

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
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Denver, Colorado 80257
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Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

August 19, 2021

Pedro J. "Pete" Amaro
Guadalupe County Correctional Facility
P.O. Box 520
Santa Rosa, NM 88435
#44726

RE: 21-2039, Amaro v. State of New Mexico, et al
Dist/Ag docket: 1:16-CV-00993-KG-JHR

Dear Appellant:

Enclosed is a copy of the order and judgment issued today in this matter. The court has entered judgment on the docket pursuant to Fed. R. App. P. Rule 36.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

CMW/jjh

APPENDIX A.

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

August 19, 2021

Christopher M. Wolpert
Clerk of Court

PEDRO J. AMARO,

Plaintiff - Appellant

v.

STATE OF NEW MEXICO; SUSANA MARTINEZ, Governor for the State of New Mexico; BILL RICHARDSON, former Governor for the State of New Mexico; HECTOR H. BALDERAS, Attorney General for the State of New Mexico; GARY R. KING, former Attorney General for New Mexico; DEPARTMENT OF HEALTH AND HUMAN SERVICES; NEW MEXICO DEPARTMENT OF CORRECTIONS; GREGG MARCANTEL; JOE WILLIAMS, Secretary of Corrections; JERRY ROARK, Director of Adult Prisons; TIM LEMASTER, Deputy Secretary of Operations; LARRY PHILLIPS, NMCD Grievance/Disciplinary Appeals; JAMES R. BREWSTER, General Counsel; ANGELA M. MARTINEZ, Health Services Administrator; Y. RIVERA, A.C.A. Monitor/Administrator for New Mexico; G. CHAVEZ; GEO GROUP, INC., a corporation registered to do business in New Mexico; JOE R. WILLIAMS, employed by GEO Group; FNU LNU, Wardens; FNU LNU, Chief of Security; FNU LNU, Grievance Lieutenants; CORIZON, LLC, a foreign corporation registered to do business in New Mexico; LISA STABER, M.D.; KATHY ARMIJO, employed by Corizons

No. 21-2039
(D.C. No. 1:16-CV-00993-KG-JHR)
(D. N.M.)

as Health Services; FNU LNU, John/Jane
Does,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **MATHESON, BRISCOE, and PHILLIPS**, Circuit Judges.

Plaintiff Pedro Amaro, a New Mexico state prisoner appearing pro se, appeals from the district court's decision dismissing his amended civil rights complaint without prejudice. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm the district court's decision.

I

At all times relevant to this case, Amaro was confined at the Guadalupe County Correctional Facility (GCCF) in Santa Rosa, New Mexico. GCCF is purportedly operated by The GEO Group, Inc. (GEO), under contract with the State of New Mexico. ROA at 31.

On the morning of December 28, 2012, Amaro was allegedly "subjected to a near-fatal episode of acute Carbon Monoxide Poisoning." *Id.* Amaro was allegedly

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

also “subjected to additional and cumulative episodes of Carbon Monoxide Exposure and/or Poisoning” on January 4, 2013, January 19, 2013, and January 21, 2013. *Id.* In addition, on February 6, 2014, he was “pale/wane, vomiting, and otherwise mentally affected and/or neurologically distressed/disoriented.” *Id.* According to Amaro, since the first episode on December 28, 2012, he has suffered from “varying degrees of anxiety” and has had “trouble going to sleep” out of fear “if he will wake up or not.” *Id.* at 33. Amaro also alleges that he “has not felt the same mentally and has become somewhat ‘disabled’ in regards [sic] to his mental faculties” since the December 28, 2012 episode. *Id.*

On September 2, 2016, Amaro initiated these federal proceedings by filing a complaint against the State of New Mexico, a host of named and unnamed state officials and employees, GEO, various named and unnamed officers and employees of GEO, including named and unnamed officers and employees at GCCF, and various unnamed individuals responsible for the design, engineering, construction, and ongoing maintenance of GCCF. The complaint recounted Amaro’s alleged exposures to carbon monoxide, and also alleged generally that prisoners confined at GCCF were being exposed to and poisoned by carbon monoxide. The complaint, which set forth seven specific counts, sought relief “under the Federal Civil Rights Act and the Constitutions of the United States and the State of New Mexico,” as well as “under New Mexico civil and/or common law,” including the New Mexico Tort Claims Act (NMTCA). *Id.* at 20.

On September 15, 2017, the district court dismissed Amaro's complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and entered final judgment in the case. In doing so, the district court reached the following conclusions regarding the allegations in Amaro's complaint:

- Amaro documented only "one incident of carbon monoxide exposure" that "occur[red] on December 28, 2012" at GCCF, but "did not file his civil rights Complaint until September 2, 2016," *id.* at 100;
- Amaro's complaint did include allegations of an incident on February 6, 2014, when he was sick, but "d[id] not allege . . . an event of exposure to carbon monoxide on that date," *id.* at 108;
- "To the extent Amaro" was "seek[ing] relief on claims other than his own, the Complaint fail[ed] to state a claim for relief and those claims w[ould] be dismissed," *id.* at 102;
- "Although [Amaro] identifies specific individuals, specifies their official positions, and generally alleges that they acted under color of law, he makes almost no factual allegations of any act or omission by any individual defendant," and thus "[t]he allegations of the Complaint are insufficient to state any plausible Section 1983 claim against any named individual defendant," *id.* at 106;
- The allegations in the complaint were insufficient "to impose supervisory liability on any individual defendant," *id.*;

- “[A]ll of Amaro’s claims are barred by the two-year statute of limitations of the NMTCA and the three-year statute of limitations governing Section 1983 claims,” *id.* at 109;
- Because “Amaro’s claims are barred by the statute of limitations,” “any amendment of those claims would also be subject to immediate dismissal,” and thus “leave to amend . . . would be futile,” *id.* at 110.

After unsuccessfully moving for reconsideration, Amaro appealed from the district court’s order of dismissal.

On June 13, 2018, this court issued an order and judgment affirming in part and reversing in part. In particular, this court affirmed “the dismissal of . . . all claims premised on the December 2012 or January 2013 incidents or the grievance process associated with those incidents,” but reversed Amaro’s claims arising out of the “February 2014 incident” and remanded those “claims with instructions for the district court to provide [Amaro] an opportunity to amend his complaint” to allege “sufficient individual specificity to state a valid claim for relief under § 1983.” *Id.* at 179.

On remand, the district court granted Amaro leave to amend his complaint. The district court emphasized that “[t]he amended complaint must be limited to [his] claims against individual state officials and prison employees for [the] alleged February 2014 incident and related grievance proceeding.” *Id.* at 182. Amaro filed an amended complaint on September 26, 2018.

On May 28, 2020, the district court issued a memorandum opinion and order dismissing the amended complaint without prejudice “for failure to comply with the Court’s Order and with the Federal Rules of Civil Procedure.” *Id.* at 328. The district court noted, in pertinent part:

Far from complying with the Court’s orders, Plaintiff Amaro’s Amended Complaint is 144 pages long. (Doc. 69). He names in excess of 300 defendants, up to and including “the owners of the real property bearing the street address of 1039 Agua Negra Rd, Santa Rosa, New Mexico.” (Doc. 69) at 57-58. The allegations expressly include official capacity claims and claims against defendants that were previously dismissed by this Court. (See, e.g., Doc. 69 at 7, 9, 10). He asserts 39 claims covering a 10-year period (Doc. 69 at 63, 60-141) and makes generalized allegations

Id. at 331. The district court also “t[ook] notice that Amaro ha[d] a pattern of making grossly overbroad and unsupported claims,” noting in support that in 2017 “Amaro filed a habeas corpus petition under 28 U.S.C. § 2254 seeking to have all criminal convictions by New Mexico’s Ninth Judicial District Court from 1979 through 2013 set aside and all convicted prisoners released from custody.” *Id.* The district court emphasized that its “dismissal [wa]s without prejudice,” and it noted that “[i]f Plaintiff Amaro believes he has civil rights claims, he may institute a new case by filing a new complaint that complies with the requirements of Fed. R. Civ. P. 8 and 11” *Id.* at 333.

Amaro filed a motion for relief from judgment, which was denied by the district court on March 23, 2021. Amaro then filed a timely notice of appeal.

II

Amaro argues on appeal that “the district court’s overall conduct,” including its reference to his 2017 habeas litigation, “clearly articulates a prejudicial ‘anti-prisoner’ and/or ‘anti’-Pro Se Plaintiff posture both directly and tacitly” Aplt. Br. at 4. Amaro further argues that the district court’s order granting him leave to amend his complaint “did not comport with this Court’s Mandate on reversal and remand, but prejudicially limited [him] to only one cause of action, with disregard for the ‘continuing injury’ constituted by the unabated risk of harm from the underlying conditions, in violation of the 8th Amendment.” *Id.* at 5. Ultimately, Amaro argues that his amended complaint complies with both this court’s mandate and with the district court’s order on remand granting him leave to amend his complaint, and therefore should not have been dismissed by the district court.

We review the district court’s decision to dismiss Amaro’s amended complaint for an abuse of discretion. *See United States ex rel. Lemmon v. Envircare of Utah, Inc.*, 614 F.3d 1163, 1167 (10th Cir. 2010) (“Rule 8(a) dismissals are reviewed for an abuse of discretion”); *Nasious v. Two Unknown B.I.C.E. Agents*, 492 F.3d 1158, 1161 (10th Cir. 2007) (“We review a district court’s dismissal under Rule 41(b) for an abuse of discretion.”). Because Amaro is proceeding pro se, we construe his pleadings liberally, but he remains obligated to comply with the Federal Rules of Civil and Appellate Procedure, and we may not act as his advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

In dismissing Amaro's amended complaint, the district court effectively relied on Rules 8 and 41(b) of the Federal Rules of Civil Procedure. Rule 8 outlines the "General Rules of Pleading" and, as relevant here, requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Rule 41(b) authorizes the involuntary dismissal of an action or claim "[i]f the plaintiff fails to prosecute or to comply with" the Federal Rules of Civil Procedure "or a court order." Fed. R. Civ. P. 41(b). Rule 41(b) "has long been interpreted to permit courts to dismiss actions sua sponte for a plaintiff's failure to . . . comply with the . . . court's orders." *Olsen v. Mapes*, 333 F.3d 1199, 1204 n.3 (10th Cir. 2003).

After examining the record on appeal, including in particular Amaro's amended complaint, we conclude the district court did not abuse its discretion in dismissing the amended complaint without prejudice. As a threshold matter, there is little question that the amended complaint fails to comply with Rule 8(a)(2). Instead of the "short and plain statement" required by Rule 8(a)(2), the amended complaint is approximately 142 pages in length and includes 1,031 paragraphs of allegations and claims. Further, and as the district court emphasized in its order of dismissal, the amended complaint fails to comply with the district court's July 26, 2018 order granting Amaro leave to amend. Rather than focusing on the alleged February 2014 incident and related grievance proceedings, as this court's mandate anticipated and as the district court directed in its order granting Amaro leave to amend, the amended complaint outlines a host of claims spanning multiple years. For example, the

amended complaint purports to set forth claims related to Amaro falling from his cell bunk in October 2014, ROA at 264, for a March 27, 2018 exposure to carbon monoxide, *id.* at 265, for “[d]efective construction of a correctional facility,” *id.* at 266, and for an unspecified “assault/battery with bodily intrusion,” *id.* at 268.

Lastly, we reject Amaro’s argument that the district court was “anti-prisoner,” “anti-pro se,” or otherwise biased against him. To be sure, the district court referenced a prior habeas action that was filed by Amaro. But we are not persuaded that this reference demonstrated any bias on the part of the district court.

III

The judgment of the district court is AFFIRMED.

Entered for the Court

Mary Beck Briscoe
Circuit Judge

Pedro J. Amaro, 44726
Guadalupe County Correctional Facility
P.O. Box 520 South Hwy. 54, Exit 3B
Santa Rosa, NM 88435



United States District Court
District of New Mexico
Office of the Clerk
Cover Sheet

Date: May 28, 2020 04:50 PM MDT

To: Pedro J. Amaro

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

CM/ECF Support Email: cmecf@nmcourt.fed.us

Number of Pages (including cover sheet): 8

Comments: Case#1:16-cv-00993-KG-JHR Document#75 Filed:05/28/2020

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The court will only print and mail documents to pro se parties and other individuals exempted from the mandatory e-filing requirements.

APPENDIX B.

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

PEDRO J. AMARO,

Plaintiff,

vs.

No. CV 16-00993 KG/JHR

SUSANA MARTINEZ, GOVERNOR FOR THE
STATE OF NEW MEXICO, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court under Fed. R. Civ. P. 41(b) on the Amended Civil Rights Complaint filed by Pedro J. Amaro (Doc. 69). The Court will dismiss the Amended Complaint without prejudice for failure to comply with the Court's Order and with the Federal Rules of Civil Procedure.

Plaintiff Pedro J. Amaro is a prisoner in state custody serving a life sentence for First Degree Murder, Tampering With Evidence, and Burglary. (*Amaro v. Horton*, No. CV 17-00898 WJ/LF, Doc. 10 at 1). He filed his original Civil Rights Complaint in this Court. (Doc. 1). In his Complaint, he sought wide-ranging relief, including injunctive relief “against the actual conditions of the plants’ inherently flawed architectural design and faulty construction at all private ‘for-profit’ prison facilities operating in New Mexico,” declaratory relief “mandating structural alterations of the prisons’ structural flaws”, “legal termination and/or dissolution of all State contracts with all private ‘for-profit’ prison companies operating in New Mexico,” and compensatory, punitive, and hedonic damages.” (Doc. 1-1) at 12-14. The Court dismissed the Complaint on the grounds that it failed to state a plausible §1983 claim for relief and was barred by the applicable statute of limitations. (Doc. 27).

On September 15, 2017, the Court entered its Memorandum Opinion and Order dismissing all of Plaintiff Pedro J. Amaro's claims in this case. (Doc. 27). Plaintiff Amaro appealed the Court's ruling to the Tenth Circuit Court of Appeals on September 28, 2017. (Doc. 34). After taking his appeal, Amaro also filed a Motion for Amendment of Complaint on October 24, 2017. (Doc. 39). The Tenth Circuit entered its Order and Judgment on Amaro's appeal on June 13, 2018. (Doc. 62-1).

In its Order and Judgment, the Tenth Circuit affirmed this Court's rulings dismissing:

- (1) all claims against the State of New Mexico;
- (2) any claims of damages suffered by other prisoners;
- (3) all requests for relief at prisons where Plaintiff was not and is not incarcerated;
- (4) all claims premised on the December 2012 or January 2013 incidents or the grievance process associates with those incidents; and
- (5) any claims for damages against state officials in their official capacities.

(Doc. 62-1) at 12. The Tenth Circuit also affirmed this Court's conclusion that Plaintiff's claims against individual state officials and prison employees for an alleged February 2014 incident and related grievance proceeding are not currently alleged with sufficient individual specificity to state a valid claim, but reversed dismissal of those claims with instructions for this Court to provide Plaintiff an opportunity to amend his complaint to remedy the pleading deficiency. (Doc. 62-1) at 12.

On the mandate of the Tenth Circuit, the Court granted Plaintiff Amaro a reasonable opportunity to remedy the defects in his pleading. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990). The Court instructed Amaro that the amended complaint must be limited to Plaintiff's claims against individual state officials and prison employees for an alleged February 2014 incident and related grievance proceeding, and Plaintiff Amaro may not re-assert any other claims previously dismissed by the Court. (Doc. 64). The Court's Order stated:

Plaintiff's amended complaint should be concise and may raise only

facts and issues relevant to his allegations of unconstitutional conduct arising out of the alleged February 2014 incident and related grievance proceeding. The amended complaint must include all the allegations and supporting material to be considered by the court, and it may not reference or attempt to incorporate material from plaintiff's original complaint. *See* Local Rule 9.2(c). Plaintiff is to refrain from including unsupported speculation, he must limit the amended complaint to claims that directly concern him, and he may not discuss issues concerning other people. He is to avoid lengthy or irrelevant background information or other excessively long narratives. Further, Plaintiff must allege some personal involvement by an identified official in the alleged constitutional violation to succeed under § 1983. *Fogarty v. Gallegos*, 523 F.3d 1147, 1162 (10th Cir. 2008). In a Section 1983 action, it is particularly important that a plaintiff's complaint "make clear exactly *who* is alleged to have done *what to whom*, to provide each individual with fair notice as to the basis of the claim against him or her." *Robbins v. Oklahoma*, 519 F.3d 1242, 1249-50 (10th Cir. 2008) (emphasis in the original). Generalized allegations against "defendants", without identification of actors and conduct that caused the deprivation of a constitutional right, do not state any claim for relief. *Robbins v. Oklahoma*, 519 F.3d at 1249-50. The amended complaint must state the facts of each separate claim and why Plaintiff believes his constitutional rights were violated. He should include identities of individual defendants and their official positions, a description of their actions, and relevant dates, if available. If Plaintiff fails to file an amended complaint or files an amended complaint that does not comply with these directions, the Court may dismiss this action with prejudice and without further notice.

(Doc. 64) at 2-3.

Rather than filing an amended complaint that complied with the Court's Order, Amaro objected to the Order. (Doc. 65). In his Objections, Amaro claimed that the Court's Order was "overly strict." The Court overruled Amaro's objections and granted him an additional 30 days in which to file his amended complaint. (Doc. 67). In overruling Amaro's objections, the Court again notified Amaro that his amended complaint needed to set out a short, plain statement of his claims that complied with Fed. R. Civ. P. 8. (Doc. 67) at 1. The Order also reiterated that Amaro could not reassert any claims that were previously dismissed and the dismissal was affirmed by the Tenth Circuit. (Doc. 67) at 2.

Plaintiff Amaro then filed his Amended Complaint. (Doc. 69). Far from complying with the Court's Orders, Plaintiff Amaro's Amended Complaint is 144 pages long. (Doc. 69). He names in excess of 300 defendants, up to and including "the owners of the real property bearing the street address of 1039 Agua Negra Rd, Santa Rosa, New Mexico." (Doc. 69) at 57-58. The allegations expressly include official capacity claims and claims against defendants that were previously dismissed by this Court. (*See, e.g.*, Doc. 69 at 7, 9, 10). He asserts 39 claims covering a 10-year period (Doc. 69 at 63, 60-141) and makes generalized allegations such as:

but for negligent staffing of respective state departments by Cabinet Secretaries, NMCD, DOH, and HSD would have been adequately staffed by quality personnel who were properly hired, credentialed, trained, and supervised...

(Doc. 69) at 71. In his request for relief, he again seeks injunctive relief, declaratory relief, agency commitment to staff training and discipline, reform of conditions and attitudes endemic to the current correctional culture, legal termination or dissolution of the State's contracts with GEO Group and/or Centurion, various compensatory damages, punitive damages, hedonic damages, court costs and related costs/fees, and judicial discharge of his current sentence. (Doc. 69) at 141-142.

The Court takes notice that Amaro has a pattern of making grossly overbroad and unsupported claims. In *Amaro v. Horton*, No. CV 17-00898 WJ/LF, Amaro filed a habeas corpus petition under 28 U.S.C. § 2254 seeking to have all criminal convictions by New Mexico's Ninth Judicial District Court from 1979 through 2013 set aside and all convicted prisoners released from custody.

Rule 12(e) of the Federal Rules of Civil Procedure permits the Court to dismiss, strike, or order a more definite statement where a complaint is so vague or ambiguous that an opposing party cannot reasonably prepare a response. Fed. R. Civ. P. 12(f) provides that the Court may strike

from a pleading any redundant, immaterial, impertinent, or scandalous matter. Rule 8 requires that a complaint set out a short, plain statement of the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a). Each allegation must be simple, concise, and direct. Fed. R. Civ. P. 8(d)(1).

The Court is not required to sort through voluminous, vague allegations to try to identify Plaintiff's cause of action. A *pro se* complaint may be stricken or dismissed under Rule 8(a) if it is "incomprehensible." See *Carpenter v. Williams*, 86 F.3d 1015, 1016 (10th Cir.1996); *Olguin v. Atherton*, 215 F.3d 1337 (10th Cir. 2000). Rule 8(a)'s purpose is to require plaintiffs to state their claims intelligibly so as to give fair notice of the claims to opposing parties and the Court. *Mann v. Boatright*, 477 F.3d 1140, 1148 (10th Cir. 2007); *Monument Builders of Greater Kansas City, Inc., v. American Cemetery Ass'n of Kansas*, 891 F.2d 1473, 1480 (10th Cir.1989). Imprecise pleadings undermine the utility of the complaint and violate that purpose of Rule 8. See *Knox v. First Security Bank of Utah*, 196 F.2d 112, 117 (10th Cir. 1952). Rambling and incomprehensible filings bury material allegations in "a morass of irrelevancies" and do not meet Rule 8(a)'s pleading requirement of a "short and plain statement." *Mann*, 477 F.3d at 1148; *Ausherman v. Stump*, 643 F.2d 715, 716 (10th Cir.1981).

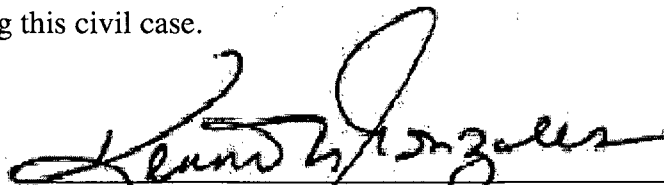
Moreover, a plaintiff may not seek to amend a complaint in a manner that turns the complaint into a "moving target." It is unreasonable to expect the Court or the defendants continually to have to adapt as the plaintiff develops new theories or locates new defendants. There comes a point when even a *pro se* plaintiff has had sufficient time to investigate and to properly frame his claims against specific defendants. *Minter v. Prime Equipment Co.*, 451 F.3d 1196, 1206 (10th Cir. 2006). Plaintiff was given precise instructions and the opportunity to frame his claims against specific defendants. Plaintiff's rambling, voluminous filing does not comply with the

requirements of Rule 8. Plaintiff's filing buries any material allegations in "a morass of irrelevancies" and does not meet Rule 8(a)'s "short and plain statement" pleading requirement. *Mann*, 477 F.3d at 1148; *Ausherman*, 643 F.2d at 716; *Minter*, 451 F.3d at 1206.

Pro se litigants are required to follow the federal rules of procedure and simple, nonburdensome local rules. See *Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980). The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with statutes or rules of civil procedure, or to comply with court orders. See *Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003).

Plaintiff Amaro has deliberately failed to comply with the Court's Orders, failed to comply with Fed. R. Civ. P. 8 and 11, and failed to prosecute this action. The Court may dismiss this action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, to comply with statutes, and to comply with court orders. *Olsen*, 333 F.3d at 1204, n. 3. The Court will dismiss this civil proceeding pursuant to Rule 41(b) for failure to comply with rules and Court Orders and failure to prosecute this proceeding. The Court's dismissal is without prejudice. If Plaintiff Amaro believes he has civil rights claims, he may institute a new case by filing a new complaint that complies with the requirements of Fed. R. Civ. P. 8 and 11 and paying the filing fee or qualify to proceed *in forma pauperis* under 28 U.S.C. § 1915.

IT IS ORDERED that the Amended Civil Rights Complaint filed by Pedro J. Amaro (Doc. 69) is DISMISSED without prejudice under Fed. R. Civ. P. 41(b) and a final judgment of dismissal without prejudice will be entered closing this civil case.


UNITED STATES DISTRICT JUDGE



United States District Court
District of New Mexico
Office of the Clerk
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MEMORANDUM OPINION AND ORDER by District Judge Kenneth J. Gonzales dismissing [69] Amended Complaint. (tah)

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Pedro J. Amaro, 44726
Guadalupe County Correctional Facility
P.O. Box 520 South Hwy. 54, Exit 3B
Santa Rosa, NM 88435



United States District Court
District of New Mexico
Office of the Clerk
Cover Sheet

Date: May 28, 2020 04:55 PM MDT

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The court will only print and mail documents to pro se parties and other individuals exempted from the mandatory e-filing requirements.

APPENDIX C.

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

PEDRO J. AMARO,

Plaintiff,

vs.

No. CV 16-00993 KG/JHR

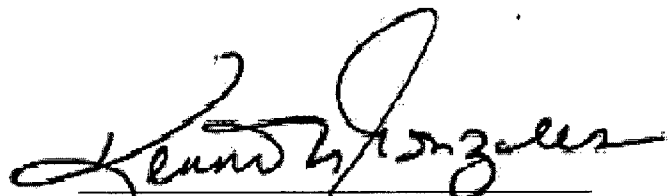
SUSANA MARTINEZ, GOVERNOR OF THE
STATE OF NEW MEXICO, et al.,

Defendants.

JUDGMENT

THIS MATTER having come before the Court under Fed. R. Civ. P. 41(b) on the Amended Civil Rights Complaint filed by Pedro J. Amaro (Doc. 69), and the Court having entered its Memorandum Opinion and Order dismissing the Complaint for failure to comply with the Federal Rules of Civil Procedure and the Court's Orders,

IT IS ORDERED that JUDGMENT and the Amended Civil Rights Complaint filed by Plaintiff Pedro J. Amaro (Doc. 69) is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(b).



UNITED STATES DISTRICT JUDGE



United States District Court
District of New Mexico
Office of the Clerk
Document Summary Page

Date: May 28, 2020 04:55 PM MDT

To: Pedro J. Amaro

Case: Amaro v. State of New Mexico

From: Office of the Clerk, District of New Mexico

CM/ECF Support Number: (505) 348-2075

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Comments: Case#1:16-cv-00993-KG-JHR Document#77 Filed:05/28/2020

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JUDGMENT by District Judge Kenneth J. Gonzales. (tah)

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

PEDRO J. AMARO,

Plaintiff,

vs.

No. CV 16-0993 KG/JHR

STATE OF NEW MEXICO, et al.,

Defendants.

ORDER GRANTING LEAVE TO AMEND

THIS MATTER is before the Court on the Mandate of the United States Court of Appeals for the Tenth Circuit. (Doc. 62-1). On September 15, 2017, the Court entered its Memorandum Opinion and Order dismissing all of Plaintiff Pedro J. Amaro's claims in this case. (Doc. 27). Plaintiff Amaro appealed the Court's ruling to the Tenth Circuit Court of Appeals on September 28, 2017. (Doc. 34). After taking his appeal, Amaro also filed a Motion for Amendment of Complaint on October 24, 2017. (Doc. 39). The Tenth Circuit entered its Order and Judgment on Amaro's appeal on June 13, 2018. (Doc. 62-1).

In its Order and Judgment, the Tenth Circuit affirmed this Court's rulings dismissing:

- "(1) all claims against the State of New Mexico;
- (2) any claims of damages suffered by other prisoners;
- (3) all requests for relief at prisons where Plaintiff was not and is not incarcerated;
- (4) all claims premised on the December 2012 or January 2013 incidents or the grievance process associates with those incidents; and
- (5) any claims for damages against state officials in their official capacities."

(Doc. 62-1 at 12). The Tenth Circuit also affirmed this Court's conclusion that Plaintiff's claims against individual state officials and prison employees for an alleged February 2014 incident and related grievance proceeding are not currently alleged with sufficient individual specificity to state a valid claim, but reversed dismissal of those claims with instructions for this Court to

provide Plaintiff an opportunity to amend his complaint to remedy the pleading deficiency. (Doc. 62-1 at 12).

On the mandate of the Tenth Circuit, the Court will grant Plaintiff Amaro a reasonable opportunity to remedy the defects in his pleading. *Reynoldson v. Shillinger*, 907 F.2d 124, 126 (10th Cir. 1990). Plaintiff Amaro will have thirty (30) days from the date of entry of this Order in which to file an amended complaint. The amended complaint must be limited to Plaintiff's claims against individual state officials and prison employees for an alleged February 2014 incident and related grievance proceeding. Plaintiff Amaro may not re-assert any other claims previously dismissed by the Court.

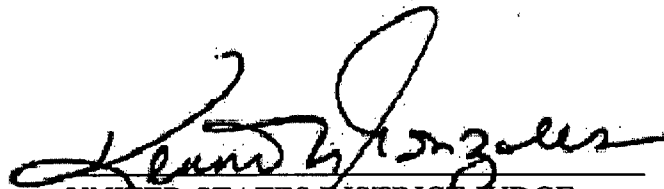
Plaintiff's amended complaint should be concise and may raise only facts and issues relevant to his allegations of unconstitutional conduct arising out of the alleged February 2014 incident and related grievance proceeding. The amended complaint must include all the allegations and supporting material to be considered by the court, and it may not reference or attempt to incorporate material from plaintiff's original complaint. *See* Local Rule 9.2(c). Plaintiff is to refrain from including unsupported speculation, he must limit the amended complaint to claims that directly concern him, and he may not discuss issues concerning other people. He is to avoid lengthy or irrelevant background information or other excessively long narratives.

Further, Plaintiff must allege some personal involvement by an identified official in the alleged constitutional violation to succeed under § 1983. *Fogarty v. Gallegos*, 523 F.3d 1147, 1162 (10th Cir. 2008). In a Section 1983 action, it is particularly important that a plaintiff's complaint "make clear exactly *who* is alleged to have done *what to whom*, to provide each individual with fair notice as to the basis of the claim against him or her." *Robbins v. Oklahoma*,

519 F.3d 1242, 1249-50 (10th Cir. 2008) (emphasis in the original). Generalized allegations against “defendants”, without identification of actors and conduct that caused the deprivation of a constitutional right, do not state any claim for relief. *Robbins v. Oklahoma*, 519 F.3d at 1249-50. The amended complaint must state the facts of each separate claim and why Plaintiff believes his constitutional rights were violated. He should include identities of individual defendants and their official positions, a description of their actions, and relevant dates, if available. If Plaintiff fails to file an amended complaint or files an amended complaint that does not comply with these directions, the Court may dismiss this action with prejudice and without further notice.

IT IS ORDERED:

- (1) Plaintiff Pedro J. Amaro is granted leave to file one amended complaint that complies with this Order within thirty (30) days of entry of the Order;
- (2) Plaintiff’s Motion for Amendment of Complaint (Doc. 39) is **DISMISSED** as moot in light of this Order.


UNITED STATES DISTRICT JUDGE

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT
OFFICE OF THE CLERK**

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157

Elisabeth A. Shumaker
Clerk of Court

July 05, 2018

Chris Wolpert
Chief Deputy Clerk

Mr. Mitchell R. Elfers
United States District Court for the District of New Mexico
Office of the Clerk
333 Lomas N.W.
Albuquerque, NM 87102


RE: 17-2178, Amaro v. State of New Mexico, et al
Dist/Ag docket: 1:16-CV-00993-KG-JHR

Dear Clerk:

Please be advised that the mandate for this case has issued today. Please file accordingly in the records of your court.

Please contact this office if you have questions.

Sincerely,



Elisabeth A. Shumaker
Clerk of the Court

cc: Pedro J. Amaro

EAS/sds

Appendix E
Rec'd
7/6/18

June 13, 2018

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

TENTH CIRCUIT

PEDRO J. AMARO,

Plaintiff - Appellant,

v.

STATE OF NEW MEXICO; SUSANA MARTINEZ; BILL RICHARDSON, former Governor for the State of New Mexico; HECTOR H. BALDERAS, Attorney General for the State of New Mexico; GARY R. KING, former Attorney General for New Mexico; DEPARTMENT OF HEALTH AND HUMAN SERVICES; NEW MEXICO DEPARTMENT OF CORRECTIONS; GREGG MARCANTEL; JOE WILLIAMS, Secretary of Corrections; JERRY ROARK, Director of Adult Prisons; TIM LEMASTER, Deputy Secretary of Operations; LARRY PHILLIPS, NMCD Grievance/Disciplinary Appeals; JAMES R. BREWSTER, General Counsel; ANGELA M. MARTINEZ, Health Services Administrator; Y. RIVERA, A.C.A. Monitor/Administrator for New Mexico; G. CHAVEZ; GEO GROUP, INC., a corporation registered to do business in New Mexico; JOE R. WILLIAMS, employed by GEO Group; FNU LNU, Wardens; FNU LNU, Chief of Security; FNU LNU, Grievance Lieutenants; CORIZON, LLC, a foreign corporation registered to do business in New Mexico; LISA

No. 17-2178

(D.C. No. 1:16-CV-00993-KG-JHR)
(D. N.M.)

STABER, M.D.; KATHY ARMIJO,
employed by Corizons as Health
Services; FNU LNU, John/Jane Does,

Defendants - Appellees.

ORDER AND JUDGMENT*

Before **PHILLIPS, McKAY, and McHUGH**, Circuit Judges.

After examining the briefs and the appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). This case is therefore ordered submitted without oral argument.

Plaintiff Pedro Amaro, a state prisoner proceeding pro se, filed this action under 42 U.S.C. § 1983 against numerous defendants, including the State of New Mexico, several state officials, the corporation that runs the private prison in which he is housed, the company that manages healthcare at this prison, and various individuals affiliated with the prison. He alleged that conditions in the prison in which he is housed, as well as other prisons operated by the same company, violate prisoners' Eighth Amendment rights because design flaws and

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

structural defects related to the ventilation system, boilers, and flues have caused several incidents of carbon-monoxide exposure and continue to place prisoners at risk of further such incidents. He alleged that he experienced “repetitive episodes of Carbon Monoxide exposure/poisoning,” which occurred on December 28, 2012; January 4, 2013; January 19, 2013; January 21, 2013; and February 6, 2014. (R. at 24–25.) He further alleged that he “twice utilized the facility’s ‘Grievance’ program under NMCD Policy/Procedure in an attempt to resolve this situation but all ‘Grievances’ were ‘Denied’ and/or remain unanswered/unresolved.” (R. at 23.) Specifically, as the materials attached to the complaint showed, Plaintiff filed one grievance following the December 28, 2012 incident, and he pursued this grievance up until its final denial by the director of prisons on April 8, 2013. He allegedly filed a second grievance following the February 6, 2014 incident, but he obtained no relief from this grievance either. He filed this federal complaint on September 2, 2016, claiming negligence and a violation of his Eighth Amendment rights based on both the specific past incidents of carbon-monoxide exposure and the ongoing risk of future exposure. He also raised a due process claim relating to the way his grievances were handled by the prison system. In his prayer for relief, he sought declaratory relief, various forms of injunctive relief, and damages.

The district court *sua sponte* dismissed Plaintiff’s complaint on several grounds. First, the court held that, to the extent Plaintiff sought relief for alleged

incidents at other prisons and for alleged injuries to other prisoners, his pro se complaint failed to state a claim on which relief could be granted. Second, the court held that the allegations of the complaint were insufficient to state a plausible § 1983 claim against any named individual defendant, since Plaintiff did not allege individual conduct or tie the acts of any particular individual to an alleged constitutional violation. Third, the court held that Plaintiff could not proceed against the State of New Mexico under § 1983 and his claims against the state officers in their official capacity were likewise barred as claims against the state. Finally, the court held that the complaint was also subject to dismissal because all of Plaintiff's claims were barred by the applicable statute of limitations. The court noted that the complaint had been filed less than three years after the February 6, 2014 incident. However, the court held that this incident still did not fall within the three-year statute of limitations for civil-rights claims because the court understood the complaint to be alleging not a separate incident of exposure on that date, but rather a flare-up of symptoms relating to the prior exposure. The court held the complaint was subject to immediate dismissal without leave to amend because amendment would be futile. The court also denied Plaintiff's motion for summary judgment and request for the appointment of counsel to represent him in this case.

We first consider Plaintiff's argument that the district court erred in denying his request for the appointment of counsel. We review this decision only

for an abuse of discretion. *See Rachel v. Troutt*, 820 F.3d 390, 397 (10th Cir. 2016). “In considering whether the court acted within its discretion, we consider the merits of the claims, the nature of the claims, [Plaintiff’s] ability to present the claims, and the complexity of the issues.” *Id.* The district court considered these factors and concluded that Plaintiff was capable of representing himself. After reviewing the record and Plaintiff’s filings in this court, we see no abuse of discretion in this decision, and we thus affirm the district court’s denial of Plaintiff’s request for the appointment of counsel.

We turn then to Plaintiff’s arguments that the district court erred in dismissing his complaint as time-barred and as failing to state a claim upon which relief could be granted. We review both of these legal issues de novo. *See Indus. Constructors v. Bureau of Reclamation*, 15 F.3d 963, 967 (10th Cir. 1994).

We begin by addressing the statute of limitations. Civil-rights claims arising in New Mexico and brought under § 1983 are governed by a three-year statute of limitations. *Varnell v. Dora Consol. Sch. Dist.*, 756 F.3d 1208, 1212 (10th Cir. 2014). “A § 1983 action accrues when facts that would support a cause of action are or should be apparent.” *Fogle v. Pierson*, 435 F.3d 1252, 1258 (10th Cir. 2006) (internal quotation marks omitted). The statute of limitations is statutorily tolled while a New Mexico prisoner is pursuing mandatory grievance proceedings, but this tolling lasts only as long as the grievance process “continue[s] in force.” *Roberts v. Barreras*, 484 F.3d 1236, 1243 (10th Cir.

2007) (quoting N.M. Stat. Ann. § 37-1-12). “A complaint may be dismissed *sua sponte* under § 1915 based on an affirmative defense—such as statute of limitations—only when the defense is obvious from the face of the complaint and no further factual record is required to be developed.” *Fogle*, 435 F.3d at 1258 (internal quotation marks omitted).

Based on the complaint and attached documents, it is clear the statute of . . . limitations for Plaintiff’s claims relating to the December 2012 and January 2013 incidents accrued no later than April 2013, when Plaintiff received the final denial of his administrative grievance relating to this exposure. At that point, the “facts that would support a cause of action [we]re or should [have been] apparent,” *id.*, and the statute of limitations was no longer being tolled by the grievance proceedings. Because Plaintiff did not file his complaint until September 2016, his claims relating to these earlier incidents are barred by the statute of limitations. Moreover, to the extent Plaintiff’s due process claim is based on the 2013 grievance proceeding, it is clear from the face of the complaint that this claim likewise accrued in April 2013 and is thus time-barred. We affirm the dismissal of these claims based on the statute of limitations.

As for the February 2014 incident, however, we agree with Plaintiff that the district court failed to liberally construe the allegations in his complaint. *See Hall v. Bellmon*, 935 F.2d 1106, 1109–10 (10th Cir. 1991). It is possible to read the complaint in the way the district court read it, as alleging only a flare-up of

symptoms in February 2014 based on the December 2012 incident, but the more liberal—and more natural—reading of the complaint is to allege multiple individual incidents of carbon-monoxide exposure at the prison, including one incident in February 2014. Moreover, the allegations of the complaint indicate that the statute of limitations was tolled as to this claim by Plaintiff's pursuit of the mandatory grievance process. Since the complaint was filed in September 2016, well within the three-year statute of limitations for civil-rights claims, the district court erred in dismissing these claims—and any related due process claims based on the grievance proceedings—as time-barred. To the extent Plaintiff raised claims of negligence based on this incident that may have been governed by a two-year statute of limitations instead, the district court likewise erred in dismissing these claims as time-barred, since Plaintiff alleged that his grievance was pending until at least October 2014, and thus it was not “patently clear” from the face of his complaint that a two-year statute of limitations would bar these claims either. *Fratus v. DeLand*, 49 F.3d 673, 675 (10th Cir. 1995).

Finally, we note that the district court failed to consider how the statute of limitations would apply to Plaintiff's claims for declaratory and injunctive relief, which are primarily based on Plaintiff's allegations that he is currently being subjected to an ongoing violation of his Eighth Amendment right to be free from unsafe prison conditions and that the Eighth Amendment requires the prison to protect him against future harm. *See Helling v. McKinney*, 509 U.S. 25, 33

(1993) (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition. . . . It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”). We decline to decide in the first instance how the statute of limitations would apply to these claims, and we thus will not affirm the dismissal of these claims on this basis on appeal.

We turn then to the question of whether these surviving claims—Plaintiff’s claims relating to the February 2014 incident and the associated grievance process, as well as his claims for declaratory and injunctive relief—should be affirmed on the alternative basis given by the district court, for failure to state a plausible claim for relief.

We first hold that the district court did not err in dismissing Plaintiff’s claims that were based on other prisons and other prisoners. “A litigant may bring his own claims to federal court without counsel, but not the claims of others.” *Fymbo v. State Farm Fire & Cas. Co.*, 213 F.3d 1320, 1321 (10th Cir. 2000). Plaintiff argues that this principle simply proves that an attorney should have been appointed to represent him and other potential class members; however, as previously explained, we see no abuse of discretion in the district court’s decision not to appoint counsel, and we are not persuaded that Plaintiff’s desire to pursue a class action either required appointment of an attorney or permitted him to litigate the claims of others. Plaintiff further argues he should

be permitted to seek injunctive relief relating to other prisons because there is a chance that he may be transferred to another prison that has the same unsafe conditions as his current one. However, the abstract possibility that he may be transferred to an unsafe prison in the future is insufficient to satisfy Article III's standing requirements. *See Rector v. City & Cty. of Denver*, 348 F.3d 935, 946 (10th Cir. 2003).

As for Plaintiff's claims against the individual defendants based on the alleged carbon-monoxide exposure in February 2014 and associated grievance proceedings, we agree with the district court that the complaint was not sufficiently specific as to how each individual defendant violated his constitutional rights to state a valid claim for relief under § 1983. In § 1983 cases involving a government agency and several government actors sued in their individual capacities, "it is particularly important . . . that the complaint make clear exactly *who* is alleged to have done *what* to *whom*, to provide each individual with fair notice as to the basis of the claims against him or her, as distinguished from collective allegations against the state." *Robbins v. Oklahoma*, 519 F.3d 1242, 1249–50 (10th Cir. 2008). Plaintiff's complaint "fails to isolate the allegedly unconstitutional acts of each defendant, and thereby does not provide adequate notice as to the nature of the claims against each." *Id.* However, given that these claims are not facially time-barred and that the complaint might be amended to include the required specificity, we conclude that

the district court erred in dismissing these claims without granting Plaintiff leave to amend. Thus, although the complaint as it currently stands is not sufficient to state a valid claim for relief under § 1983 against the individual defendants, we reverse and remand these non-time-barred claims with instructions that Plaintiff be granted an opportunity to amend his complaint.

We affirm the district court's dismissal of Plaintiff's claims against the State of New Mexico. "Section 1983 provides a federal forum to remedy many deprivations of civil liberties, but it does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties." *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 66 (1989).

As for Plaintiff's claims against state officials in their official capacities, however, the district court erred in holding that all such claims must likewise be barred based on the Supreme Court's opinion in *Will*. In *Will*, the Court held that a plaintiff could not obtain damages from a state official sued in his official capacity because "a suit against a state official in his or her official capacity is not against the official but rather is a suit against the official's office," and, "[a]s such, it is no different from a suit against the State itself." *Id.* at 61, 71.

However, the Court expressly reaffirmed the validity of the *Ex parte Young* rule, which allows claims for prospective equitable relief to be brought against state officials in their official capacities. *See id.* at 71 n.10; *see also Ex parte Young*, 209 U.S. 123, 158–59 (1908). Thus, *Will* bars claims for retroactive relief that

are brought against state officials in their official capacities, but it does not bar requests for prospective relief that fall under the *Ex parte Young* rule. *See Comm. for the First Amendment v. Campbell*, 962 F.2d 1517, 1519 n.1 (10th Cir. 1992). In determining whether *Ex parte Young* applies to a particular claim, we “need only conduct a straightforward inquiry into whether the complaint alleges an ongoing violation of federal law and seeks relief properly characterized as prospective.” *Verizon Md. Inc. v. Public Serv. Comm’n of Md.*, 535 U.S. 635, 645 (2002) (internal quotation marks and brackets omitted). If so, then the claim is not barred by sovereign immunity or the language of § 1983. *See id.*, *see also Will*, 491 U.S. at 71 n.10. Plaintiff’s claims for injunctive and declaratory relief satisfy these criteria, and thus the court erred in dismissing them based on *Will*. We accordingly reverse the dismissal of Plaintiff’s claims for injunctive and declaratory relief against the state officials in their official capacities.

Finally, we note that the district court did not address Plaintiff’s claims against the private companies that manage the prison where he is incarcerated and the healthcare system of that prison. The only reason the district court gave for dismissing these claims was the statute of limitations. Thus, there is no alternative ground for affirming the dismissal of these claims in this appeal. We accordingly affirm the dismissal of the claims against these defendants that are based on the time-barred 2012 and 2013 incidents, but we otherwise reverse the dismissal of the claims against these defendants and remand them for further

proceedings before the district court.

Plaintiff also cursorily argues that the district court erred in denying his motion for summary judgment. We see no error in this decision. The defendants have not even been served yet, and this motion is clearly premature. Although we are reversing the dismissal of several of Plaintiff's claims for relief, we express no opinion as to the ultimate merit of these claims, nor do we express any opinion as to the possible existence of other procedural grounds for dismissal.

We **AFFIRM** the district court's denial of Plaintiff's motions for the appointment of an attorney and for summary judgment. We **AFFIRM** the dismissal of (1) all claims against the State of New Mexico; (2) any claims of damages suffered by other prisoners; (3) all requests for relief at prisons where Plaintiff was not and is not incarcerated; (4) all claims premised on the December 2012 or January 2013 incidents or the grievance process associated with those incidents; and (5) any claims for damages against state officials in their official capacities. We **AFFIRM** the district court's conclusion that Plaintiff's claims against the individual state officials and prison employees for the February 2014 incident and related grievance proceeding are not currently alleged with sufficient individual specificity to state a valid claim for relief under § 1983, but we **REVERSE** these claims with instructions for the district court to provide Plaintiff an opportunity to amend his complaint to remedy this deficiency. All other claims are **REVERSED** and **REMANDED** for further proceedings in accordance

with this opinion. We **GRANT** Plaintiff's motion to proceed *in forma pauperis* on appeal but remind him of his obligation to continue making partial payments until the entire filing fee has been paid in full.

Entered for the Court

Monroe G. McKay
Circuit Judge

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