

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No: 21-3909

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Chad M. Vice

Plaintiff - Appellant

v.

Lee County Sheriff Department; Lee County Correctional Center; John Canida; John Does

Defendants - Appellees

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Appeal from U.S. District Court for the Southern District of Iowa - Central  
(4:21-cv-00355-RGE)

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**JUDGMENT**

Before COLLTON, GRUENDER, and SHEPHERD, Circuit Judges.

The motion to proceed on appeal in forma pauperis has been considered and is granted. The full \$505 appellate and docketing fees are assessed against the appellant. Appellant will be permitted to pay the fee by installment method contained in 28 U.S.C. sec. 1915(b)(2). The court remands the calculation of the installments and the collection of the fees to the district court. This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a). The motion for appointment of counsel is denied as moot.

February 02, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

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**ORDER**

Appellant's motion to file untimely petition for rehearing is denied. Appellant's petition for rehearing is denied as untimely.

March 22, 2022

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

CHAD MICHAEL VICE,

Plaintiff,

v.

LEE COUNTY SHERIFF, LEE COUNTY  
CORRECTIONAL CENTER, STACY  
WEBER, JOHN CANIDA, DOCTOR JOHN  
DOE, and NURSE JOHN DOE,

Defendants.

No. 4:21-cv-00355-RGE-SHL

**INITIAL REVIEW ORDER**

Plaintiff Chad Michael Vice brings this complaint without the assistance of counsel under 42 U.S.C. §§ 1983, 1985. ECF No. 1. Jurisdiction is predicated on 28 U.S.C. §§ 1331(1), 1343. *Id.* He applies to proceed in forma pauperis. ECF No. 2. Vice also seeks appointment of counsel. ECF No. 3.

**I. INITIAL REVIEW STANDARDS**

The Prison Litigation Reform Act requires federal courts to review all prisoner complaints filed against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). On review, the Court must identify the cognizable claims or dismiss the complaint, or any part of it, that it determines a) is frivolous or malicious, b) fails to state a claim upon which relief may be granted, or c) seeks monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b).

A claim is “frivolous” if it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). An action fails to state a claim upon which relief may be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “The plausibility standard requires a plaintiff

to show at the pleading stage that success on the merits is more than a ‘sheer possibility.’” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

A pro se complaint “must be held to ‘less stringent standards than formal pleadings drafted by lawyers.’” *Rinehart v. Weitzell*, 964 F.3d 684, 687 (8th Cir. 2020) (quoting *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam)). The Court must weigh all factual allegations in favor of the plaintiff unless the facts alleged are clearly baseless. *See Denton v. Hernandez*, 504 U.S. 25, 33 (1992) (determining what is “clearly baseless” is left to discretion of the court ruling on in forma pauperis petition). Although Federal Rule of Civil Procedure 8(a)(2) does not require detailed factual allegations, “it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678 (citation omitted). “Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice . . . . Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 678–79 (citations omitted).

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988) (citations omitted). A complaint states a plausible claim for relief when its “factual content . . . allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citation omitted).

## II. DISCUSSION OF CLAIMS

Vice is currently incarcerated at the Anamosa State Penitentiary. ECF No. 1 at 18. The events giving rise to his claim, however, arose while he was in Lee County, Iowa. *Id.* at 2.

Vice states “all of the wrongful and unconstitutional acts alleged . . . were committed . . . on or about late May, early June of 2019, or are being committed in the State of Iowa at this time.” *Id.* In May and June of 2019, Vice experienced kidney failure. *Id.* at 6. When he previously experienced this condition, he was taken to the hospital for treatment. *Id.* Vice alleges at the jail, he was seen by Nurse John Doe but not a doctor. *Id.* He states he was returned to an isolated cell where his water was turned off. *Id.* Vice was allowed 16 ounces of water per hour for three to four days. *Id.* at 6. He states he was in great pain for those days and in discomfort for “weeks to months” after that episode. *Id.* at 6–7. Vice states he still experiences a dull ache in his lower back. *Id.* at 7. Vice alleges Defendants’ actions were negligent and violated his Eighth Amendment right to be free of cruel and unusual punishment. *Id.* at 7–8.

Vice also alleges Defendants intimidated Vice “to keep him from speaking on an assault on Vice” by Fort Madison and Lee County staff in 2017. *Id.* at 14. He alleges this violated his freedom of speech. *Id.* at 14–15.

Finally, Vice alleges Defendants “conspired to intimidate and to cover-up prior illicit acts of its staff (2017 assault on Vice)” in violation of 42 U.S.C. § 1985. *Id.* at 16.

“[T]he state statute of limitations for personal injury torts [is] the appropriate period of limitations of all § 1983 cases.” *DeVries v. Driesen*, 766 F.3d 922, 923 (8th Cir. 2014) (citing *Wilson v. Garcia*, 471 U.S. 261, 276 (1985)). This is also true for cases brought under § 1985. *See Kaster v. Iowa*, 975 F.2d 1381, 1382 (8th Cir. 1992) (per curiam) (applying Iowa’s personal injury statute to § 1985 claims).

The Iowa Code provides a limitation period of two years for personal injury claims. Iowa Code § 614.1(2); *see also Wycoff v. Menke*, 773 F.2d 983, 984–85 (8th Cir. 1985) (holding Iowa’s two-year personal injury statute of limitations applies to a § 1983 action). Vice alleges unconstitutional acts occurred in 2017 and late May or early June of 2019. *Id.* at 2. Vice signed

the complaint on November 3, 2021, *id.* at 18, and it was filed by the Clerk of Court on November 12, 2021. *See generally*, ECF No. 1. Thus, more than two years passed between the date of the allegations and the date the complaint was filed. Vice does not allege any defendant took any specific action or inaction in the past two years to violate his constitutional rights. Thus, any events from 2017 and 2019 which gave rise to Vice's claims here are barred by the statute of limitations, and must be dismissed.

### **III. SUMMARY AND CONCLUSION**

For the reasons given above, Vice's claims "lack[] an arguable basis either in law or in fact," *Neitzke*, 490 U.S. at 325, and are dismissed.

**IT IS ORDERED** that Plaintiff Chad Michael Vice's application to proceed in forma pauperis, ECF No. 2, is **GRANTED**. Based on the information submitted, the Court assesses Vice no initial partial filing fee with the remainder of the \$350.00 filing fee to be paid to the Clerk of Court from his prison account in accordance with 28 U.S.C. § 1915(b). Because Vice has been granted leave to proceed without prepayment of fees, he is not required to pay the \$52.00 administrative fee. A notice of this obligation shall be sent to the appropriate prison official.

**IT IS FURTHER ORDERED** that Plaintiff Chad Michael Vice's motion for the appointment of counsel, ECF No. 3, is **DENIED** as moot.

**IT IS FURTHER ORDERED** that the complaint is **DISMISSED**. *See* 28 U.S.C. § 1915A(b) (court shall dismiss complaint on initial review if complaint is frivolous, malicious, fails to state claim or seeks monetary relief from defendant who is immune).

**IT IS SO ORDERED.**

Dated this 23rd day of November, 2021.

  
REBECCA GOODGAME EBINGER  
UNITED STATES DISTRICT JUDGE