

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

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No: 23-2777

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Larry David Davis

Plaintiff - Appellant

v.

Barry Sims, Judge, 7th Division, Pulaski County Circuit Court; Reese Lancaster, Prosecutor,  
Pulaski County Prosecutor's Office; Anna Catherine Cargile, Prosecutor, Pulaski County  
Prosecutor's Office; Amy Jackson Douglas, Deputy Public Defender, Pulaski County; Ryan  
Childers, Police/Detective/Investigator, Jacksonville Police Department; Justin Hicks, Detective,  
Jacksonville Police Department

Defendants - Appellees

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Appeal from U.S. District Court for the Eastern District of Arkansas - Central  
(4:23-cv-00311-LPR)

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**JUDGMENT**

Before COLLOTON, BENTON, and KOBES, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered  
by the court that the decision of the district court is summarily affirmed. See Eighth Circuit Rule  
47A(a). The motion for appointment of counsel is denied as moot.

September 29, 2023

*APPENDIX A*

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  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

LARRY DAVID DAVIS  
ADC #123330

PLAINTIFF

v.

Case No. 4:23-CV-00311-LPR

BARRY A. SIMS, Judge, et al.

DEFENDANTS

ORDER

Plaintiff Larry David Davis, in custody at the Delta Regional Unit of the Arkansas Division of Correction, has filed a *pro se* Complaint under 42 U.S.C. § 1983 against Pulaski County Circuit Judge Barry Sims, Pulaski County Prosecutors Reese Lancaster and Anna Catherine Cargile, Pulaski County Deputy Public Defender Amy Jackson Douglas, and Jacksonville Police Department Detectives Ryan Childers and Justin Hicks.<sup>1</sup> Mr. Davis sued all Defendants in their personal and official capacities.<sup>2</sup> Mr. Davis alleges, among other things, that his fingerprints were unlawfully taken in violation of the Fourth Amendment. He seeks damages and injunctive relief.<sup>3</sup> Mr. Davis also filed an Application to Proceed Without Prepaying Fees or Costs.<sup>4</sup>

**I. *In Forma Pauperis* Application**

Mr. Davis's *IFP* application is granted, but he must still pay the \$350.00 filing fee. Based on information contained in a certified copy of Mr. Davis's *IFP* Application and Calculation Sheet, the Court will assess an initial partial filing fee of \$22.07.<sup>5</sup> After payment of the initial partial

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<sup>1</sup> Compl. (Doc. 2).

<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> Mot. to Proceed *In Forma Pauperis* (Doc. 1).

<sup>5</sup> *Id.*

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filing fee, Mr. Davis will be obligated to make monthly payments in the amount of twenty percent (20%) of the preceding month's income credited to his prison trust account each time the amount in the account exceeds \$10.00. Mr. Davis's custodian is requested to send to the Clerk of the Court monthly payments from his prison trust account when the amount exceeds \$10.00, until the statutory filing fee is paid in full.

## II. Screening

Before docketing a complaint, or as soon as practicable after docketing, the Court must review the complaint to identify cognizable claims or dismiss the complaint, or any portion of the complaint, if it: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief against a defendant who is immune from such relief.<sup>6</sup> Although a complaint requires only a short and plain statement of the claim showing that the pleader is entitled to relief, the factual allegations must be sufficient to raise the right to relief above a speculative level.<sup>7</sup> A *pro se* complaint is construed liberally, but it must contain enough facts to state a claim to relief that is plausible on its face, not merely conceivable.<sup>8</sup>

Mr. Davis's requests for damages are *Heck*-barred. If a judgment in favor of a prisoner in a § 1983 action would necessarily imply the invalidity of a state conviction, continued imprisonment, or sentence, then no claim for damages lies unless the conviction or sentence is reversed, expunged, or called into question by the issuance of a federal writ of *habeas corpus*.<sup>9</sup> A claim for damages based on the invalidity of a state conviction, continued imprisonment, or

<sup>6</sup> 28 U.S.C. § 1915A; 28 U.S.C. § 1915(e)(2)(B).

<sup>7</sup> See FED. R. CIV. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“[A] plaintiff's obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . .” (alteration in original)).

<sup>8</sup> *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir. 1985).

<sup>9</sup> *Heck v. Humphrey*, 512 U.S. 477, 486–88 (1994).

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sentence “that has not been so invalidated is not cognizable under § 1983.”<sup>10</sup> Because Mr. Davis’s convictions have not been set aside, his claims for damages are barred. Additionally, Mr. Davis’s assertions of trial error, ineffective counsel, and retaliation are really challenges to the validity of his state criminal sentences, which he can only pursue in either state post-conviction proceedings or through a petition for federal habeas review.

In any event, Mr. Davis’s constitutional and conspiracy claims arising from the February 5, 2019 fingerprinting are time barred. Claims brought pursuant to § 1983 are governed by the statute of limitations for personal injury actions in the state in which the claim accrues.<sup>11</sup> In Arkansas, the governing statute provides for a three-year limitations period.<sup>12</sup> Mr. Davis’s § 1983 claim arose on February 5, 2019.<sup>13</sup> He did not file this lawsuit until March 30, 2023. As a result, Mr. Davis’s allegations that his fingerprints were unlawfully seized as part of a larger conspiracy are time barred.

It’s also worth noting that none of the Defendants are subject to suit for damages. Judge Sims is absolutely immune from suit for actions taken in his judicial role and nothing in Mr. Davis’s Complaint establishes that Judge Sims acted either outside of his judicial capacity or absent jurisdiction.<sup>14</sup> Similarly, prosecuting attorneys Reese Lancaster and Anna Catherine Cargile are also absolutely immune from suit for damages arising out of their official duties in initiating and pursuing criminal prosecutions.<sup>15</sup> Mr. Davis’s public defender, Amy Jackson

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<sup>10</sup> *Id.* at 487 (emphasis omitted).

<sup>11</sup> See *Sanchez v. United States*, 49 F.3d 1329, 1330 (8th Cir. 1995).

<sup>12</sup> ARK. CODE ANN. § 16-56-105; see *Miller v. Norris*, 247 F.3d 736, 739 (8th Cir. 2001).

<sup>13</sup> Compl. (Doc. 2) at 3.

<sup>14</sup> See *Robinson v. Freeze*, 15 F.3d 107, 108 (8th Cir. 1994); *Hamilton v. City of Hayti*, 948 F.3d 921, 925 (8th Cir. 2020).

<sup>15</sup> See *Williams v. Hartje*, 827 F.2d 1203, 1208 (8th Cir. 1987) (citing *Imbler v. Pachtman*, 424 U.S. 409 (1976)).

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Douglas, is not considered a state actor who can be sued.<sup>16</sup> Finally, neither Detective Childers nor Detective Hicks can be sued for damages. A suit against a police officer in his official capacity is essentially a suit against his employer. As a result, Mr. Davis is essentially suing the City of Jacksonville. In order to sue Jacksonville, Mr. Davis must identify an official policy or unofficial custom that caused or contributed to the constitutional violation.<sup>17</sup> Because he has not done so, Mr. Davis's official capacity claims are dismissed. That leaves Mr. Davis's individual capacity claims against Detectives Childers and Hicks.

But Mr. Davis has failed to state individual-capacity constitutional claims against either Detective. Detective Hicks did nothing more than seek, through a sworn affidavit, Mr. Davis's fingerprints following a positive identification of him by the Arkansas Crime Lab. Mr. Davis neither challenges the crime lab results nor does he suggest Detective Hicks lied in his sworn affidavit. Similarly, Detective Childers did no more than take Mr. Davis's fingerprints as directed by court order. Neither of these Defendants' actions amount to a constitutional violation.

### III. Conclusion

IT IS THEREFORE ORDERED that:

1. Mr. Davis's motion to proceed *in forma pauperis*, Doc. 1, is GRANTED.
2. Mr. Davis's custodian, the Warden of the Delta Regional Unit or his or her designee, is directed to collect an initial partial filing fee in the amount of \$22.07, and thereafter to collect the remainder of the filing fee in monthly payments equal to 20% of the preceding month's income in Mr. Davis's institutional account each time the amount in his account is greater than \$10.00. Mr. Davis's custodian must send those payments to the Clerk until a total of \$350.00

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<sup>16</sup> See *Polk Cnty. v. Dodson*, 454 U.S. 312, 318 (1981); *Chambers v. Kaplan*, 648 F.2d 1193, 1194 (8th Cir. 1981).

<sup>17</sup> *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978).

has been paid. All payments made on Mr. Davis's behalf must be identified by the name and number assigned to this action.

3. The Clerk of the Court is directed to send a copy of this order to the Warden of the Delta Regional Unit of the Arkansas Department of Correction, 880 East Gaines St., Dermott, Arkansas 71638-9505; the ADC Trust Fund Centralized Banking Office, P.O. Box 8908, Pine Bluff, Arkansas 71611; and the ADC Compliance Office, P.O. Box 20550, Pine Bluff, Arkansas 71612.

4. Mr. Davis's complaint is DISMISSED without prejudice.

5. The Court recommends for future jurists that this dismissal count as a "strike" within the meaning of 28 U.S.C. § 1915(g).

6. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from this Order or the accompanying Judgment would not be taken in good faith.

IT IS SO ORDERED this 2nd day of June 2023.



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LEE P. RUDOFSKY  
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

LARRY DAVID DAVIS  
ADC #123330

PLAINTIFF

v.

Case No. 4:23-CV-00311-LPR

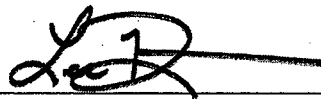
BARRY A. SIMS, Judge, et al.

DEFENDANTS

JUDGMENT

Consistent with the Order that was entered on this day, it is considered, ordered, and adjudged that this case is hereby DISMISSED without prejudice. The Court certifies that an *in forma pauperis* appeal from this Judgment or the underlying Order would not be taken in good faith.<sup>1</sup>

IT IS SO ADJUDGED this 2nd day of June 2023.



LEE P. RUDOFSKY  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> 28 U.S.C. § 1915(a)(3).

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

No: 23-2777

Larry David Davis

Appellant

v.

Barry Sims, Judge, 7th Division, Pulaski County Circuit Court, et al.

Appellees

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Appeal from U.S. District Court for the Eastern District of Arkansas - Central  
(4:23-cv-00311-LPR)

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**ORDER**

The petition for rehearing by the panel is denied.

October 27, 2023

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

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/s/ Michael E. Gans

*APPENDIX C*