

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Williams v. Newson

Williams · No. 3:25-cv-0728-BEN-VET · Decided May 6, 2025

SUMMARY

The United States District Court for the Southern District of California granted Walter Williams leave to proceed in forma pauperis. The court sua sponte dismissed his 42 U.S.C. § 1983 action as frivolous under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1), declined to grant leave to amend, and certified that an appeal would not be taken in good faith.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Roger T. Benitez
JURISDICTION	United States District Court for the Southern District of California
DECIDED	May 6, 2025
DOCKET	3:25-cv-0728-BEN-VET
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se prisoner brought a civil-rights action under 42 U.S.C. § 1983 and moved to proceed in forma pauperis. The district court granted IFP status, screened the complaint sua sponte, dismissed the action as frivolous, and certified that an IFP appeal would not be taken in good faith.
STANDARD OF REVIEW	A prisoner proceeding in forma pauperis must be screened sua sponte, and the court must dismiss a complaint that is frivolous, malicious, fails to state a claim, or seeks damages from an immune defendant. The standard for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard. For frivolousness, the court may pierce the veil of the complaint's factual allegations and determine whether they are fanciful, fantastic, or delusional.
PRECEDENTIAL VALUE	unpublished district court order

PARTIES

Walter Williams v. Gavin Newsom, State of California, All C.D.C.R.
Prisons, Rob Bonta, Ed Brown, Arnold Schwarzenegger

TOPICS

prisoners rights section 1983 civil procedure pleadings

PRACTICE AREAS

prisoner civil rights federal civil procedure in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether Plaintiff should be permitted to proceed in forma pauperis under 28 U.S.C. § 1915(a).
2. Whether the complaint was frivolous and therefore subject to sua sponte dismissal under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1).
3. Whether leave to amend should be granted after dismissal of the complaint as frivolous.
4. Whether an appeal from the IFP dismissal would be taken in good faith.

HOLDINGS

1. The court granted Plaintiff leave to proceed in forma pauperis because his account information established insufficient available funds to pay the filing fee in full, while assessing the statutory initial partial filing fee subject to 28 U.S.C. § 1915(b)(4).
2. The complaint was frivolous because its factual allegations were fanciful, fantastic, and delusional and lacked an arguable basis in law or fact. The court dismissed the action sua sponte under 28 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1).
3. Leave to amend was not warranted because the action was frivolous and therefore had no merit.

KEY QUOTATIONS

“A pleading is “factual[ly] frivolous[]” if “the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them.”” (5)

“ “[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.... [The] term ‘frivolous,’ when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.” ” (5)

“When determining whether a complaint is frivolous, the court need not accept the allegations as true, but must “pierce the veil of the complaint’s factual allegations,” ” (5)

FACTUAL BACKGROUND

Plaintiff, an incarcerated person, alleged that correctional personnel and state officials had used wireless technology over many years to attack inmates, control minds, extract knowledge, cause sleep deprivation, and make him hear voices. He attributed the alleged conduct to current and former California governors, the

California Attorney General, the State of California, and all CDCR prisons. He sought hundreds of millions of dollars in damages for alleged cruel and unusual punishment, assault, battery, and torture.

PROCEDURAL HISTORY

Plaintiff filed a complaint without paying the filing fee and submitted an IFP motion. The court granted the motion, assessed an initial partial filing fee subject to the statutory collection limitations, screened the complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), dismissed it as frivolous without leave to amend, and directed entry of judgment and closure of the case.

DISPOSITION

dismissed

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1051 (9th Cir. 2007)
- Bruce v. Samuels, 577 U.S. 82, 83-84 (2016)
- Taylor v. Delatoore, 281 F.3d 844, 850 (9th Cir. 2002)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Andrews v. King, 398 F.3d 1113, 1119 (9th Cir. 2005)
- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)
- Nordstrom v. Ryan, 762 F.3d 903, 907 n.1 (9th Cir. 2014)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)
- Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)
- Ivey v. Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982)
- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012)
- Denton v. Hernandez, 504 U.S. 25, 33 (1992)
- Neitzke v. Williams, 490 U.S. 319, 324-28 (1989)
- Vargas v. Gonzales, 2021 WL 634949, at *4-5 (E.D. Cal. Feb. 18, 2021)
- Vargas v. Gonzales, 2021 WL 1238419, at *1 (E.D. Cal. Apr. 2, 2021)
- Johnson v. Paul, 2020 WL 6825673, at *2 (S.D. Cal. Nov. 20, 2020)
- Franklin v. Newsom, 2021 WL 5827117, at *5 (S.D. Cal. Dec. 7, 2021)

OPINION

Williams v. Newson

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 WALTER WILLIAMS, Case No.: 3:25-cv-0728-BEN-VET

CDCR# V-18377,

12 ORDER: Plaintiff, 13

vs. (1) GRANTING MOTION FOR

14

LEAVE TO PROCEED IN FORMA

15 PAUPERIS [ECF No. 2]

GAVIN NEWSOM; THE STATE OF

16 CALIFORNIA; ALL C.D.C.R. PRISONS;

AND

ROB BONTA; ED BROWN; ARNOLD

17

SCHWARZENEGGER,

(2) DISMISSING CIVIL ACTION AS

18 Defendants. FRIVOLOUS PURSUANT 19 TO 28 U.S.C. § 1915(e)(2)(B)(i) AND 28 U.S.C. §
1915A(b)(1) 20 21 22 Plaintiff Walter Williams (“Plaintiff”), currently incarcerated at the
California 23 Correction Institution in Tehachapi, California, and proceeding pro se, has filed a
civil 24 rights Complaint pursuant to 42 U.S.C. § 1983. (ECF No. 1.) While the Complaint lacks
25 coherence, it appears Plaintiff seeks to sue the current and former Governors of the State 26 of
California, the Attorney General of California, all prisons within the California 27 Department of
Corrections and Rehabilitation (“CDCR”) system, and the State of 28 California itself for “assault
and battery,” “torture,” and violating his right to be free from 1 cruel and unusual punishment
because CDCR personnel used “wireless technology” to 2 attack him and other inmates in an
attempt at mind control and to “extract knowledge,” 3 which has caused him to hear voices
throughout his incarceration. (Id. at 1–5.) 4 Plaintiff did not pay the filing fee required by 28
U.S.C. § 1914(a) to commence a 5 civil action when he filed his Complaint. Instead, he has filed a
Motion for Leave to 6 Proceed in forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). (ECF
No. 2.) For the 7 reasons discussed below, the Court grants Plaintiff’s IFP motion and dismisses
the 8 Complaint as frivolous. 9 I. Motion to Proceed IFP 10 All parties instituting any civil action,
suit or proceeding in a district court of the 11 United States, except an application for writ of
habeas corpus, must pay a filing fee of 12 \$405.1 See 28 U.S.C. § 1914(a). The action may
proceed despite a plaintiff’s failure to 13 prepay the entire fee only if he is granted leave to
proceed IFP pursuant to 28 U.S.C. 14 § 1915(a). See *Andrews v. Cervantes*, 493 F.3d 1047, 1051

(9th Cir. 2007). However, all 15 prisoners who proceed IFP must pay any remaining balance in “increments” or 16 “installments,” *Bruce v. Samuels*, 577 U.S. 82, 83–84 (2016), regardless of whether their 17 action is ultimately dismissed. 28 U.S.C. § 1915(b)(1)&(2); *Taylor v. Delatoore*, 281 F.3d 18 844, 850 (9th Cir. 2002). 19 To proceed IFP, plaintiffs must establish their inability to pay by filing an affidavit 20 regarding their income and assets. See *Escobedo v. Applebees*, 787 F.3d 1226, 1234 (9th

21 Cir. 2015). A prisoner seeking leave to proceed IFP must also submit a “certified copy of 22 the trust fund account statement (or institutional equivalent) for . . . the 6-month period 23 immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2); *Andrews v. 24 King*, 398 F.3d 1113, 1119 (9th Cir. 2005). From the certified trust account statement, the 25 26 27 1 In addition to the \$350 statutory fee, civil litigants must pay an additional administrative fee of \$55. See 28 U.S.C. § 1914(a) (Judicial Conference Schedule of Fees, District Court Misc. Fee Schedule, § 14 (eff. 28 1 Court assesses an initial payment of 20% of (a) the average monthly deposits in the account 2 for the past six months, or (b) the average monthly balance in the account for the past six 3 months, whichever is greater, unless the prisoner has insufficient assets. See 28 U.S.C. 4 § 1915(b)(1)&(4); *Bruce*, 577 U.S. at 84. 5 In support of his IFP motion, Plaintiff has submitted a copy of his CDCR Inmate 6 Statement Report. (ECF No. 2 at 12–13.) Prior to filing suit, it appears Plaintiff had an 7 average monthly balance of \$13.02 and average monthly deposits of \$83.51, with an 8 available balance of \$3.53. *Id.* Therefore, the Court GRANTS Plaintiff’s motion to 9 proceed IFP and assesses an initial partial filing fee of \$16.70, but the initial fee need be 10 collected only if sufficient funds are available in Plaintiff’s account at the time this Order 11 is executed. See 28 U.S.C. § 1915(b)(4) (providing that “[i]n no event shall a prisoner be 12 prohibited from bringing a civil action or appealing a civil action or criminal judgment for 13 the reason that the prisoner has no assets and no means by which to pay the initial partial 14 filing fee.”); *Taylor*, 281 F.3d at 850 (finding that 28 U.S.C. § 1915(b)(4) acts as a “safety- 15 valve” preventing dismissal of a prisoner’s IFP case based solely on a “failure to pay . . . 16 due to the lack of funds available to him when payment is ordered.”) Plaintiff is required 17 to pay the balance of the \$350 filing fee required by 28 U.S.C. § 1914 pursuant to the 18 installment payment provisions of 28 U.S.C. § 1915(b)(1). 19 II. Sua Sponte Screening Pursuant to 28 U.S.C. §§ 1915(e) and 1915A(b) 20 A. Standard of Review 21 Because Plaintiff is a prisoner proceeding IFP, his Complaint requires pre-Answer 22 screening pursuant to 28 U.S.C. §§ 1915(e)(2) & 1915A(b). The Court must sua sponte 23 dismiss a prisoner’s IFP complaint, or any portion of it, which is frivolous, malicious, fails 24 to state a claim, or seeks damages from defendants who are immune. *Lopez v. Smith*, 203 25 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc) (discussing 28 U.S.C. § 1915(e)(2)); *Rhodes 26 v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing 28 U.S.C. § 1915A(b)). “The 27 purpose of § 1915A is ‘to ensure that the targets of frivolous or malicious suits need not 28 bear the expense of responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 1 2014) (quoting *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2

2012)). 3 “The standard for determining whether a plaintiff has failed to state a claim upon 4 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 5 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 6 1108, 1112 (9th Cir. 2012); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 1121 (9th Cir. 7 2012) (“Failure to state a claim under § 1915A incorporates the familiar standard applied 8 in the context of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).”)

9 Rule 12(b)(6) requires a complaint to “contain sufficient factual matter, accepted as true, 10 to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 11 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). 12 “Determining whether a complaint states a plausible claim for relief [is] . . . a context- 13 specific task that requires the reviewing court to draw on its judicial experience and 14 common sense.” *Id.* at 679. “[T]he tenet that a court must accept as true all of the 15 allegations contained in a complaint is inapplicable to legal conclusions. Threadbare 16 recitals of the elements of a cause of action, supported by mere conclusory statements, do 17 not suffice.” *Id.* at 678. Also, while the court “ha[s] an obligation where the petitioner is 18 pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the 19 petitioner the benefit of any doubt,” *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 20 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)), it may not “supply 21 essential elements of claims that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. 22 of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

23 Title 42 U.S.C. § 1983 “creates a private right of action against individuals who, 24 acting under color of state law, violate federal constitutional or statutory rights.” 25 *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). “To establish § 1983 liability, 26 a plaintiff must show both (1) deprivation of a right secured by the Constitution and laws 27 of the United States, and (2) that the deprivation was committed by a person acting under 28 color of state law.” *Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138 (9th Cir. 2012). 1 B. Factual Allegations 2 Plaintiff asserts that in 2003, when he was in his cell at New Folsom Prison in 3 Sacramento, “a[n] officer pointed [] which look like a garage door opener at me” and he 4 thereafter “started hearing voices” both “thru out the day” and “especially at night.” (ECF

5 No. 1 at 3–4.) Plaintiff contends that the “wireless technology intens[i]fied” during his 6 subsequent incarceration at the California State Prison Solano, and asserts that during his 7 current incarceration at the California Correction Institution in Tehachapi, when he heard 8 another inmate scream, he knew that inmate, like himself, was undergoing “attack by 9 wireless technology.” (*Id.* at 3.) While the Complaint is rather disjointed, it appears 10 Plaintiff contends that the wireless technology attacks against him and others are “military 11 tactics” aimed “mostly against Black men” and are intended to deny sleep, “steal[] my 12 business ideas,” and “make them into homosex [sic] men.” (*Id.* at 3–5.) 13 Plaintiff alleges Defendants, who include the current and former Governors of the 14 State of California, the State of California itself, all prisons in the CDCR system, and the 15 California Attorney General “illegally us[ed] wireless

technology on the men” to “invade 16 men[] minds” and for purposes of “torture,” “assault,” “extract know[]ledge” and 17 “control.” (Id. at 2.) Plaintiff asserts that he “need[s] to be compensated for my torture,” 18 “harassment” and “theft of knowledge,” and seeks a jury trial, \$200 million in damages 19 against Attorney General Bonta and Governor Newsom, and \$50 million in punitive 20 damages. (Id. at 4, 7.) 21 C. Discussion 22 The Court finds Plaintiff’s suit is plainly frivolous. “The purpose of [screening] is 23 ‘to ensure that the targets of frivolous or malicious suits need not bear the expense of 24 responding.’” *Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014) (citation omitted). 25 A pleading is “factual[ly] frivolous[]” if “the facts alleged rise to the level of the irrational 26 or the wholly incredible, whether or not there are judicially noticeable facts available to 27 contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). “[A] complaint, 28 containing as it does both factual allegations and legal conclusions, is frivolous where it 1 lacks an arguable basis either in law or in fact.... [The] term ‘frivolous,’ when applied to a 2 complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual 3 allegation.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (footnote omitted). When 4 determining whether a complaint is frivolous, the court need not accept the allegations as 5 true, but must “pierce the veil of the complaint’s factual allegations,” id. at 327, to 6 determine whether they are “‘fanciful,’ ‘fantastic,’ [or] ‘delusional.’” *Denton*, 504 U.S. at 7 33 (quoting *Neitzke*, 490 U.S. at 328). 8 Upon review, the allegations in Plaintiff’s Complaint and supplemental exhibit are 9 not only sprawling and repetitive, but patently implausible and illogical. (See ECF No. 1 10 at 2–7, ECF No. 1-2 at 1–4.) While difficult to discern, it appears Plaintiff alleges he has 11 suffered “cruel and unusual punishment,” “assault and battery” and “torture” via wireless 12 technology. (See ECF No. 1 at 2, 4, 7.) Plaintiff alleges that over twenty years ago, an 13 unidentified correctional officer (who does not appear to be named as a Defendant in the 14 instant Complaint) pointed an item which “look like a garage door opener at him,” after 15 which he started hearing voices, which Plaintiff appears to attribute to an “attack by 16 wireless technology” which he contends continues to the present day. (Id. at 3–4.) The 17 supplemental exhibit reflects that Plaintiff filed a grievance on this same subject during his 18 incarceration at Salinas Valley in 2021, contending that “C.D.C.R and all it’s [sic] prisons 19 are using wireless technology. To. Torture Assault and Battery the men,” “To. Harm and 20 Extract Knoweledge [sic] and Ideas And Information. About Family and Friends,” and “To 21 take control of the men’s Brains,” contended it was aimed “mostly against Black Men” 22 and stated that he had experienced it at “every prison” during his incarceration. (ECF No. 23 1-2 at 3–4.) Plaintiff asserts these crimes were committed by the named Defendants, who 24 include the current and two former Governors of California and the current California 25 Attorney General, in addition to the entities of the State of California and every CDCR 26 correctional facility, from whom he seeks a total of \$250 million in damages. (ECF No. 1 27 at 2, 4, 7.) 28 /// 1 In sum, Plaintiff’s Complaint is premised on assertions that Defendants conspired 2 and/or colluded for over two decades to use wireless technology against Plaintiff and other 3 state inmates for the purposes of torture, assault, mind control, and

extraction of 4 knowledge. (See *id.*) As such, the Court finds Plaintiff's allegations are "'fanciful,' 5 'fantastic,' [and] 'delusional,'" see *Denton*, 504 U.S. at 33 (quoting *Neitzke*, 490 U.S. at 6 328), and lack any "short and plain statement of the claim showing that [he] is entitled to 7 [any] relief" arguably based on law or fact. See Fed. R. Civ. P. 8(a)(2); *Neitzke*, 490 U.S. 8 at 325. Accordingly, the Court sua sponte dismisses the Complaint as frivolous pursuant 9 to 28 U.S.C. § 1915(e)(2)(B) (i) and § 1915A(b)(1). See *Iqbal*, 556 U.S. at 676; *Denton*, 10 504 U.S. at 33; *Neitzke*, 490 U.S. at 324; see also *Vargas v. Gonzales, et al.*, 1:20-CV- 11 1634-EPG (PC), 2021 WL 634949, at *4–5 (E.D. Cal. Feb. 18, 2021) (recommending 12 dismissal of pro se § 1983 complaint seeking to sue "ten guards from two prisons" for 13 "stash[ing] stolen electronic equipment in a Bakersfield residence to spy o[n] Plaintiff," 14 harming his family members, "tortur[ing], sexually assault[ing] and harass[ing]" Plaintiff 15 through "'verbalized' transmi[ss]ions," and conspiring to "change his mail" as frivolous 16 pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) and § 1915A(b)(1)), adopted by *Vargas v. 17 Gonzales, et al.*, 2021 WL 1238419, at *1 (E.D. Cal. April 2, 2021); *Johnson v. Paul*, No. 18 20-CV-2174-JLS (WVG), 2020 WL 6825673, at *2 (S.D. Cal. Nov. 20, 2020) (dismissing 19 pro se § 1983 complaint seeking to sue the Pope, a U.S. Senator, the Secretary of State, 20 and several Presidents for having committed "human trafficking crimes, Biblical crimes 21 . . . extortion, conspiracies [and] public kidnappings" sua sponte as frivolous pursuant to 22 28 U.S.C. § 1915(e)(2)); see also *Franklin v. Newsom*, No. 21-CV-1645-GPC (BGS), 2021 23 WL 5827117, at *5 (S.D. Cal. Dec. 7, 2021) (collecting cases). 24 /// 25 /// 26 /// 27 /// 28 /// 1 Conclusion and Order 2 Good cause appearing, the Court: 3 (1) GRANTS Plaintiff's motion to proceed IFP pursuant to 28 U.S.C. § 1915(a) 4 || [ECF No. 2]; 5 (2) ORDERS the Secretary of the CDCR, or his designee, to collect from □□□□□□□□ 6 account the \$16.70 initial filing fee assessed, if those funds are available at the time 7 || this order is executed, and forward whatever balance remains of the \$350 owed in monthly 8 || payments in an amount equal to twenty (20%) percent of the preceding month's income to 9 || the Clerk of the Court each time the amount in Plaintiff's account exceeds \$10.00 pursuant 10 to 28 U.S.C. § 1915(b)(2); 11 (3) DIRECTS the Clerk of the Court to serve a copy of this Order by U.S. Mail on 12 || Jeff Macomber, Secretary, California Department of Corrections and Rehabilitation, P.O. 13 || Box 942883, Sacramento, California, 94283-0001; 14 (4) DISMISSES this civil action sua sponte and in its entirety as frivolous pursuant 15 ||to 28 U.S.C. § 1915(e)(2)(B)(i) and 28 U.S.C. § 1915A(b)(1);? 16 (5) CERTIFIES that an IFP appeal would not be taken in good faith pursuant to 28 17 ||U.S.C. § 1915(a)(3); and 18 (6) DIRECTS the Clerk of the Court to enter a judgment of dismissal in S.D. Cal. 19 || Civil Case No. 3:25-cv-0728-BEN-VET and to close the file. 20 IT IS SO ORDERED. . 21 Dated: May 6, 2025 lyin, 22 Honorable RogerT. Benitez =" 23 United States District Judge 24 25 ||} 27 ||? Because Plaintiff's Complaint is frivolous, there is "no merit" to it and therefore "no reason to grant 28 leave to amend." *Lopez*, 203 F.3d at 1127 □□ 8 ("When a case may be classified as frivolous or malicious, there is, by definition, no merit to the underlying action and so no reason to grant leave to amend.")

