

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

**Amos Dumarce v. Nebraska Department of Correctional Services,  
Michelle Wilhelm, Warden; Jessica Rhoades, CPL.; and Kimberly  
McGill, Correctional Administrator**

Amos Dumarce v. Nebraska Department of Correctional Services, No. 4:23-cv-03132 (D. Neb. Nov. 25, 2025) ·  
No. 4:23CV3132 · Decided November 25, 2025

SUMMARY

The court conducts an initial review under 28 U.S.C. §§ 1915(e) and 1915A of Amos Dumarce’s pro se complaint concerning the cancellation and suspension of family visitation at the Nebraska State Penitentiary. The court dismisses claims against the Nebraska Department of Correctional Services and defendants in their official capacities on sovereign-immunity grounds, and dismisses claims asserted on behalf of family members for lack of standing. It allows Dumarce’s First, Eighth, and Fourteenth Amendment visitation claims to proceed against the individual defendants, denies appointed counsel without prejudice, and directs service of process.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the District of Nebraska                                                                                                                                                                                                                                                                                                                                                                      |
| WRITING FOR THE COURT | Joseph F. Bataillon                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | United States District Court for the District of Nebraska                                                                                                                                                                                                                                                                                                                                                                      |
| DECIDED               | November 25, 2025                                                                                                                                                                                                                                                                                                                                                                                                              |
| DOCKET                | 4:23CV3132                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PROCEDURAL POSTURE    | Initial review of a pro se prisoner's complaint and supplemental filing under 28 U.S.C. §§ 1915(e) and 1915A.                                                                                                                                                                                                                                                                                                                  |
| STANDARD OF REVIEW    | Under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), the court must dismiss claims that are frivolous or malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from an immune defendant. The court accepted the pleaded facts as true, liberally construed the pro se filings, and applied the plausibility standard under <i>Bell Atlantic Corp. v. Twombly</i> and <i>Ashcroft v. Iqbal</i> . |
| PRECEDENTIAL VALUE    | Unpublished district court memorandum and order; limited persuasive value                                                                                                                                                                                                                                                                                                                                                      |

## TOPICS

section 1983   civil rights   sovereign immunity   standing   civil procedure

## PRACTICE AREAS

Prisoner civil rights   Federal civil procedure   Constitutional law   Sovereign immunity   Civil rights litigation

## QUESTIONS PRESENTED

1. Whether claims for monetary relief against the Nebraska Department of Correctional Services and state officials in their official capacities are barred by sovereign immunity.
2. Whether Dumarce had standing to assert constitutional claims based on alleged injuries to his family members.
3. Whether the allegations plausibly stated First, Eighth, and Fourteenth Amendment claims based on the allegedly arbitrary cancellation and suspension of family visitation.
4. Whether appointed counsel should be requested for the indigent pro se plaintiff.

## HOLDINGS

1. Claims seeking monetary relief from the Nebraska Department of Correctional Services and the defendants in their official capacities are barred by sovereign immunity and must be dismissed.
2. Dumarce lacks standing to seek relief for alleged violations of the constitutional rights of his girlfriend, mother, or daughter, but may pursue claims based on injuries to his own rights.
3. The complaint and supplement plausibly state First, Eighth, and Fourteenth Amendment claims against the individual defendants based on allegedly arbitrary cancellation and suspension of Dumarce's family visitation, and those claims may proceed to service of process.
4. The request for appointment of counsel is denied without prejudice to reassertion.

## KEY QUOTATIONS

*“limitations on visitation privileges do not violate the Constitution if imposed “for a limited period as a regular means of effecting prison discipline.””* (at 10)

*“Plaintiff’s Complaint and Supplement sufficiently state claims for relief under Manning for violations of Plaintiff’s First, Eighth, and Fourteenth Amendment rights based on the loss and suspension of visitation with his family, and those claims will be allowed to proceed to service of process against Defendants in their individual capacities.”* (at 12)

## FACTUAL BACKGROUND

Dumarce alleged that prison officials cancelled two family visits after a visitation officer claimed to smell marijuana and later suspended the visitation privileges of his mother and girlfriend for alleged disruptive or noncompliant conduct. He alleged that the cancellations and suspensions were arbitrary, occurred without notice or a hearing, and disproportionately arose when particular officers were working. He also alleged that another

officer subjected his mother to an intrusive search and that her visitation privileges were later suspended for one year. Dumarce sought damages for the loss of visitation and related injuries.

#### PROCEDURAL HISTORY

Amos Dumarce filed a pro se § 1983 complaint on July 20, 2023, and was granted leave to proceed in forma pauperis. The court treated his July 19, 2024 brief as a supplement and conducted statutory screening. The court dismissed claims against the Nebraska Department of Correctional Services and defendants in their official capacities, dismissed claims asserted on behalf of family members, allowed Dumarce's individual-capacity First, Eighth, and Fourteenth Amendment visitation claims to proceed to service, and denied appointed counsel without prejudice.

#### DISPOSITION

other

#### CASES CITED

- Miller v. Hedrick, 140 F. App'x 640, 641 (8th Cir. 2005)
- Rice v. Hamilton Air Force Base Commissary, 720 F.2d 1082, 1085 (9th Cir. 1983)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 569-70 (2007)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Topchian v. JPMorgan Chase Bank, N.A., 760 F.3d 843, 848-49 (8th Cir. 2014)
- West v. Atkins, 487 U.S. 42, 48 (1988)
- Buckley v. Barlow, 997 F.2d 494, 495 (8th Cir. 1993)
- Will v. Michigan Department of State Police, 491 U.S. 58, 70 (1989)
- Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995)
- Dover Elevator Co. v. Arkansas State University, 64 F.3d 442, 444, 446-47 (8th Cir. 1995)
- Nevels v. Hanlon, 656 F.2d 372, 377-78 (10th Cir. 1981)
- Burgess v. City of Sioux Falls, No. CIV 17-4027, 2018 WL 2305668, at \*6 (D.S.D. May 21, 2018)
- Archuleta v. McShan, 897 F.2d 495, 497 (10th Cir. 1990)
- Martin v. Sargent, 780 F.2d 1334, 1337 (8th Cir. 1985)
- Sandin v. Conner, 515 U.S. 472, 483-84 (1995)
- Temple v. Dahm, 905 F. Supp. 670, 673 (D. Neb. 1995)
- Kentucky Department of Corrections v. Thompson, 490 U.S. 454, 461 (1989)
- Overton v. Bazzetta, 539 U.S. 126, 131, 137 (2003)
- Manning v. Ryan, 13 F.4th 705, 703, 708 (8th Cir. 2021)
- Turner v. Safley, 482 U.S. 78, 89 (1987)
- Phillips v. Jasper County Jail, 437 F.3d 791, 794 (8th Cir. 2006)
- Chambers v. Pennycook, 641 F.3d 898, 909 (8th Cir. 2011)

- *Recca v. Omaha Police Department*, 859 F. App'x 3, 4-5 (8th Cir. 2021)
- *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996)
- *Patterson v. Kelley*, 902 F.3d 845, 850 (8th Cir. 2018)
- *Williams v. Carter*, 10 F.3d 563, 567 (8th Cir. 1993)
- *Wright v. First Student, Inc.*, 710 F.3d 782, 783 (8th Cir. 2013)
- *Moore v. Jackson*, 123 F.3d 1082, 1085 (8th Cir. 1997)
- *Beyer v. Pulaski County Jail*, 589 F. App'x 798 (8th Cir. 2014)
- *Graham v. Satkoski*, 51 F.3d 710, 713 (7th Cir. 1995)

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