
16 Prison Complex-Eyman in Florence, Arizona, filed a pro se civil rights Complaint pursuant  
17 to 42 U.S.C. § 1983 (Doc. 1). In a February 20, 2019 Order, the Court gave Plaintiff 30  
18 days to either pay the filing and administrative fees or file an Application to Proceed In  
19 Forma Pauperis.

20 On February 20, 2019, Plaintiff filed an Application to Proceed In Forma Pauperis.  
21 In a February 27, 2019 Order, the Court denied the deficient Application to Proceed and  
22 gave Plaintiff 30 days to either pay the filing and administrative fees or file a complete  
23 Application to Proceed In Forma Pauperis. On March 5, 2019, Plaintiff filed a second  
24 Application to Proceed In Forma Pauperis, which the Court denied in a March 15, 2019  
25 Order.

26 On March 8, 2019, Plaintiff filed a Motion to Amend Forma Pauperis/Request for  
27 Forma Pauperis Relief. On April 4, 2019, he filed a Request for Extension of Time to  
28 Receive Certified Six-Month Trust Account Statement. In an April 19, 2019 Order, the

1 Court denied the Motion to Amend Forma Pauperis and partially granted the Request for  
2 Extension of Time. The Court gave Plaintiff thirty days to either pay the \$350.00 filing  
3 fee and \$50.00 administrative fee or file a complete Application to Proceed In Forma  
4 Pauperis and a certified six-month trust account statement.

5 On April 25, 2019, Plaintiff filed a Certified Statement of Account. On May 10,  
6 2019, he filed a Motion to Amend Complaint (Doc. 15) and lodged a “Proposed Amended  
7 Complaint (Count 4).” On May 20, 2019, he filed a Request for a “Writ of Injunction  
8 Under 28 U.S.C. § 2283 Against the Superior Court” (Doc. 17). On May 24, 2019, he filed  
9 a “Motion to Consolidate a[] Hearing with the Trial on the Merits; Expedi[t]ing the  
10 Preliminary Injunction (Writ of Injunction)” (Doc. 18). On June 11, 2019, Plaintiff filed a  
11 Supplemental Motion of Writ of Injunction Under 28 U.S.C. § 2283 (Doc. 19).

12 Although Plaintiff has not filed another Application to Proceed, the Court will grant  
13 Plaintiff leave to proceed in forma pauperis based on the information in his Certified  
14 Statement of Account. The Court will dismiss the Complaint and this action, deny the  
15 Motion to Amend Complaint because amendment would be futile, and deny as moot the  
16 Request for a Writ of Injunction, Motion to Consolidate, and Supplemental Motion of Writ  
17 of Injunction.

18 **I. In Forma Pauperis Status and Filing Fee**

19 The Court will grant Plaintiff permission to proceed in forma pauperis. Plaintiff  
20 must pay the statutory filing fee of \$350.00. 28 U.S.C. § 1915(b)(1). The Court will assess  
21 an initial partial filing fee of \$17.05. The remainder of the fee will be collected monthly  
22 in payments of 20% of the previous month’s income credited to Plaintiff’s trust account  
23 each time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). The Court  
24 will enter a separate Order requiring the appropriate government agency to collect and  
25 forward the fees according to the statutory formula.

26 **II. Statutory Screening of Prisoner Complaints**

27 The Court is required to screen complaints brought by prisoners seeking relief  
28 against a governmental entity or an officer or an employee of a governmental entity. 28

1 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff  
 2 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which  
 3 relief may be granted, or that seek monetary relief from a defendant who is immune from  
 4 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

5 A pleading must contain a “short and plain statement of the claim *showing* that the  
 6 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does  
 7 not demand detailed factual allegations, “it demands more than an unadorned, the-  
 8 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 9 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
 10 conclusory statements, do not suffice.” *Id.*

11 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
 12 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
 13 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
 14 that allows the court to draw the reasonable inference that the defendant is liable for the  
 15 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for  
 16 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
 17 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual  
 18 allegations may be consistent with a constitutional claim, a court must assess whether there  
 19 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

20 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
 21 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342  
 22 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent  
 23 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551  
 24 U.S. 89, 94 (2007) (per curiam)).

25 If the Court determines that a pleading could be cured by the allegation of other  
 26 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
 27 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).

1 Plaintiff's Complaint will be dismissed for failure to state a claim, without leave to amend  
2 because the defects cannot be corrected.

3 **III. Complaint**

4 In his three-count Complaint, Plaintiff names as Defendants Maricopa County Judge  
5 John Rea, Maricopa County Commissioner Erin O'Brien, and Maricopa County Public  
6 Defender Nicholaus Pödsiadlik. In his Request for Relief, Plaintiff seeks monetary  
7 damages, "release on bail during consideration," for the Court to "dismiss and discharge  
8 all charges," and "total discharge from prison."

9 In **Count One**, Plaintiff alleges he was subjected to "judicial bias," in violation of  
10 his Fifth and Fourteenth Amendment rights, Rule 7(c)(1) of the Federal Rules of Criminal  
11 Procedure, the Civil Rights Act, the Court Reporter Act, the Privacy Act, the Victim's Bill  
12 of Rights, the Arizona Constitution, Rule 42 of the Rules of Professional Conduct, and  
13 Ethical Rule 3.8(d). He claims that in November 2016, Defendant Rea "made a political  
14 statement against [Plaintiff]" when he stated, "Let's hope they are Trump support[er]s."  
15 Plaintiff contends this was a reference to Defendant Rea's "preference of the type of jury  
16 that he would like to see," the statement was deleted from the transcribed record, and the  
17 statement is only available in a video of the proceedings. Plaintiff alleges he was "denied  
18 a motion from the Arizona Supreme Court during [his] petition for review to review the  
19 entire record for structural error"; all of Defendant Rea's rulings were "bias[ed] and not  
20 on [the] merits"; and Defendant Rea allowed the prosecutor to "impeach the witness under  
21 the guise of impeachment, even when the defense . . . warned the judge of the evidence  
22 (affidavit) that the state's witness provided." Plaintiff also claims that the witness  
23 mentioned a supplemental police report that was never submitted to the Maricopa County  
24 Attorney as discovery, the affidavit and supplemental police report were  
25 "exculpatory/impeaching," the witness was "cut off by the judge when she mentioned the  
26 police advised her how to have [Plaintiff] arrested," and Defendant Rea received emails  
27 from the state's witness during sentencing, and Defendant Rea had "info of [Plaintiff] being  
28 denied a legal call."

1           In Count Two, Plaintiff alleges he was subjected to a “conspiracy, kidnapping,  
 2 [and] involuntary confinement,” in violation of his Fifth, Sixth, and Fourteenth  
 3 Amendment rights, the Civil Rights Act, the Privacy Act, and the Arizona Constitution.  
 4 Plaintiff contends Defendant O’Brien vacated Plaintiff’s evidentiary hearing by e-mail,  
 5 outside the presence of Plaintiff and his defense counsel. Plaintiff alleges there was no  
 6 “adversary[ial] hearing of any kind to put on [the] record before trial,” only emails between  
 7 Defendant O’Brien, the prosecutor, and defense counsel. According to Plaintiff, his  
 8 attorney argued during trial that Plaintiff’s Sixth Amendment rights under the  
 9 Confrontation Clause were violated because he did not have an opportunity to cross-  
 10 examine the witness before trial. Plaintiff claims Defendant Rea denied the objection  
 11 during trial, “allowing . . . hearsay testimony.” Plaintiff also asserts that there is evidence  
 12 that he contacted his defense attorney to find out why his evidentiary hearing was denied.  
 13 Finally, Plaintiff contends the Arizona Supreme Court denied “review for motion to review  
 14 fundamental error while on PR.”

15           In Count Three, Plaintiff raises a claim regarding “contempt of court” and the  
 16 denial of access to the court, in violation of his Fifth and Fourteenth Amendment rights,  
 17 the Civil Rights Act, the Privacy Act, Rule 42 of the Rules of Professional Conduct, and  
 18 the Arizona Constitution. He claims Defendant Podsiadlik denied him access to the court  
 19 when he refused to provide Plaintiff with “the State’s PowerPoint,” which was “full of  
 20 videos, the same video statements that w[ere] never cross-examine[d] prior to trial, because  
 21 the evidentiary hearing was denied.”

22 **IV. Failure to State a Claim**

23           First, § 1983 provides a cause of action against persons acting under color of state  
 24 law who have violated rights guaranteed by the United States Constitution and federal law.  
 25 42 U.S.C. § 1983; *see also Buckley v. City of Redding*, 66 F.3d 188, 190 (9th Cir. 1995).  
 26 Section 1983 does not provide a cause of action for violations of state law or state  
 27 constitutional rights. *Ybarra v. Bastian*, 647 F.2d 891, 892 (9th Cir. 1981).

28 . . . .

1       Second, to the extent Plaintiff seeks the invalidation or modification of his sentence,  
 2 or any relief which would result in immediate or speedier release, his exclusive remedy is  
 3 a petition for habeas corpus. *Preiser v. Rodriguez*, 411 U.S. 475, 488-90 (1973).

4       Third, Plaintiff's mere use of the word "conspiracy" in Count Two of his Complaint  
 5 is insufficient to state a conspiracy claim. To state a conspiracy claim, a plaintiff must  
 6 show "an agreement or 'meeting of the minds' to violate constitutional rights.'" *Franklin*  
 7 *v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (citation omitted). The Court "need not, however,  
 8 accept as true allegations that are merely conclusory, unwarranted deductions of fact, or  
 9 unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.),  
 10 *amended on other grounds*, 275 F.3d 1187 (9th Cir. 2001); *see also Woodrum v. Woodward*  
 11 *County*, 866 F.2d 1121, 1126 (9th Cir. 1989) (conclusory allegations of conspiracy did not  
 12 support a § 1983 claim); *Karim-Panahi v. Los Angeles Police Dep't*, 839 F.2d 621, 626  
 13 (9th Cir. 1988) ("A mere allegation of conspiracy without factual specificity is  
 14 insufficient."). Thus, the Court will dismiss Plaintiff's conspiracy claim.

15       Fourth, judges are absolutely immune from § 1983 suits for damages for their  
 16 judicial acts except when they are taken "in the 'clear absence of all jurisdiction.'" *Stump*  
 17 *v. Sparkman*, 435 U.S. 349, 356-57 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351  
 18 (1871)); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986). An act is "judicial" when  
 19 it is a function normally performed by a judge and the parties dealt with the judge in his or  
 20 her judicial capacity. *Stump*, 435 U.S. at 362; *Crooks v. Maynard*, 913 F.2d 699, 700 (9th  
 21 Cir. 1990). This immunity attaches even if the judge is accused of acting maliciously and  
 22 corruptly, *Pierson v. Ray*, 386 U.S. 547, 554 (1967), or of making grave errors of law or  
 23 procedure. *See Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988). Thus, the  
 24 Court will dismiss Plaintiff's claims against Defendants Rea and O'Brien.

25       Fifth, a prerequisite for any relief under 42 U.S.C. § 1983 is a showing that the  
 26 defendant has acted under the color of state law. An attorney representing a criminal  
 27 defendant does not act under color of state law. *See Polk County v. Dodson*, 454 U.S. 312,  
 28 325 (1981); *see also Szijarto v. Legeman*, 466 F.2d 864, 864 (9th Cir. 1972) (per curiam)

1 (“[A]n attorney, whether retained or appointed, does not act ‘under color of’ state law.”).  
 2 Thus, the Court will dismiss Plaintiff’s claim against Defendant Podsiadlik.

3 **V. Motion to Amend Complaint**

4 In his Motion to Amend Complaint, Plaintiff seeks to add a fourth claim to his  
 5 Complaint to “raise a[] Declaratory Judgment-Injunction under Title 28 U.S.C. § 2283” to  
 6 enjoin “unconstitutional and criminal activities regarding Plaintiff’s criminal conviction.”

7 Although the decision to grant or deny a motion to amend is within the discretion  
 8 of the district court, “Rule 15(a) [of the Federal Rules of Civil Procedure] declares that  
 9 leave to amend ‘shall be freely given when justice so requires’; this mandate is to be  
 10 heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). However, “[l]eave to amend need  
 11 not be given if a complaint, as amended, is subject to dismissal.” *Moore v. Kayport*  
 12 *Package Express, Inc.*, 885 F.2d 531, 538 (9th Cir. 1989).

13 In his “Proposed Amended Complaint (Count Four),” Plaintiff requests the Court  
 14 protect his constitutional rights in his pending criminal case.<sup>1</sup> He contends that he was not  
 15 “exonerated of all charges” after his victim “declined her accusations” and, instead, a  
 16 “fraudulent scheme . . . in the state court [made] the jury believe that the victim perjured  
 17 herself in order to secure a prosecution against . . . Plaintiff.” He claims the “State of  
 18 Arizona and its Judicial Systems” violated Plaintiff’s constitutional rights by not  
 19 dismissing Plaintiff’s criminal case after the victim testified and filed an affidavit declaring  
 20 that “her accusations were not true,” Plaintiff did not sexually assault her, and she was  
 21 coerced by law enforcement and the prosecution. Plaintiff claims his due process rights  
 22 have been denied because his efforts to obtain the PowerPoint “and other such needed  
 23 evidence for appeal and Rule 32 is stonewalled.”

24 . . . .

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25  
 26 <sup>1</sup> Plaintiff’s convictions and sentences were affirmed on appeal. *State v. Evans*, 1  
 27 CA-CR 17-0048 (Ariz. Ct. App. 2018); <https://www.azcourts.gov/Portals/0/OpinionFiles/Div1/2018/CR17-0048.pdf> (last visited June 12, 2019). It appears Plaintiff’s petition for  
 28 post-conviction relief is still pending before the trial court. See <http://www.superiorcourt.maricopa.gov/docket/CriminalCourtCases/caseInfo.asp?caseNumber=CR2016-123024> (last visited June 12, 2019).

1           Section 1983 actions are exceptions to the federal anti-injunction statute, 28 U.S.C.  
 2 § 2283. *Mitchum v. Foster*, 407 U.S. 225, 243 (1972). However, even in § 1983 actions,  
 3 the abstention doctrine set forth in *Younger v. Harris*, 401 U.S. 37 (1971), “may require a  
 4 federal court to abstain from exercising its jurisdiction in certain actions when proceedings  
 5 are pending in state court.” *Goldie’s Bookstore, Inc. v. Super. Ct. of Cal.*, 739 F.2d 466,  
 6 469 (9th Cir. 1984); *see also Mitchum*, 407 U.S. at 243 (although district court had the  
 7 power in a § 1983 action to enjoin a proceeding pending in a state court, the Supreme Court  
 8 “d[id] not question or qualify in any way the principles of equity, comity, and federalism  
 9 that must restrain a federal court when asked to enjoin a state court proceeding.”)

10           The *Younger* abstention doctrine prevents a federal court in most circumstances  
 11 from directly interfering with ongoing criminal proceedings in state court and applies while  
 12 the case works its way through the state appellate process. *New Orleans Pub. Serv., Inc.*  
 13 *v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989) (“[f]or *Younger* purposes, the  
 14 State’s trial-and-appeals process is treated as a unitary system”); *Huffman v. Pursue, Ltd.*,  
 15 420 U.S. 592, 608 (1975) (“Virtually all of the evils at which *Younger* is directed would  
 16 inhere in federal intervention prior to completion of state appellate proceedings, just as  
 17 surely as they would if such intervention occurred at or before trial.”). “Only in the most  
 18 unusual circumstances is a defendant entitled to have federal interposition by way of  
 19 injunction or habeas corpus until after the jury comes in, judgment has been appealed from  
 20 and the case concluded in the state courts.” *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir.  
 21 1972). Special circumstances occur “[o]nly in cases of proven harassment or prosecutions  
 22 undertaken by state officials in bad faith without hope of obtaining a valid conviction and  
 23 perhaps in other extraordinary circumstances where irreparable injury can be shown.”  
 24 *Carden v. Montana*, 626 F.2d 82, 84 (9th Cir. 1980) (quoting *Perez v. Ledesma*, 401 U.S.  
 25 82, 85 (1971)).

26           Plaintiff has failed to show special or extraordinary circumstances indicating that he  
 27 will suffer irreparable harm if this Court abstains from hearing his claims until after he has  
 28 a chance to present his claims to the state courts. *See Younger*, 401 U.S. at 45-46; *Carden*,

1 626 F.2d at 83-84. Thus, the Court will abstain from interfering in Plaintiff's ongoing  
2 state-court criminal proceedings and will deny Plaintiff's Motion to Amend Complaint.

3 **VI. Request for a Writ of Injunction, Motion to Consolidate, and Supplemental  
4 Motion of Writ of Injunction**

5 In light of the Court's dismissal of the Complaint and this action and the denial of  
6 Plaintiff's Motion to Amend, the Court will deny as moot Plaintiff's Request for a Writ of  
7 Injunction, Motion to Consolidate, and Supplemental Motion of Writ of Injunction.

8 **IT IS ORDERED:**

9 (1) Plaintiff is granted permission to proceed in forma pauperis.

10 (2) As required by the accompanying Order to the appropriate government  
11 agency, Plaintiff must pay the \$350.00 filing fee and is assessed an initial partial filing fee  
12 of \$17.05.

13 (3) The Complaint (Doc. 1) is dismissed for failure to state a claim and for  
14 seeking monetary relief from Defendants who are immune from such relief, pursuant to 28  
15 U.S.C. § 1915A(b)(1) and (2), and the Clerk of Court must enter judgment accordingly.

16 (4) Plaintiff's Motion to Amend Complaint (Doc. 15) is denied.

17 (5) Plaintiff's Request for a Writ of Injunction (Doc. 17), Motion to Consolidate  
18 a Hearing with the Trial on the Merits (Doc. 18), and Supplemental Motion of Writ of  
19 Injunction (Doc. 19) are denied as moot.

20 (6) The Clerk of Court must make an entry on the docket stating that the  
21 dismissal for failure to state a claim may count as a "strike" under 28 U.S.C. § 1915(g).

22 ....

23 ....

24 ....

25 ....

26 ....

27 ....

28 ....

(7) The docket shall reflect that the Court, pursuant to 28 U.S.C. § 1915(a)(3) and Federal Rules of Appellate Procedure 24(a)(3)(A), has considered whether an appeal of this decision would be taken in good faith and finds Plaintiff may appeal in forma pauperis.

Dated this 18th day of June, 2019.

Domestic W. Lanza  
United States District Judge

## Appendix B

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SHAYEZ EVANS

Appellant,

9th Cir. Case No. 19-10257

Originating Court Case No. 2:19-cv-0079-DAB-JFB

vs.

HON. JUDGE JOHN REA, et al.

Appellee(s).

**APPELLANT'S INFORMAL BRIEF**  
(attach additional sheets as necessary)

1. Jurisdiction

a. Timeliness of Appeal:

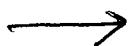
- (i) Date of entry of judgment or order of originating court: June 19 2019
- (ii) Date of service of any motion made after judgment (other than for fees and costs): \_\_\_\_\_
- (iii) Date of entry of order deciding motion: \_\_\_\_\_
- (iv) Date notice of appeal filed: Jun 24 2019
- (v) For prisoners, date you gave notice of appeal to prison authorities: Jun 21 2019

## 2. What are the facts of your case?

The facts are the judicial bias that the defendant(s) practiced that when Plaintiff was defendant in criminal case number CR2016-123024-001 totally deprived him of his constitutional protection(s).

Mr. Evans was totally deprived of his adversarial safeguards at every stage of the prosecution when it was in the direct power and discretion of the Judge Rea to present, protect and secure his position as the defendant. This raises a number of issues. An issue most pressing is matters are Mr. Evans deprived of the evidentiary process of bail hearings contrary to applicable law(s) and statute. The prejudicial comments by the Judge stating that he hoped that the Jury was President Trump supporters in light of the court unconstitutionally allowing the actual victims declining allegation(s) against Mr. Evans to present as perjured testimony at Jury trial.

Continue pg. 2-4



What are the Facts  
of your case? continued

The question is involuntary servitude in violation under 18 U.S.C. § 241 as ultimately the Appellee(s) rendered the Appellant to totality of the adversarial process despite the victim making sworn statements to a court of law that she was coerced into making false accusation(s) against her husband; the state of Arizona and its court(s) not exonerating the Appellee which was due and instead took an U.S. citizen and discriminatory, prejudicially, with racial classification willfully deprived the Appellee of his constitutional rights under the U.S. Constitution in order to deprive the adversarial process of an Defendant(s) defense in a criminal prosecution in order to convict him which raises issues under 18 U.S.C. § 241.

Upon the Appellant amending his complaint to cause an intervention by the District Court to protect him in his Rule 32 post conviction relief under rule 32 of the Arizona Rules of Criminal Procedure; under the Writ of Injunction doctrine under 28 U.S.C. § 2283; and under the Younger v. Harris doctrine.

Under the circumstances the District Court judge abused its discretion by his position of the court under the abstention doctrine as there is no other remedy for a state prosecuting a man or woman for sexual assault when the victim admitted that she was not sexually assaulted by that person but was coerced into making false accusation(s); then in light of these developing circumstances the trial judge, prosecution, and defense counsel conspired and contrary to evidence to the contrary willfully under color of law deprived Mr. Evans of his adversarial procedures in order to convict him.

The Fact(s) are that the only remedy is under 28 U.S.C. § 2283 against the perpetrators which are the Defendants-Appellee(s) whom are no longer under the absolute immunity protections. Mr. Evans should have been exonerated of all charges. The District Court erred in its decision and violated Mr. Evans rights to amend his complaint; and erred by making moot his Preliminary Injunction Filed under 28 U.S.C. § 2283.

State the claim or claims  
you raised at the original-  
ing court

The bail reform act was denied Mr. Evans, his adversarial and evidentiary rights  
at all critical stages of the prosecution was denied Mr. Evans. Court three is against  
the contempt of court issued against him (this issue was previously an action in the  
District Court under Case No. 2:19-cv-00167-JWL-BSB. The issue regarding the  
[power point] is the foundation of what raises this court three — he was in denial  
of the adversarial process in his criminal prosecution in general it affected his  
direct appeal and petition for review.

Having reviewed the issues raised as claim(s) Mr. Evans Civil Rights Complaint  
he amended his complaint raising an Declaratory Judgment-Indunction under Title 28  
U.S.C. § 2283 to enjoin "unconstitutional and criminal activities regarding Plaintiff's cr-  
iminal conviction". A writ of Indunction was then moved in the court under 28 U.S.C.  
§ 2283.

3. What did you ask the originating court to do (for example, award damages, give injunctive relief, etc.)?

I sought compensatory, nominal, monetary, punitive damages and injunctive relief under 28 U.S.C. § 2283; I also moved to amend the complaint but was arbitrarily denied this privilege.

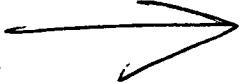
4. State the claim or claims you raised at the originating court.

In court one the judicial bias is in violation of the Constitution Amend 14, regarding denied bail hearing, evidentiary hearing. I was denied a full-blown adversarial hearing — this was court two which also raises conspiracy denying Mr. Evans basic common law rights of his Bill of Rights in any criminal prosecution.

Confer pg. "3-A" 

5. What issues are you raising on appeal? What do you think the originating court did wrong?

Judicial bias in of the Fifth and Fourteenth Amendments (Rule 7(c)(1), Fed. R. Civ. P., Civil Rights Act, the Court Reporter Act, the Privacy Act, the Sixths Bill of Rights, the Arizona Constitution, Rule 42 of the Rules of Professional Conduct

Confer pg. "3-B" 

What issues are you  
raising on appeal...

and Ethical Rule 3.8(a)

I raise "conspiracy, Kidnapping and involuntary confinement in violation of his Fifth, Sixth, and Fourteenth Amendment rights, the Civil Rights Act, the Privacy Act, and the Arizona Constitution.

I raise contempt of court issues denied access to court in violation of the Fifth, and Fourteenth Amendment, the Civil Rights Act, the Privacy Act, Rule 42 of the Rule of Professional Conduct, and the Arizona Constitution.

I raise a claim of Special circumstances requiring an intervention by the Federal Court regarding extraordinary issues where irreparable injury has happened to me the Appellant, and shall continue to happen to me, has happened indefinitely to me. That an declaratory judgment -Injunction under Title 28 U.S.C. 2283 is necessary.

I claim that the writ of injunction filed under the doctrine of *Koonger v. Harris* that the District Judge ruled as most violates the due process clause. That in no wise has the Superior Court-Maricopa County shown that it shall not continue to willfully deprive under color of law me my rights under U.S. and State Constitution(s) in the Rule 32 post-conviction relief (and pending) proceeding.

I raise abuse of discretion regarding the position of the District Court under the abstention doctrine set forth in *Koonger v. Harris*, 401 U.S. 37 (1971) that the court is conservative and therefore political in this point. Nevertheless denying to execute Justice in My civil matters.

6. Did you present all issues listed in #5 to the originating court?

If not, why not?

Yes  No

7. What law supports these issues on appeal?  
(You may, but need not, refer to cases and statutes.)

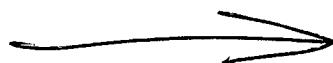
MEMORANDUM OF LAW

Paragraph. 1

This court has ruled that in *Goldstein v. City of Long Beach*, 481 F.3d 1170, 1175-77 (9th Cir. 2007) (prosecutors not absolutely immune when failing to train and supervise deputies to avoid civil rights violation(s)).

In this present case the prosecution practiced such disregard to my legal interest(s) coerced, intimidated, threatened injured, harassed not just the Appellant but their own key material witness which was the victim herself in order to secure an unconstitutional conviction

conterue pg. "4-1"



issues on appeal...

in light of the victim declining her ~~accuse~~ accusation(s) by sworn statement(s) etc.. these acts by the Appellee(s) are Knowingly unconstitutional.

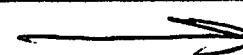
### Paragraph II:

the state Judge (Appellee(s)) [willfully] allowed the adversarial process to be deprived the Appellant knowing that the victim testified that Mr. Evans did not sexually assault her that she was forced by law enforcement and threatened by child protective services (violating her bill of rights) in order to secure a conviction <sup>against</sup> ~~against~~ Appellant. This court said in Eggar v. City of Livingston, 40 F.3d 312 (9th Cir. 1994) "A state Judge does not enjoy judicial immunity from unconstitutional behavior when the facts are sufficient to grant party declaratory or injunctive relief against a judge".

Assuredly the Judge, <sup>(Rea)</sup> in this case willfully violated Mr. Evans civil rights in regards to what's stated above. Also making such statements as "I hope that the jury are president Trump supporters" is an issue. Black attorney's claim that Judge presiding over state court case brought by attorney referred to him "in vicious derogatory terms in regards to his race and color", refused to allow him representation, and improperly dismissed state court suit stated claim under 81983. Davidson v. Garry, F.D.N.K. 1996, 956 F. Supp. 265, affirmed 112 F.3d 503. Civil Rights K. 1395(1).

### Paragraph III:

The Superior Court - Maricopa County Failed to hold an bond hearing denied Mr. Evans his denied him his adversarial process in this instance regarding the bail reform Act in Salerno creating liability under 81983.



what law supports these issues on appeal ...  
9th Cir Case No 19-16257 Pg. "4-B"

Woods v. City of Michigan City, Ind. C.A.7 (Ind) 1991, 940 F.2d 275.  
Civil Rights K. 1358; see also Lopez v. Arpaio, 770 F.3d 772, 786.

III.

### Paragraph I.

the Defense counsel (trial counsel) conspired with the Judge, and the prosecutor to deprive Mr. Evans of his imminent adversarial process. The law enforcement in this case is part of that conspiracy. The connection(s) here are evident regarding conspiracy. Lawline v. American Bar Ass'n N.D Ill 1999 738 F. Supp. 288, Affirmed 956 F.2d 1378.

Fabricating evidence and/or effectuate a criminal conviction making void the truth seeking process at trial violates constitutional norms. Green v. Wright P. Conn 2005, 389 F. Supp. 2d 416.

The issue is liberty, See, Meyer v. Nebraska, 262 U.S. 390, 399, 43 S.Ct. 625, 626 (1923) of which was not afforded Mr. Evans. The state is liable for § 1983 against its state officials constitutional rights violations in this present case. Haines v. Fisher, C.A. 10 (Wyo.) 1996, 83 F.3d 1803; see also, Kalina v. Fletcher, U.S. Washington 1991, 118 S.Ct. 502, 522 U.S. 118, 139 L. Ed. 2d 471.

Presumption was great in favor of the Appellant. Ariz. Const., Art. II, § 2d (A)(4) raising substantive component of the Due Process Clause. Lopez - Valenzuela v. Arpaio, 770 F.3d 772, 775 (2014).

### Paragraph J.

Mr. Evans theretofore moves to amend his civil complaint under the Declaratory Judgment - Injunction under Title 28 U.S.C § 2283 and to move the injunction deemed moot into hearing(s). Mr. Evans should

conserve Pg. "4-C"

What law supports these  
issues on appeal.

not enjoy any protection under his rights under United States  
and State Constitution in the pending Rule 3.2 under the Arizona  
Rules of Criminal Procedure postconviction relief action in the juris-  
diction of the State of Arizona in Maricopa County and need in-  
tervention by federal court to protect his [rights]. Mitchum v. Foster, 407  
U.S. 225, 243 (1972); see also Younger v. Harris, 401 U.S. 37 (1971).

8. Do you have any other cases pending in this court? If so, give the name and docket number of each case.

*none*

9. Have you filed any previous cases which have been decided by this court? If so, give the name and docket number of each case.

*none*

10. For prisoners, did you exhaust all administrative remedies for each claim prior to filing your complaint in the district court?

*This is an tort civil claim and not against the prison and/or any conditions of confinement matters.*

Shavez Evans  
Name

  
Signature

P.O. Box 3200  
1-0-19-L Eyman-Cook  
Florence, AZ 85132  
Address

01/02/2019  
Date

## CERTIFICATE OF SERVICE

Case Name: SHANEZ EVANS v. HON. JUDGE JOHN REA, et al.

9th Cir. Case No.: 19-16257

IMPORTANT: You must send a copy of ALL documents filed with the Court and any attachments to counsel for ALL parties in this case. You must attach a copy of the certificate of service to each of the copies and the original you file with the Court. Please fill in the title of the document you are filing. Please list the names and addresses of the parties who were sent a copy of your document and the dates on which they were served. Be sure to sign the statement below.

I certify that a copy of the APPELLANT'S INFORMAL BRIEF  
(title of document you are filing)  
and any attachments was served, either in person or by mail, on the persons listed  
below.

  
Signature  
Notary NOT required

Name

Address

Date Served

**NOT FOR PUBLICATION**

**FILED**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

MAR 10 2020

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

SHAVEZ EVANS,

Plaintiff-Appellant,

v.

JOHN REA, Honorable Judge, Maricopa  
County Superior Court; et al.,

Defendants-Appellees.

No. 19-16257

D.C. No. 2:19-cv-00709-DWL-JZB

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Dominic Lanza, District Judge, Presiding

Submitted March 3, 2020\*\*

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Shavez Evans appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging federal and state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal under 28 U.S.C. § 1915A. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th

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\* 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).

Cir. 2011). We affirm.

The district court properly dismissed Evans's claims against his public defender because he was not acting under color of state law in his representation of Evans. *See Polk County. v. Dodson*, 454 U.S. 312, 320-25 (1981) ("[A] public defender does not act under color of state law when performing a lawyer's traditional functions to a defendant in a criminal proceeding.").

The district court properly dismissed Evans's claims against Judge Rea and former Commissioner O'Brien as barred by judicial immunity. *See Mireles v. Waco*, 502 U.S. 9, 11-12 (1991) (discussing judicial immunity and its limited exceptions).

The district court did not abuse its discretion in denying Evans's motion to add to his complaint a request to enjoin his ongoing criminal trial. *See Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (setting forth standard of review). The district court properly found that *Younger* abstention would prevent it from interfering with the ongoing state criminal trial. *See ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 758 (9th Cir. 2014) (setting forth requirements for *Younger* abstention in civil cases).

Evans's pending motion for appointment of counsel is denied. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009).

Evans's pending motions for injunctions, as well as the motion in his

Opening Brief to amend his complaint to add a claim for injunctive relief, are denied. As stated above, *Younger* abstention prevents this Court from interfering with a state criminal trial. *See ReadyLink Healthcare, Inc.*, 754 F.3d at 758.

Evans's remaining motion requesting the court take judicial notice of his affirmation is denied.

**AFFIRMED.**

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings**

**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**

**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)**

**(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- The proceeding involves a question of exceptional importance; or
- The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

#### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms*.

#### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at [www.ca9.uscourts.gov](http://www.ca9.uscourts.gov) under *Forms* or by telephoning (415) 355-7806.

#### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at [www.supremecourt.gov](http://www.supremecourt.gov)

#### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

Form 10. Bill of Costs

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (party name(s)):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

Signature

Date

(use "s/[typed name]" to sign electronically-filed documents)

COST TAXABLE	REQUESTED (each column must be completed)		
	No. of Copies	Pages per Copy	Cost per Page
DOCUMENTS / FEE PAID			TOTAL COST
Excerpts of Record*	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
Principal Brief(s) (Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
Reply Brief / Cross-Appeal Reply Brief	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
Supplemental Brief(s)	<input type="text"/>	<input type="text"/>	\$ <input type="text"/>
Petition for Review Docket Fee / Petition for Writ of Mandamus Docket Fee			\$ <input type="text"/>
			<b>TOTAL:</b> \$ <input type="text"/>

\*Example: Calculate 4 copies of 3 volumes of excerpts of record that total 500 pages [Vol. 1 (10 pgs.) + Vol. 2 (250 pgs.) + Vol. 3 (240 pgs.)] as:

No. of Copies: 4; Pages per Copy: 500; Cost per Page: \$.10 (or actual cost IF less than \$.10);  
TOTAL:  $4 \times 500 \times \$.10 = \$200$ .

Feedback or questions about this form? Email us at [forms@ca9.uscourts.gov](mailto:forms@ca9.uscourts.gov)

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

OCT 16 2019

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

SHAVEZ EVANS,

Plaintiff-Appellant,

v.

JOHN REA, Honorable Judge, Maricopa  
County Superior Court; et al.,

Defendants-Appellees.

No. 19-16257

D.C. No. 2:19-cv-00709-DWL-JZB  
District of Arizona,  
Phoenix

ORDER

Appellant's filings (Docket Entry Nos. 6, 7 and 8) are referred to the panel  
that will consider the merits of this appeal.

FOR THE COURT:

MOLLY C. DWYER  
CLERK OF COURT

By: Alex Hammond  
Deputy Clerk  
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

JUN 23 2020

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

SHAVEZ EVANS,

Plaintiff-Appellant,

v.

JOHN REA, Honorable Judge, Maricopa  
County Superior Court; et al.,

Defendants-Appellees.

No. 19-16257

D.C. No. 2:19-cv-00709-DWL-JZB  
District of Arizona,  
Phoenix

ORDER

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Evans's petition for rehearing en banc (Docket Entry No. 12) is denied.

No further filings will be entertained in this closed case.

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