FILED
United States Court of Appeals
Tenth Circuit

February 3, 2023

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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THEODORE DEAN ACOSTA,

Plaintiff - Appellant,

v.

GLEN WILSON; RICK CLANDSENN;* JOHN DOE; TAMMY ERET,

Defendants - Appellees.

No. 22-1120
(D.C. No. 1:21-CV-03406-LTB-GPG)
(D. Colo.)

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**ORDER AND JUDGMENT****

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Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

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Theodore Dean Acosta, a pro se prisoner, appeals from a district-court order dismissing his amended complaint. He seeks leave to proceed on appeal in forma pauperis (IFP). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm the district court's judgment and deny IFP status.

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* Although Plaintiff-Appellant designated "Rick Clandsenn" in the complaint as a defendant, the correct spelling of his name is "Riecke Claussen."

** 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

Mr. Acosta's amended complaint, the operative complaint in this case, brought several claims arising out of his arrest and prosecution some 20 years or more ago. As set forth in the magistrate judge's report and recommendation, Mr. Acosta has pursued repeated litigation over the years making identical or similar claims. The present claims are likely barred by the statute of limitations or under principles of res judicata. But we need not resolve those issues. One of the grounds for the district court's judgment was that the claims are barred as repetitious litigation, see McWilliams v. Colorado, 121 F.3d 573, 574 (10th Cir 1997) ("Repetitious litigation of virtually identical causes of action may be dismissed under [28 U.S.C.] § 1915 as frivolous or malicious." (original brackets and internal quotation marks omitted)), and Mr. Acosta has not challenged that ruling on appeal. We therefore affirm the judgment below. See Rivero v. Bd. Of Regents of Univ. of N.M., 950 F.3d 754, 763 (10th Cir. 2020) ("If the district court states multiple alternative grounds for its ruling and the appellant does not challenge all those grounds in the opening brief, then we may affirm the ruling.").

We deny Mr. Acosta's motion to proceed IFP, as he has not provided "a reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal," DeBardeleben v. Quinlan, 937 F.2d 502, 505 (10th Cir. 1991), and we direct him to pay any remaining unpaid balance of the appellate filing fee. Finally, we deny Mr. Acosta's outstanding motions.

Entered for the Court

Harris L Hartz
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Gordon P. Gallagher, United States Magistrate Judge

Civil Action No. 21-cv-03406-LTB-GPG

THEODORE DEAN ACOSTA,

Plaintiff,

v.

GLEN WILSON,
RICK CLANDSENN,
JOHN DOE, and
TAMMY ERET,

Defendants.

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**RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

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This matter comes before the Court on the amended Prisoner Complaint filed pro se by Plaintiff Theodore Dean Acosta on February 16, 2022. (ECF No. 12). Because Acosta proceeds pro se, the Court liberally construes his pleadings, but will not act as an advocate. James v. Wadas, 724 F.3d 1312, 1315 (10th Cir. 2013). The matter has been referred to this Court for recommendation (ECF No. 16).[1]

The Court has reviewed the filings to date. It has considered the entire case file, the applicable law, and is advised of the premises. This Court respectfully recommends

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1 Be advised that all parties shall have fourteen (14) days after service hereof to serve and file any written objections in order to obtain reconsideration by the District Judge to whom this case is assigned. Fed. R. Civ. P. 72(b). The party filing objections must specifically identify those findings or recommendations to which the objections are being made. The District Court need not consider frivolous, conclusive or general objections. A party's failure to file such written objections to proposed findings and recommendations contained in this report may bar the party from a de novo determination by the District Judge of the proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 676-83 (1980); 28 U.S.C. § 636(b)(1). Additionally, the failure to file written objections to the proposed findings and recommendations within fourteen (14) days after being served with a copy may bar the aggrieved party from appealing the factual findings and legal conclusions of the Magistrate Judge that are accepted or adopted by the District Court. Thomas v. Arn, 474 U.S. 140, 155 (1985); Moore v. United States, 950 F.2d 656, 659 (10th Cir. 1991).

dismissing the amended Prisoner Complaint under 28 U.S.C. § 1915(e)(2)(B).

## I. BACKGROUND

### A. Current lawsuit.

Acosta awaits trial at the El Paso County Criminal Justice Center in Colorado Springs, Colorado. (ECF No. 12 at 2). He brings this action under 42 U.S.C. § 1983 against various officials from Mesa County, Colorado. The claims stem from what Acosta alleges to have been a wrongful arrest (July 4, 1999), wrongful conviction (November 29, 2001), and unjustified imprisonment that continued until his conviction was overturned by the Colorado Court of Appeals (December 18, 2003), which resulted in his release from prison on December 26, 2003. (Id. at 7-16).

The complaint names four defendants. Two of the named defendants were officers of the Mesa County Sheriff's Office at the time of Acosta's arrest and prosecution: Deputy Sheriff Glen Wilson and Sheriff Rick Clandsenn. Plaintiff also names the district attorney who prosecuted him, Tammy Eret. (Id. at 3-4). The fourth defendant is John Doe, who allegedly approved Acosta's case to proceed to trial. (Id. at 4).

The complaint presents six claims for relief. (Id. at 5-23). The claims are: (1) false arrest; (2) false imprisonment; (3) malicious prosecution; (4) violation of due process; (5) "continuing wrong;" and (6) theft/destruction of exculpatory evidence. (Id. at 5). The following is a summary of each claim.

Claims 1 and 2 allege that Deputy Glen Wilson violated Acosta's constitutional rights "by initiating a frivolous arrest false imprisonment and malicious conviction and continuing wrong by denial of due process ie relief sought in case no. 05-cv-02598-WYD-CBS resulting in continuing false imprisonments, Plaintiff was arrested on July 4th

1999 at work[.]" (Id. at 7). Acosta further alleges: "see police report by Deputy Sheriff Glen Wilson in case no 00CR257 where Wilson tells complaintant in that case Mr. Gilbert Trujillo that the matter is civil in nature and not criminal, and only upon confering with Rick Clandsenn . . . misconduct was committed by Wilson and Clandsenn acting under color of law and as a result I was deprived of rights, privileges, or immunities secured by the Constitution or laws of the United States[.]" (Id. at 7-8 (no alterations made)). Acosta adds that he was "wrongfully subjected to detention a [p]lethora of times spanning over 22 years, 2. without consent. 3. without authority of law." (Id. at 8 (no alterations made)).

Claim 3 is for malicious prosecution. (Id. at 9). This claim is based on Acosta's criminal prosecution and conviction in Case No. 00CR257, which ended in his favor after the conviction was reversed on appeal, and he was released on December 26, 2003. (Id. at 9-11).

Claim 4 asserts a violation of due process. As factual support, Acosta alleges his "liberty was taken away see case no. 00CR257 and continuing wrong claims in this civil action(s) 100% factuall. No allegation(s)) . . . 2. Their was not due process see denial of due process in case no. 05-cv-02598-WYD-CBS and action filed in Judge Amanda Baileys court room for relief in case no. 00CR257 in Mesa County District court which were ignored . . . in violation of ADA statutes." (Id. at 12 (no alterations made)).

Claim 5 is titled "Continuing Wrong." (Id. at 13). Acosta alleges that, on June 26, 2004, he "suffered a Fifth Amendment violation Double Jeopardy default judgment of contempt of court pursuant to a child support enforcement action concerning accrued child support while serving time in the Colorado Department of Corrections on case no. 00CR257 which was over turned in the Colorado Court of Appeals Case No.

01CA2491[.]" (Id. at 13). Acosta recalls that his driver's license and professional license were suspended, he incurred $20,000 in unjust expenses, lost wages, and a number of additional costs and fees—all as a result of the wrongful conviction that "should have never existed[.]" (Id. at 14-15). "This totality of events occurred on December 26th 2004 and June 26th 2004 again on December 26th 2005. And June 26th again on December 26th 2006 and June 26 2007 and on December 26th 2007, through-out the entire timeline Case No. 05-CV-02598-WYD-CBS was being considered and unjustly denied[.]" (Id. at 15-16). Plaintiff continues by discussing the Americans with Disabilities Act, listing a number of dates from June 26, 2008 to December 26, 2018, and stating "[c]umulative period invokes equitable tolling[.]" (Id. at 16-18).

Claim 6 is captioned "Theft/Destruction of Exculpatory Evidence." (Id. at 20). The supporting allegations are difficult to follow, but it seems that at some point Acosta visited the office of then-Attorney General Cynthia Coffman to discuss a plea deal related to the criminal charges in the Mesa County case, or the subsequent appeal of that case. (Id.). After his conviction was reversed, Acosta recounts visiting "the Colorado State Capitol Building to show the speaker of the house Terrance Carrol the documents 1.) the conviction 2.) the reversal 3.) the denial of relief from the United States District Court by Judge Wiley Daniel. 4.) the plea agreement by Deputy district attorney Tammy Eret that she knew '(prior to prosecution)' that the case was civil in nature and not a criminal occurrence." (Id. at 21-22 (no alterations made)). During his visit to the Capital Building, Acosta was arrested. (Id.). Acosta's legal file was taken at the time of the arrest; he returned the following day to be told tht the Colorado State Patrol officer never booked the legal file into property. (Id. at 22-23). It appears that Acosta's legal files were not returned to him.

As relief, Acosta requests "4.5 million dollars for the wrongful conviction and confinement and $100,000.00 for each year due process was denied Plaintiff suffered additionall harm and permanent lasting damages. Insanity, arrests, loss of vehicles, jobs, income, family . . ." (Id. at 24 (no alterations made)).

**B. Prior lawsuits.**

Acosta has previously challenged the Mesa County conviction in this court.

First, in Acosta v. Wilson, et al., Case No. 05-cv-02598-WYD-CBS, Acosta sought monetary damages against Glen Wilson and Rick Clandsenn for alleged violations of his rights under 42 U.S.C. §§ 1983, 1985, 1986 and 1988. He asserted claims for malicious prosecution, false arrest, and false imprisonment. Each claim stemmed from Acosta's November 29, 2001 conviction in Mesa County District Court Case No. 2000CR257 that was subsequently reversed on appeal in 2003—the same conviction he repines here.

That lawsuit alleged that Acosta was released from prison following the reversal of his conviction on December 26, 2003, after serving slightly more than two years of his sentence. Acosta, Civil Action No. 05-cv-02598-WYD-CBS, Docket No. 7 at 5. Ultimately, the case was dismissed under Federal Rule of Civil Procedure 12(b)(6) as barred by the applicable statutes of limitations. Docket Nos. 57 and 58. The lawsuits didn't stop there.

Second, while an inmate at the Jefferson County Detention Facility, Acosta filed Acosta v. The State of Colorado, Case No. 18-cv-00684-LTB. He named the State of Colorado as the sole defendant and alleged that Colo. Rev. Stat. § 13-65-101, et seq., violated his Fourteenth Amendment guarantee of due process under 42 U.S.C. § 1983. Docket No. 7 at 4. Acosta claimed he had been denied compensation under the state's

Exoneration Act for being wrongfully convicted in the Mesa County case, which violated his right to due process. Docket No. 7. Acosta requested relief in the form of $1,800.00 for every day he was incarcerated, to have his criminal records expunged, refund of back child support awarded against him, court costs, lawyer's fees, reimbursement for funds taken from his inmate account, and attorney's fees to address contempt of court convictions. Id. at 6. In response to an order to show cause, Acosta stated that his request for compensation under the Exoneration Act was denied in the year 2015. Docket Nos. 15, 16, 17. The case was then dismissed without prejudice for lack of subject-matter jurisdiction. Docket No. 22.

Third, and most recently, in Acosta v. Weiser, et al., Civil Action No. 21-cv-00630-LTB-GPG, Acosta again sought damages based on his conviction in Mesa County District Court. Docket No. 1. Acosta maintained that his constitutional, civil, and due process rights were violated when he was denied compensation for the wrongful conviction. Id. at 10, 14. Acosta posited that he was denied compensation because of his national origin, pointing to the case of Robert Dewey. According to Acosta, Dewey was wrongfully convicted by the same prosecutor as Acosta, in the same court as Acosta, had the same public defender as Acosta, had his conviction reversed by the Colorado Court of Appeals, but has "been made whole." Acosta alleged that he was not compensated for the wrongful conviction because of racial discrimination. Id. at 5. As relief, Acosta requested $4.5 million in damages. Id. at 9. The Court dismissed the case under 28 U.S.C. § 1915(e)(2)(B) as untimely, repetitious, and improperly seeking damages from an immune defendant or a defendant who was not a state actor. Docket Nos. 12, 21, 22.

The Court will now discuss why Acosta's amened Prisoner Complaint in this case

should be dismissed.

## II. DISCUSSION

The Court reviews a prisoner's complaint to determine whether any claims are appropriate for summary dismissal as frivolous or seek relief against a defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B); 28 U.S.C. § 1915A; D.C.COLO.LCivR 8.1(b). "[A] complaint, containing as it does both factual allegations and legal conclusions, is frivolous where it lacks an arguable basis either in law or in fact." Neitzke v. Williams, 490 U.S. 319, 327-28 (1989). A claim that is legally frivolous is one based on an indisputably meritless legal theory, such as infringement of a legal interest that clearly does not exist. Id. at 327. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or wholly incredible." Denton v. Hernandez, 504 U.S. 25, 33 (1992). There is considerable overlap between the standards for frivolousness and failure to state a claim and a claim that lacks an arguable basis in law is dismissible under both standards. Neitzke, 490 at 326, 328. Acosta's complaint is subject to summary dismissal for several reasons.

### A. Repetitious litigation.

This lawsuit is repetitious. "Repetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious." McWilliams v. Colorado, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted); see also Martinez v. Internal Revenue Service, 744 F.2d 71, 73 (10th Cir. 1984) (federal courts have inherent power to regulate their dockets, promote judicial efficiency, and deter frivolous filings).

The claims asserted in this case are virtually identical to the claims presented in Acosta v. Wilson, et al., Case No. 05-cv-02598-WYD-CBS; Acosta v. The State of

Colorado, Case No. 18-cv-00684-LTB; and Acosta v. Weiser, et al., Civil Action No. 21-cv-00630-LTB-GPG. In those cases, Acosta sought monetary damages for alleged violations of his rights under 42 U.S.C. §§ 1983, 1985, 1986 and 1988, based on malicious prosecution, false arrest, and false imprisonment. Each claim sought to recover for what Acosta alleged to have been a wrongful arrest, conviction, and imprisonment in Mesa County Case No. 00CR257—the factual underpinnings in each case began with his arrest, the subsequent wrongful conviction, followed by the conviction being overturned on appeal.

The same is true here. Every claim in this case flows from, as Acosta puts it, his "frivolous arrest false imprisonment and malicious conviction and continuing wrong by denial of due process." Acosta does expand the scope of this case by naming the prosecuting attorney, Tammy Eret, as a defendant, and identifying perceived errors in Judge Daniel's denial of relief in 05-cv-02598-WYD-CBS.[2] But adding an immune defendant (prosecuting attorneys have absolute immunity from suit) and lodging an improper collateral attack to an earlier federal case do not change the fundamental nature of what Acosta is doing here: seeking to recover money damages for the arrest,

2 Attacks on the 2005 case are frivolous for another reason. Permitting Acosta to file a second lawsuit in this district to attack an earlier-filed lawsuit in this district, cannot be permitted "without seriously undercutting the orderly process of the law. Celotex Corp. v. Edwards, 514 U.S. 300, 313 (1995) (prohibiting a litigant dissatisfied with one federal district court's decision from collaterally attacking the decision in another federal district court). If Acosta wants to challenge a ruling in that case, he must proceed through established legal channels, such as filing a timely appeal or timely requesting reconsideration if there is a legitimate basis for such requests. See, e.g., 28 U.S.C. § 1291; Fed. R. Civ. P. 59 and 60. That he waited too long or did not obtain the relief he requested in an earlier case, is not an excuse for continually filing lawsuits asserting the same claims and requesting the same relief. And so much as he complains of being denied compensation by the state courts, the Rooker-Feldman doctrine precludes cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005); see also Johnson v. De Grandy, 512 U.S. 997, 1005-06 (1994) (stating that the losing party in a state court proceeding is generally barred from seeking what in substance would be appellate review of the state court judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights).

conviction, and imprisonment in Mesa County Case No. 00CR257 that was later overturned. Acosta may not repeatedly consume limited judicial resources to rehash claims brought on multiple occasions before. Because Acosta again attempts to litigate virtually identical causes of action, this case should be dismissed as repetitious, frivolous, and malicious under 28 U.S.C. § 1915(e)(2)(B)(i).

**B. Statute of limitations.**

This action is untimely too. The "[l]imitation periods in § 1983 suits are to be determined by reference to the appropriate state statute of limitations and the coordinate tolling rules." Hardin v. Staub, 490 U.S. 536, 539 (1989) (internal quotation marks and citation omitted). The applicable statute of limitations for § 1983 claims in Colorado is two years. See Blake v. Dickason, 997 F.2d 749, 750-51 (10th Cir. 1993). "Although state law determines the applicable statute of limitations period, federal law governs the particular point in time at which a claim accrues." Kripp v. Luton, 466 F.3d 1171, 1175 (10th Cir. 2006). Under federal law, claims accrue "when the plaintiff knows or has reason to know of the injury which is the basis of his action." Id. (internal quotation marks omitted); see also Fogle v. Pearson, 435 F.3d 1252, 1258 (10th Cir. 2006) ("A § 1983 action accrues when facts that would support a cause of action are or should be apparent."). The test is an objective one, with the focus "on whether the plaintiff knew of facts that would put a reasonable person on notice that wrongful conduct caused the harm." Alexander v. Okla., 382 F.3d 1206, 1216 (10th Cir. 2004).

A court may dismiss a claim sua sponte where the allegations "show that relief is barred by the applicable statute of limitations[.]" Jones v. Bock, 549 U.S. 199, 215 (2007); see also Fratus v. DeLand, 49 F.3d 673, 676 (10th Cir. 1995) (stating that dismissal under § 1915 on the basis of an affirmative defense is permitted "when the

claim's factual backdrop clearly beckons the defense").

There is no doubt Acosta knew about the arrest he alleges took place on July 4, 1999. And Acosta's claims regarding the conviction and reversal accrued when his conviction and sentence was vacated on December 18, 2003. Plaintiff's claims accrued, at the very latest, on **December 18, 2003**.[3] Assuming without deciding that the prison mailbox rule applies, this action commenced no sooner than **December 15, 2021**. (ECF No. 1 at 22 (date that Acosta's complaint was signed)). Thus, the claim's factual backdrop clearly shows Plaintiff's complaint was filed well beyond the two-year statute of limitations.

Acosta makes two arguments to resist the conclusion that this action is untimely. First, he motions the court to "remove all statute of limitations all time lines due to the non stop ad [infinium] parade of lost documents kept documents by county jail staff[.]" (ECF No. 11 at 4 (no alterations made)). He supports the argument by citing several cases filed in this court between 2018 and 2021 while he was a pretrial detainee. (Id. at 2-3). Second, Acosta invokes the continuing violation doctrine, which he discusses in his complaint as "continuing wrongs." (ECF No. 12 at 13-19). Neither argument saves this untimely case.

"[W]hen a federal statute [like § 1983] is deemed to borrow a State's limitations period, the State's tolling rules are ordinarily borrowed as well[.]" Heimeshoff v. Hartford Life & Accident Ins. Co., 134 S. Ct. 604, 616 (2013). The State of Colorado recognizes the doctrine of equitable tolling to suspend a statute of limitations period "when flexibility is required to accomplish the goals of justice." Morrison v. Goff, 91 P.3d 1050, 1053

3 The issue of accrual was decided by the court in 2007. See Acosta, Civil Action No. 05-cv-02598-WYD-CBS, Docket No. 57.

(Colo. 2004) (internal quotation marks omitted). For example, equitable tolling of a statute of limitations is appropriate when "plaintiffs did not timely file their claims because of 'extraordinary circumstances' or because defendants' wrongful conduct prevented them from doing so." Id. However, "when the dates given in the complaint make clear that the right sued upon has been extinguished, the plaintiff has the burden of establishing a factual basis for tolling the statute." Aldrich v. McCulloch Properties, Inc., 627 F.2d 1036, 1041 n. 4 (10th Cir. 1980).

Plaintiff does not carry his burden of establishing a factual basis for equitable tolling of the statute. For one thing, he has already litigated the time-barred claims. Equity does not favor extending the statute of limitations so Acosta can take another swing. On top of that, it is a litigant's responsibility to act diligently throughout a period of limitations. Though Acosta continues to take issue with the dismissal of his 2005 lawsuit as untimely, and vaguely cites cases he filed between 2018 and 2021, he has failed to establish how he has acted diligently throughout the limitations period, which spans nearly 18 years. Nor does he point to extraordinary circumstances that stood in his way to prevent timely filing. As such, equitable tolling is not available.

Switching gears, Acosta looks to the continuing violation doctrine to cure the untimeliness. That doctrine provides that, "under proper circumstances, a plaintiff may recover for discriminatory acts that occurred prior to the statutory limitations period if they are 'part of a continuing policy or practice that includes the act or acts within the statutory period.'" Davidson v. Am. Online, Inc., 337 F.3d 1179, 1183 (10th Cir. 2003) (citation omitted). This theory has been applied in Title VII and ADA cases. See id. The Tenth Circuit, though, has not "formally adopted the continuing violation doctrine for § 1983 actions." Gosselin v. Kaufman, 656 F. App'x 916, 919 (10th Cir. 2016)

(unpublished). Even if the doctrine applied, Acosta's allegations do not show a continuing violation; they show, at most, continued damages claimed to have resulted from the 2011 Mesa County conviction. Yet continuing damages from the initial violation do not trigger application of the doctrine even if it applied in this § 1983 action. Colby v. Herrick, 849 F.3d 1273, 1280 (10th Cir. 2017) ("For the sake of argument, we can assume that the continuing violation doctrine applies in § 1983 cases. This doctrine is triggered by continuing unlawful acts but not by continued damages from the initial violation."). Acosta does not allege any continuing unlawful acts by the named defendants.

Consequently, neither equitable tolling nor the continuing violation doctrine saves the untimely complaint. The amended Prisoner Complaint should therefore be dismissed as untimely under 28 U.S.C. § 1915(e)(2)(B)(i) and (ii).

## III. RECOMMENDATION

For these reasons, this Court respectfully recommends that the amended Prisoner Complaint (ECF No. 12) be **dismissed** pursuant to 28 U.S.C. § 1915(e)(2)(B)(i), and alternatively, (ii). And it is respectfully recommended that all pending motions be **denied as moot.**

DATED March 14, 2022.

BY THE COURT:

Gordon P. Gallagher
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-03406-LTB-GPG

THEODORE DEAN ACOSTA,

Plaintiff,

v.

GLEN WILSON,
RICK CLANDSENN,
JOHN DOE, and
TAMMY ERET,

Defendants.

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**ORDER**

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This matter is before the Court on the Recommendation of United States Magistrate Judge dated March 14, 2022. (ECF No. 17). The Recommendation states that any objection to the Recommendation must be filed within fourteen days after its service. See 28 U.S.C. § 636(b)(1)(C). The Recommendation was served on March 14, 2022. No timely objection to the Recommendation has been filed, and Plaintiff is therefore barred from de novo review.

Accordingly, it is

ORDERED that the Recommendation of United States Magistrate Judge (ECF No. 17) is ACCEPTED AND ADOPTED. It is

FURTHER ORDERED that the amended Prisoner Complaint (ECF No. 12) and this action are DISMISSED for the reasons stated in the Recommendation. It is

FURTHER ORDERED that leave to proceed in forma pauperis on appeal is DENIED WITHOUT PREJUDICE to the filing of a motion seeking leave to proceed in

forma pauperis on appeal in the United States Court of Appeals for the Tenth Circuit. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this dismissal would not be taken in good faith. It is

FURTHER ORDERED that all pending motions are DENIED AS MOOT.

DATED at Denver, Colorado, this 12th day of April, 2022.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-03406-LTB-GPG

THEODORE DEAN ACOSTA,

Plaintiff,

v.

GLEN WILSON,
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TAMMY ERET,

Defendants.

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**JUDGMENT**

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Pursuant to and in accordance with the Order entered by Lewis T. Babcock, Senior District Judge, on April 12, 2022, it is hereby

ORDERED that Judgment is entered in favor of Defendants and against Plaintiff.

DATED at Denver, Colorado, April 12, 2022.

FOR THE COURT,

JEFFREY P. COLWELL, Clerk

By: s/A. Thomas
Deputy Clerk