

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Andre Michael Leteve v. Ryan Thornell, et al.

Leteve v. Thornell · No. CV-25-00622-TUC-JGZ · Decided April 14, 2026

SUMMARY

The United States District Court for the District of Arizona grants Andre Michael Leteve leave to file a First Amended Complaint and conducts statutory screening under 28 U.S.C. § 1915A. The court dismisses certain individual-capacity claims, permits an official-capacity policy-or-custom claim against Sergeant Tuccino to proceed, and directs specified defendants to answer surviving claims. The order also addresses service of process and related procedural requirements.

CASE DETAILS

COURT	United States District Court for the District of Arizona
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 14, 2026
DOCKET	CV-25-00622-TUC-JGZ
DISPOSITION	other
PROCEDURAL POSTURE	The court considered Plaintiff's motion for leave to file a first amended complaint and conducted statutory screening of the amended prisoner complaint under 28 U.S.C. § 1915A.
STANDARD OF REVIEW	Under 28 U.S.C. § 1915A, the court must dismiss a prisoner complaint or portion thereof that is frivolous, malicious, fails to state a claim, or seeks monetary relief from an immune defendant. Under Rule 8 and the plausibility standard, the complaint must contain sufficient factual matter to state a claim that is plausible on its face, while self-represented prisoner filings are construed liberally.
PRECEDENTIAL VALUE	Nonprecedential district court order; precedential status is unknown in the provided metadata.
PARTIES	Andre Michael Leteve v. Ryan Thornell, Jorge Martinez, Danny Mendoza, Mario Tuccino, Arizona Department of Corrections, Rehabilitation & Reentry

TOPICS

- prisoners rights
- section 1983
- motion to amend
- pleadings
- due process

PRACTICE AREAS

Civil rights

Prisoner litigation

Federal civil procedure

Constitutional law

QUESTIONS PRESENTED

1. Whether Plaintiff should be granted leave to file the first amended complaint.
2. Whether Count One stated individual-capacity Fourth Amendment, due process, access-to-the-courts, or First Amendment claims concerning the seizure or non-delivery of a prisoner's legal-materials update.
3. Whether Plaintiff stated an individual-capacity § 1983 claim against supervisory defendant Ryan Thornell.
4. Whether Plaintiff stated an official-capacity policy-or-custom claim against Mario Tuccino sufficient to require an answer.
5. Whether the court's prior screening conclusions remained applicable to unchanged Counts Two and Three of the amended complaint.

HOLDINGS

1. Leave to file the first amended complaint was granted because Plaintiff was entitled to amend as a matter of course or, alternatively, because the court's prior order contemplated amendment.
2. Plaintiff failed to state Fourth Amendment or procedural due process claims based on the seizure, destruction, or loss of the legal-materials update; those individual-capacity claims were dismissed with prejudice.
3. Plaintiff failed to state an access-to-the-courts claim because he did not allege an actual injury or the loss of a nonfrivolous or arguable underlying legal claim.
4. Plaintiff failed to state an individual-capacity First Amendment claim based on the alleged mishandling of the legal-materials update; the claim was dismissed without prejudice.
5. Plaintiff failed to state an individual-capacity § 1983 claim against Thornell because the claim was based solely on respondeat superior.
6. Liberally construed, the amended complaint stated an official-capacity policy-or-custom claim against Tuccino concerning an alleged ASPC-Tucson custom of not following ADCRR prison-mail policy, so Tuccino was required to answer Count One in his official capacity only.

KEY QUOTATIONS

“A pleading must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”” (at 2)

“The “Due Process Clause is simply not implicated by a negligent act of an official causing unintended loss of or injury to life, liberty, or property.”” (at 8)

“Plaintiff does not allege he suffered an actual injury or he was prevented from asserting a nonfrivolous or arguable claim.” (at 9)

FACTUAL BACKGROUND

Plaintiff, a death-sentenced prisoner pursuing post-conviction proceedings, alleged that a 2025 update to a two-volume legal resource was received and signed for by prison employee Mario Tuccino but was not delivered to him. He alleged that the update was treated as contraband, destroyed or returned without adequate notice or an opportunity to appeal, and that the conduct interfered with his access to legal materials and the courts. He also alleged that the Tucson prison complex followed a custom of disregarding ADCRR policies concerning inmate mail and that supervisory defendant Ryan Thornell was responsible by extension.

PROCEDURAL HISTORY

Plaintiff filed an original complaint asserting three counts against ADCRR and several officials. In a prior screening order, the court permitted Counts Two and Three to proceed against Martinez and Thornell in their official capacities, dismissed the remaining claims and Mendoza and Tuccino without prejudice, and contemplated amendment. Plaintiff then filed a first amended complaint adding allegations to Count One; the court granted leave to amend, dismissed portions of Count One, and ordered Tuccino, Martinez, and Thornell to respond to specified official-capacity claims.

DISPOSITION

other

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678-81 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015)
- Antonetti v. McDaniels, No. 16-CV-00396, 2018 WL 11362954, at *2 n.3 (D. Nev. May 25, 2018)
- Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)
- Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)
- Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976)
- Monell v. Department of Social Services, 436 U.S. 658, 690 n.55 (1978)
- Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Hudson v. Palmer, 468 U.S. 517, 528 n.8, 533-35 (1984)
- Taylor v. Knapp, 871 F.2d 803, 806 (9th Cir. 1989)
- Daniels v. Williams, 474 U.S. 327, 328 (1986)
- Dennison v. Ryan, 522 F. App'x 414, 417-18 (9th Cir. 2013)
- Aldrete v. Arizona Department of Corrections, 2011 WL 30959, at *7 (D. Ariz. Jan. 3, 2011)
- Wright v. Riveland, 219 F.3d 905, 918 (9th Cir. 2000)

- Lewis v. Casey, 518 U.S. 343, 348, 353 n.3 (1996)
- Davis v. Goord, 320 F.3d 346, 352 (2d Cir. 2003)
- Silva v. DiVittorio, 658 F.3d 1090, 1104 (9th Cir. 2011)
- Phillips v. Hust, 477 F.3d 1070, 1076 (9th Cir. 2007), vacated on other grounds, 555 U.S. 1150 (2009)
- Witherow v. Paff, 52 F.3d 264, 265 (9th Cir. 1995)
- Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 1990)
- Will v. Michigan Department of State Police, 491 U.S. 58, 71 (1989)
- Hafer v. Melo, 502 U.S. 21, 27 (1991)
- Gilbreath v. Cutter Biological, Inc., 931 F.2d 1320, 1327 (9th Cir. 1991)
- Coalition to Defend Affirmative Action v. Brown, 674 F.3d 1128, 1134 (9th Cir. 2012)
- P.R. Aqueduct & Sewer Authority v. Metcalf & Eddy, Inc., 506 U.S. 139, 146 (1993)
- Hindes v. FDIC, 137 F.3d 148, 166 (3d Cir. 1998)
- Los Angeles County v. Humphries, 562 U.S. 29, 39 (2010)
- Sadoski v. Mosley, 435 F.3d 1076, 1080 (9th Cir. 2006)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF
ARIZONA 8 9 Andre Michael Leteve, No. CV-25-00622-TUC-JGZ 10 Plaintiff, ORDER 11 v. 12
Ryan Thornell, et al., 13 Defendants. 14 15 Pending before the Court is Plaintiff's Motion for
Leave to File an Amended 16 Complaint. (Doc. 16.)

The Court will grant Plaintiff's Motion¹ and screen Plaintiff's First 17 Amended Complaint under
28 U.S.C. § 1915A(a). 18 I. Statutory Screening of Prisoner Complaints 19 The Court is required
to screen complaints brought by prisoners seeking relief 20 against a governmental entity or an
officer or an employee of a governmental entity. 28 21 U.S.C. § 1915A(a).

The Court must dismiss a complaint or portion thereof if a plaintiff has 22 raised claims that are
legally frivolous or malicious, fail to state a claim upon which relief 23 may be granted, or seek
monetary relief from a defendant who is immune from such relief. 24 Id. § 1915A(b)(1)–(2). 25 1
“A party may amend its pleading once as a matter of course no later than...

21 days 26 after serving it, or... 21 days after service of a responsive pleading.” Fed. R. Civ. P.
15(a)(1)(A)–(B). Defendant Thornell was served on April 3, 2026, (see Doc. 18), and as of 27 the
filing date of this Order, no defendant has appeared or filed a responsive pleading. Additionally,
the Court's first screening order contemplated amendment pursuant to Rule 28 15.

(See Doc. 8 at 17.) Thus, the Court grants Plaintiff leave to amend to the extent leave of court is
required given this posture. 1 A pleading must contain a “short and plain statement of the claim
showing that the 2 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While

Rule 8 does not demand detailed factual allegations, “it demands more than an unadorned, the- 4 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

5 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory 6 statements, do not suffice.” *Id.* 7 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a 8 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 9 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content 10 that allows the court to draw the reasonable inference that the defendant is liable for the 11 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for 12 relief [is]... a context-specific task that requires the reviewing court to draw on its judicial 13 experience and common sense.” *Id.* at 679.

Thus, although a plaintiff’s specific factual 14 allegations may be consistent with a constitutional claim, a court must assess whether there 15 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681. 16 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts 17 must “continue to construe [self-represented litigant’s] filings liberally.” *Hebbe v. Pliler*, 18 627 F.3d 338, 342 (9th Cir.

2010). A “complaint [filed by a self-represented prisoner] ‘must 19 be held to less stringent standards than formal pleadings drafted by lawyers.’” *Id.* (quoting 20 *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)). 21 II. Discussion 22 Plaintiff’s original Complaint asserted three counts against Defendants Arizona 23 Department of Corrections, Rehabilitation & Reentry (ADCRR) Director Ryan Thornell, 24 ASPC-Tucson Warden Jorge Martinez and Deputy Warden Danny Mendoza, and Sergeant 25 Mario Tuccino.² (See Doc.

1.) In a December 8, 2025 Order, the Court screened Plaintiff’s 26 2 In the caption and when listing defendants, Plaintiff names Sergeant “Mario Tuccino,” (Doc. 1 at 1–2), but when describing the facts supporting his claims, Plaintiff names 27 Sergeant “Tuccino,” (see *id.* at 4–5).

In documents attached to the original complaint, the official’s name is spelled “Tussino.” (See, e.g., *id.* at 33–34, 49.) The Court will refer to 28 Defendant “Tuccino” because that spelling is found in the caption of the complaint and on the docket. 1 original Complaint pursuant to 28 U.S.C. § 1915A(a). (Doc. 8.)

The Court ordered 2 Defendant Martinez to answer Count Two and Defendant Thornell to answer Count Three, 3 in their official capacities only. (*Id.* at 9, 17.) The Court dismissed Plaintiff’s remaining 4 claims and Defendants Mendoza and Tuccino without prejudice. (*Id.* at 8–15, 17.) 5 In his First Amended Complaint (FAC), Plaintiff adds to his allegations in Count 6 One and leaves Counts Two and Three unchanged.

(See Doc. 16.) Although an “amended 7 complaint supersedes the original, the latter being treated thereafter as non-existent,” 8 *Ramirez v. County of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir.

2015) (citation 9 omitted), the Court’s reasoning and conclusions in the initial screening order remain 10 applicable to Counts Two and Three of the FAC, which are unchanged from the original 11 complaint.

See *Antonetti v. McDaniels*, No. 16-CV-00396, 2018 WL 11362954, at *2 n.3 12 (D. Nev. May 25, 2018) (“With respect to the counts that Plaintiff has not amended, the 13 Court’s rulings from the original screening order... apply.”).

Thus, the Court incorporates 14 its initial holdings regarding Counts Two and Three by reference, (see Doc. 8 at 9, 12–15, 15 17), and will screen Count One of the FAC.³ 16 A. Count One 17 In Count One, Plaintiff raises a claim regarding his due process rights and access to 18 the courts. Plaintiff makes the following allegations. He ordered a two-volume legal 19 resource to assist his attorney in his post-conviction proceedings,⁴ received the books in 20 2021, and received annual updates in 2023 and 2024.

(Doc. 16-1 ¶¶ 2–3, 15.)⁵ After he was 21 moved to ASPC-Tucson, he purchased the 2025 update, which was shipped to 22 him. (Id. ¶ 4.) Although Defendant Tuccino signed for the shipment, Plaintiff did not 23 receive the update. (Id. ¶¶ 4–5.)

In violation of ADCRR policy, contraband forms were not 24 3 Because the only change to Count One between the FAC and original complaint is the addition of Paragraph 5.1, the analysis of Count One that follows is largely, but not entirely, 25 duplicative of the initial screening order’s analysis of Count One. (See Doc. 8 at 7–12.) 4 Plaintiff states he was sentenced to death, is not constitutionally entitled to assistance of 26 counsel in his proceedings seeking post-conviction relief, and uses the legal resource to file his own motions.

(Doc. 16-1 at 4, ¶¶ 1, 14–15.) 27 5 Plaintiff’s factual allegations supporting Count One begin in numbered paragraphs on page 4 of the FAC. (Doc. 16-1 at 4.) Citations to paragraph numbers in this Section refer 28 to those paragraphs, rather than the numbered paragraphs in preceding sections of the FAC. (See *id.* at 4–8.) 1 filled out and given to Plaintiff, Plaintiff was not given an opportunity to appeal, and 2 Defendant Tuccino “refused to fill out the package tracking document for all 3 documents/items arriving in the mailroom.” (Id. ¶¶ 5, 6.)

The annual update was not 4 returned to the publisher, and Plaintiff believes the update was destroyed. (Id. ¶¶ 6, 13.) 5 Plaintiff filed a grievance regarding Defendant Tuccino’s alleged violations of his 6 rights to due process and access to the courts and “right to participate in his capital 7 appeals.” (Id. ¶ 7.)

The Department’s second level grievance appeal decision stated 8 Defendant Tuccino’s decision to reject the package and return to sender was consistent 9 with Department policy. (Id. ¶ 5.1.) Plaintiff asserts that under DO 914.9.3.5, the decision 10 to allow or exclude a publication by one complex shall be binding on all other complexes. 11 (Id.) Plaintiff claims, therefore, that prior

decisions by Florence and Eyman complexes to 12 approve and deliver the updates to Plaintiff were binding on the Tucson complex.

(Id.) As 13 a result, Plaintiff claims Defendant Tuccino followed a custom at ASPC-Tucson not to 14 follow Department Orders that favor inmates' rights. (Id.) In support of his claim that 15 Defendant Tuccino's actions evidence a custom, Plaintiff claims two other inmates had 16 property denied and returned to vendors without notification. (Id.) 17 Plaintiff claims he spoke with ADCRR's general counsel, who "agreed with 18 Plaintiff that [Defendant] Tuccino[] refusing to process the... update interfered with 19 Plaintiff[']s access to the courts." (Id. ¶ 8.)

According to Plaintiff, the general counsel 20 claimed it was "impossible to create an exhaustive approved[-]vendors list" but she would 21 add the publisher to the list. (Id.) Plaintiff claims this demonstrates the update did not 22 "violate[] any legitimate penological interest." (Id. ¶ 17.) 23 Plaintiff contends Defendant Tuccino violated the Fourth Amendment by 24 confiscating and destroying the annual update.

(Id. ¶ 11.) He asserts Defendant Tuccino 25 violated his First Amendment and due process rights to receive legal materials that did not 26 violate any policy prohibitions. (Id. ¶ 12.) Plaintiff also claims Defendant Tuccino "and by 27 extension [Defendant] Thornell," interfered with his "ability to participate in his active and 28 ongoing Capital appeals litigation" and prevented him from "receiving the research book 1 update[] necessary to present any further unknown legal arguments to protect the record 2 on appeal." (Id. ¶¶ 10, 14, 16.)

Finally, Plaintiff claims Defendant Tuccino "disregard[ed] 3 policy" and "fail[ed] to provide contraband notice," which prevented Plaintiff from 4 challenging and appealing the decision to designate the update as contraband and failed to 5 "create a record to prove [the update was] returned." (Id. ¶ 13.) 6 B. Screening 7 1. Count One - Individual Capacity Claims 8 A suit against a defendant in his or her individual capacity seeks to impose personal 9 liability upon the official.

Kentucky v. Graham, 473 U.S. at 165–66. For a person to be 10 liable in his or her individual capacity, "[a] plaintiff must allege facts, not simply 11 conclusions, that show that an individual was personally involved in the deprivation of his 12 civil rights." Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998). 13 To state a valid claim under § 1983, plaintiffs must allege that they suffered a 14 specific injury as a result of specific conduct of a defendant and show an affirmative link 15 between the injury and the conduct of that defendant.

See Rizzo v. Goode, 423 U.S. 362, 16 371-72, 377 (1976). There is no respondeat superior liability under § 1983, and therefore, 17 a defendant's position as the supervisor of persons who allegedly violated Plaintiff's 18 constitutional rights does not impose liability. Monell, 436 U.S. 658; Hamilton v. Endell, 19 981 F.2d 1062, 1067 (9th Cir. 1992); Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.

1989). 20 “Because vicarious liability is inapplicable to... § 1983 suits, a plaintiff must plead that 21 each Government-official defendant, through the official’s own individual actions, has 22 violated the Constitution.” *Iqbal*, 556 U.S. at 676. “A plaintiff must allege facts, not simply 23 conclusions, that show that an individual was personally involved in the deprivation of his 24 civil rights.” *Barren*, 152 F.3d at 1194.

25 a. Fourth Amendment and Due Process 26 The Fourth Amendment does not protect an inmate from the seizure of his property. 27 *Hudson v. Palmer*, 468 U.S. 517, 528 n.8 (1984); see also *Taylor v. Knapp*, 871 F.2d 803, 28 806 (9th Cir. 1989) (holding no Fourth Amendment claim arose from seizure, conversion, 1 and destruction of inmate’s assets). Such a claim would arise, if at all, under the Due 2 Process Clause of the Fourteenth Amendment.

3 The “Due Process Clause is simply not implicated by a negligent act of an official 4 causing unintended loss of or injury to life, liberty, or property.” *Daniels v. Williams*, 474 5 U.S. 327, 328 (1986). Although Plaintiff alleges Defendant Tuccino intentionally deprived 6 him of the updates, even unauthorized and intentional deprivations of property do not 7 constitute a violation of procedural requirements of the Due Process Clause if a meaningful 8 post-deprivation remedy for the loss is available.

Hudson, 468 U.S. at 533. 9 Arizona provides a meaningful and adequate post-deprivation remedy through the 10 prison grievance system, specifically Department Order 909(8.0). *Dennison v. Ryan*, 522 11 F. App’x 414, 417–18 (9th Cir. 2013); *Aldrete v. Ariz. Dep’t of Corr.*, 2011 WL 30959, at 12 *7 (D. Ariz. Jan. 3, 2011). But even if the prison grievance system remedy was not 13 available, the availability of a common-law tort suit against a state employee constitutes 14 an adequate post-deprivation remedy.

Hudson, 468 U.S. at 534-35; see also *Wright v. 15 Riveland*, 219 F.3d 905, 918 (9th Cir. 2000) (both state tort claims and prison grievance 16 procedures provide adequate post-deprivation remedies). Thus, the Court will dismiss 17 Plaintiff’s Fourth Amendment and due process claims against Tuccino with prejudice. 18 Plaintiff had an opportunity to amend these claims, and the Court finds that further attempts 19 to amend would be futile.

20 b. Access to the Courts 21 As a matter of standing for an access-to-courts claim, a plaintiff must show he 22 suffered an “actual injury”—i.e., “actual prejudice with respect to contemplated or existing 23 litigation, such as the inability to meet a filing deadline or to present a claim.” *Lewis v. 24 Casey*, 518 U.S. 343, 348 (1996) (citation omitted); see also *Davis v. Goord*, 320 F.3d 346, 25 352 (2d Cir.

2003) (“Mere ‘delay in being able to work on one’s legal action or 26 communicate with the courts does not rise to the level of a constitutional violation.’”) 27 (citations omitted); cf. *Silva v.*

DiVittorio, 658 F.3d 1090, 1104 (9th Cir. 2011) (actual 28 injury alleged where plaintiff claimed pending lawsuits had been dismissed as the result of 1 defendants' actions).

2 Moreover, where a prisoner is asserting a backward-looking denial of access 3 claim—one that seeks a remedy for a lost opportunity to present a legal claim—he must 4 show, among other things, “the loss of a ‘nonfrivolous’ or ‘arguable’ underlying claim.” 5 *Phillips v. Hust*, 477 F.3d 1070, 1076 (9th Cir. 2007), vacated on other grounds, 555 U.S. 6 1150 (2009).

A plaintiff does not have to show that his claim would have ultimately been 7 successful on the merits, *id.*, but he must show that it had arguable merit, *Lewis*, 518 U.S. 8 at 353 n.3. 9 Plaintiff does not allege he suffered an actual injury or he was prevented from 10 asserting a nonfrivolous or arguable claim. His assertion that he was prevented from 11 presenting “any further unknown legal arguments” is entirely speculative.

Thus, Plaintiff 12 has failed to state an access-to-the-courts claim. 13 c. First Amendment 14 Although prisoners have “a First Amendment right to send and receive mail,” 15 *Witherow v. Paff*, 52 F.3d 264, 265 (9th Cir. 1995), a single mistake or occasional incident 16 of mishandling of mail, legal or nonlegal, without any evidence of improper motive or of 17 actual interference with the prisoner's right to counsel or access to the courts, does not rise 18 to the level of a constitutional violation.

Smith v. Maschner, 899 F.2d 940, 944 (10th Cir. 19 1990). 20 As previously discussed, Plaintiff has failed to demonstrate actual interference with 21 his access to the courts. Moreover, Plaintiff's allegations suggest that Tuccino was acting 22 pursuant to a pre-approved vendor's list, as opposed to having an improper motive.

Thus, 23 the Court will dismiss Plaintiff's First Amendment claim without prejudice. 24 d. Defendant Thornell 25 Plaintiff's claim against Defendant Thornell in Count One is premised entirely on 26 respondeat superior liability. Plaintiff has not alleged Defendant Thornell personally 27 participated in a deprivation of Plaintiff's constitutional rights, was aware of a deprivation 28 and failed to act, or formed policies that resulted in Plaintiff's injuries.

Thus, the Court will 1 dismiss without prejudice Plaintiff's claim in Count One against Defendant Thornell. 2 2. Count One - Official Capacity Claims 3 A claim against an individual in his or her official capacity is “only another way of 4 pleading an action against an entity of which an officer is an agent.” *Monell v. Dep't of 5 Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978). “[A] suit against a state official in his or her 6 official capacity is not a suit against the official but rather is a suit against the official's 7 office.

As such, it is no different from a suit against the State itself.” *Will v. Mich. Dep't of 8 State Police*, 491 U.S. 58, 71 (1989) (internal citation omitted). 9 Plaintiff cannot maintain a lawsuit for damages against ADCRR employees in their 10 official capacities. See *Hafer v. Melo*, 502 U.S.

21, 27 (1991) (“State officers sued for 11 damages in their official capacity are not ‘persons’ for purposes of the suit because they 12 assume the identity of the government that employs them.”); see also *Gilbreath v. Cutter 13 Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir.

1991) (“[A] state is not a ‘person’ for 14 purposes of section 1983. Likewise[,] ‘arms of the State’ such as the Arizona Department 15 of Corrections are not ‘persons’ under section 1983.”) (citation omitted). 16 Plaintiff may maintain a lawsuit against ADCRR employees in their official 17 capacity for prospective declaratory and injunctive relief because the Eleventh Amendment 18 “does not... bar actions for prospective declaratory or injunctive relief against state 19 officers in their official capacities for their alleged violations of federal law.” *Coal. to 20 Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir.

2012). But not all 21 declaratory and injunctive relief is prospective. The exception is intended to prevent 22 continuing violations of federal law and “does not permit judgments against state officers 23 declaring that they violated federal law in the past.” *P.R. Aqueduct & Sewer Auth. v. 24 Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993); see also *Hindes v. FDIC*, 137 F.3d 148, 25 166 (3d Cir.

1998) (“The type of prospective relief permitted... is relief intended to 26 prevent a continuing violation of federal law.”). 27 “[I]n an official-capacity suit the entity’s ‘policy or custom’ must have played a part 28 in the violation of federal law.” *Kentucky v. Graham*, 473 U.S. 159, 166 (1985); see also 1 *Los Angeles County v. Humphries*, 562 U.S. 29, 39 (2010) (the “‘policy or custom’ 2 requirement [in *Monell*] applies in § 1983 cases irrespective of whether the relief sought is 3 monetary or prospective.”).

A plaintiff must allege, as a matter of law, that the policy or 4 custom caused him to suffer constitutional injury. *Sadoski v. Mosley*, 435 F.3d 1076, 1080 5 (9th Cir. 2006). Liberally construed, Plaintiff has stated a policy or custom claim against 6 Defendant Tuccino regarding ASPC-Tucson’s custom of not following ADCRR’s policy 7 regarding prison mail. (See Doc.

16-1 ¶ 5.1.) Thus, the Court will require Defendant 8 Tuccino to answer Count One in his official capacity only. 9 Accordingly, 10 IT IS ORDERED: 11 (1) Plaintiff’s Motion for Leave to File an Amended Complaint (Doc. 16) is 12 granted. 13 (2) Plaintiff’s individual capacity Fourth Amendment and Due Process claims in 14 Count One are dismissed with prejudice.

Plaintiff’s individual capacity access-to-the- 15 courts and First Amendment claims in Count One are dismissed without prejudice. 16 (3) Defendant Mendoza is dismissed without prejudice. 17 (4) Plaintiff’s claims against Defendants Thornell, Martinez, and Tuccino in 18 their individual capacities in Counts Two and Three are dismissed without prejudice. 19 (5) Defendant Tuccino must answer Count One in his official capacity only; 20 Defendant Martinez must answer Count

Two in his official capacity only; and Defendant 21 Thornell must answer Count Three in his official capacity only.

22 (6) The Clerk of Court must send Plaintiff this Order, and a copy of the 23 Marshal's Process Receipt & Return form (USM-285) and Notice of Lawsuit & Request 24 for Waiver of Service of Summons form for Defendant Tuccino. 25 (7) Plaintiff's Request (Notice of Errata) to Correct Addresses on Summons and 26 Process Receipt (Doc. 17) with respect to Defendant Martinez is denied as moot.

27 Defendant Martinez was served on April 9, 2026. (See Doc. 19.) 28 1 (8) Plaintiff must complete⁶ and return the service packets to the Clerk of Court 2 within 21 days of the date of filing of this Order. The United States Marshal will not provide 3 service of process if Plaintiff fails to comply with this Order. 4 (9) If Plaintiff does not either obtain a waiver of service of the summons or 5 complete service of the Summons and Complaint on a Defendant within 90 days of the 6 filing of the First Amended Complaint or within 60 days of the filing of this Order, 7 whichever is later, the action may be dismissed as to each Defendant not served.

Fed. R. 8 Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(ii). 9 (10) The United States Marshal must retain the Summons, a copy of the 10 Complaint, and a copy of this Order for future use. 11 (11) The United States Marshal must notify Defendants of the commencement of 12 this action and request waiver of service of the summons pursuant to Rule 4(d) of the 13 Federal Rules of Civil Procedure.

The notice to Defendants must include a copy of this 14 Order. 15 (12) A Defendant who agrees to waive service of the Summons and Complaint 16 must return the signed waiver forms to the United States Marshal, not the Plaintiff, within 17 30 days of the date of the notice and request for waiver of service pursuant to Federal Rule 18 of Civil Procedure 4(d)(1)(F) to avoid being charged the cost of personal service.

19 (13) The Marshal must immediately file signed waivers of service of the 20 summons. If a waiver of service of summons is returned as undeliverable or is not returned 21 by a Defendant within 30 days from the date the request for waiver was sent by the Marshal, 22 the Marshal must: 23 a) personally serve copies of the Summons, Complaint, and this Order 24 upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil 25 Procedure; and 26 b) within 10 days after personal service is effected, file the return of 27 6 If a Defendant is an ADCRR officer or employee, Plaintiff must list the address of the specific institution where the officer or employee works.

Service cannot be effected on an 28 officer or employee at the ADCRR's Central Office unless the officer or employee works there. 1 service for Defendant, along with evidence of the attempt to secure a 2 waiver of service of the summons and of the costs subsequently 3 incurred in effecting service upon Defendant.

The costs of service 4 must be enumerated on the return of service form (USM-285) and 5 must include the costs incurred by the Marshal for photocopying 6 additional copies of the Summons, Complaint, or this Order and for 7 preparing new process receipt and return forms (USM-285), if 8 required. Costs of service will be taxed against the personally served 9 Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil 10 Procedure, unless otherwise ordered by the Court.

11 (14) Defendants Thornell, Tuccino, and Martinez must answer the relevant || portions of the Complaint or otherwise respond by appropriate motion within the time 13 | provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure. 14 (15) Any answer or response must state the specific Defendant by name on whose || behalf it is filed.

The Court may strike any answer, response, or other motion or paper that does not identify the specific Defendant by name on whose behalf it is filed. 17 Dated this 13th day of April, 2026. 18
20 Jennifer G. Zh ps 21 Chiet United States District Judge 22 23 24 25 26 27 28 -ll-