

1 TOLD TRIAL COUNSEL WAS THAT SHORTLY AFTER AGUILAR  
2 WAS FOUND GUILTY HE BUDDLE WRAPPED THE PHONE  
3 AND PLACED IT WITH AGUILAR'S ATTORNEY FILE INSIDE  
4 COUNSEL'S LAW FIRM. Id.

5  
6 NOT ONLY IS THE ISSUE CONCERNING THE FACTS  
7 SURROUNDING WHAT COUNSEL DID WITH AGUILAR'S PHONE  
8 UNPRECEDENTED AND NOVEL, BUT THE FACT COUNSEL WAS  
9 UNABLE TO PRODUCE THE PHONE WHILE AGUILAR'S CASE  
10 REMAINED UNADJUDICATED IS A CLASS SIX FELONY  
11 UNDER ARIZONA REVISED STATUTES SECTION 13-2809.

12  
13 HENCE, NOT ONLY IS AGUILAR CURRENTLY HARD  
14 AT WORK PREPARING A PETITION FOR A WRIT OF CERTIO-  
15 RARI IN AGUILAR V. COCA AND A PRISONER COMPLAINT  
16 IN AGUILAR V. THORNELL, BUT IN AGUILAR V. SHINN,<sup>1</sup> HE  
17 MUST FILE A MOTION FOR RECONSIDERATION AND PETITION  
18 FOR REHEARING EN BANC, CONVINCING THE NINTH CIRCUIT  
19 THE AFOREMENTIONED NOVEL CLAIM IS THEIR DUTY TO  
20 ENTERTAIN. THIS MUST OCCUR IN THE MONTH OF JULY,  
21 2023. AGUILAR BEGINS THE COURT FOR THE NOVEL  
22 CLAIM TO BE DETERMINED AS GOOD CAUSE FOR MORE  
23 TIME TO FILE HIS PETITION FOR A WRIT OF CERTIORARI.

24  
25 <sup>1</sup> WHEN AGUILAR'S 28 U.S.C. § 2254 HABEAS PETI-  
26 TION WAS DOCKETED IN THE NINTH CIRCUIT, RESPONDENT  
27 DAVID SHINN WAS REPLACED BY ARIZONA DEPARTMENT  
28 OF CORRECTIONS REHABILITATION AND REENTRY. 22-116707

1 D. THE CRISTY CAUSE

2  
3 ON SEPTEMBER 19, 2023, AGUILAR BEGINS TRIAL  
4 IN THE DEATH OF CRISTY KAPLOWITZ. STATE V. AGUILAR  
5 CR 20221602. WITHHELD FROM THE GRAND JURY IN THE  
6 CASE WERE THE FACT (1) CRISTY HAD ATTEMPTED TO HAVE  
7 HIM MURDERED, (2) AT AUTOPSY, CRISTY HAD 14,000 mg/L  
8 UNITS OF METHAMPHETAMINE IN HER SYSTEM, (3) MOMENTS  
9 BEFORE HER DEATH CRISTY HAD LEARNED AGUILAR HAD  
10 ADVISED DEPARTMENT OF HOMELAND SECURITY AGENT BILL  
11 CARLBERG NOT TO GIVE HER \$20,000, AND (4) A LOADED,  
12 RECENTLY-OBTAINED ILLEGAL HANDGUN WAS FOUND BY POLICE  
13 IN CRISTY'S APARTMENT WITH HER. INVESTIGATION, TRIAL PREP  
14 AND IN LITIGATIVE PROCEEDINGS HAVE LONG BEGUN. YET AGAIN,  
15 AGUILAR BEGS FOR THE COURT TO RECOGNIZE THE SERIOUS-  
16 NESS OF AGUILAR'S SITUATION AND THE IMPRATORIOUSNESS  
17 OF THE INSTANT CLAIM, ALONG WITH ALL HIS ACTIONS,  
18 AS GOOD CAUSE FOR EXTENDING TIME TO FILE HIS  
19 PETITION FOR A WRIT OF CERTIORARI. IT IS WITH THE  
20 HEAVIEST OF HEARTS WHICH AGUILAR SUBMITS HIS  
21 SUPPLICATION.

22  
23  
24  
25 AT DISTRICT COURT, ODDLY, WHEN AGUILAR'S CERTIFICATE  
26 OF APPEALABILITY WAS DENIED, ON JUNE 15, 2023, DAVID  
27 SHINN RETURNED AS RESPONDENT WHEN, BY THEN, HE HAD  
28 BEEN REPLACED BY RYAN THORNELL.

### III. ARGUMENT

MAY IT PLEASE THE COURT: Acudilar submits FOR THE DETERMINATION OF GOOD CAUSE TO EXTEND TIME FOR HIM TO BE ALLOWED TO FILE HIS PETITION FOR A WRIT OF HABEAS CORPUS, ON OR BEFORE OCTOBER 13, 2023, Acudilar "NEED ONLY DEMONSTRATE 'A SUBSTANTIAL SHOWING OF THE DENIAL OF A CONSTITUTIONAL RIGHT.'" MILLER-EL V. COCKRELL, 537 U.S. 322, 327, 123 S.Ct. 1029, 154 L.Ed. 2d 931 (2003) (quoting 28 U.S.C.S. § 2253(c)(2)).

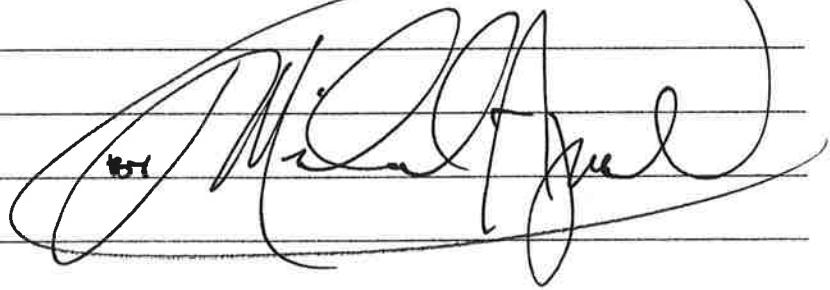
### CONCLUSION

THE FEDERAL COURTS ARE THE APPROPRIATE VEHICLE TO OVERSEE PRISON AND JAIL REFORM. NO OTHER BRANCH OF GOVERNMENT IS SO CONSTITUTED AS TO GENERATE AND MAINTAIN THE REQUISITE INTEREST AND SUSTAINED MOMENTUM NEEDED TO ASSURE MINIMAL CONSTITUTIONAL GUARANTEES FOR PRISONERS. IT IS IN SUCH INSTANCES WHEN THE LEGISLATURE AND THE EXECUTIVE ARE UNABLE OR UNWILLING TO INSURE MINIMAL CONSTITUTIONAL RIGHTS THAT JUDICIAL INTERVENTION HAS BEEN AND SHOULD CONTINUE TO BE A VIABLE SOLUTION. "THE FEDERAL JUDICIARY WAS DESIGNED BY THE FRAMERS TO STAND INDEPENDENT OF THE EXECUTIVE AND LEGISLATURE - TO MAINTAIN THE CHECKS AND BALANCES OF THE CONSTITUTIONAL STRUCTURE, AND ALSO TO GUARANTEE THAT THE PROCESS OF ADJUDICATION ITSELF REMAINED IMPARTIAL." NORTHERN PIPELINE

1 CONSTR. CO. v. MARATHON PIPE LINE CO. 458 U.S. 50, 50,  
2 102 S.Ct. 2958, 73 L.Ed.2d 598 (1982). AGUILAR, FOR  
3 THE FINAL TIME (IN THIS PLEADING), BEGINS FOR THE  
4 COURT TO REST ON THE FOREGOING IN ITS "GUARANTEE  
5 THAT THE PROCESS OF ADJUDICATION ITSELF REMAINS  
6 IMPARTIAL" FOR A MAN TENACIOUSLY DEDICATED TO SUCH  
7 PROCESS IN HIS QUEST FOR A SIXTY DAY EXTENSION TO  
8 FILE A PETITION FOR A WRIT OF CERTIORARI IN THE  
9 SUPREME COURT OF THE UNITED STATES OF AMERICA.

10  
11 DATED: JULY 4, 2023.

12  
13 RESPECTFULLY, GRATEFULLY SUBMITTED,

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19 MICHAEL EDUARDO AGUILAR  
20 PRO SE  
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FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FEB 23 2023

FOR THE NINTH CIRCUIT

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

MICHAEL EDWARD AGUILAR,

Plaintiff-Appellant,

v.

GENE COCA, Correctional Officer IV at  
ASPC - Safford/Tonto Unit; ROXANNE  
HILL, Deputy Warden at ASPC -  
Safford/Tonto Unit; VANCE LARKIN,  
Captain, ASPC - Safford; MICHAEL  
ENNIS, Captain, ASPC Safford; STACI  
IBARRA; KIMBERLY CURRIER,

Defendants-Appellees.

No. 21-16789

D.C. No. 4:21-cv-00009-JGZ-PSOT

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Jennifer G. Zipps, District Judge, Presiding

Submitted February 14, 2023\*\*

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

Arizona state prisoner Michael Edward Aguilar appeals pro se from the

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

district court's judgment dismissing his 42 U.S.C. § 1983 action alleging a retaliation claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal under 28 U.S.C. § 1915A. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000). We affirm.

The district court properly dismissed Aguilar's action because Aguilar failed to allege facts sufficient to show that defendant Coca acted with a retaliatory motive. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (setting forth elements of a retaliation claim in the prison context); *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995) (the timing of adverse actions alone is insufficient to establish retaliatory motive).

The district court did not abuse its discretion by dismissing Aguilar's third amended complaint without leave to amend because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and explaining that dismissal without leave to amend is proper when amendment would be futile).

**AFFIRMED.**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

FILED

MAY 16 2023

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

MICHAEL EDWARD AGUILAR,

Plaintiff-Appellant,

v.

GENE COCA, Correctional Officer IV at  
ASPC - Safford/Tonto Unit; et al.,

Defendants-Appellees.

No. 21-16789

D.C. No. 4:21-cv-00009-JGZ-PSOT  
District of Arizona,  
Tucson

ORDER

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

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

Aguilar's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 27) are denied.

Aguilar's motion for suspension of rules (Docket Entry No. 22) is denied.

No further filings will be entertained in this closed case.

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