

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Oct 05, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALEJANDRO VELASQUEZ  
MENDOZA,

Plaintiff,

v.

JOHN F. SMITH, ARTURO  
ALEJANDRO, JO PHILLIPS,  
JENNIFER MEYERS, PAULA  
STRAIT, PEZO SALAZAR, and JOHN  
DOE,

Defendants.

No: 4:23-CV-05077-TOR

ORDER DISMISSING ACTION

**28 U.S.C. § 1915(g)**

By Order filed August 30, 2023, the Court advised Plaintiff, at the time a prisoner housed at Monroe Correctional Complex – Intensive Management Unit (“IMU”), of the deficiencies of his First Amended Complaint and directed him to amend or voluntarily dismiss within thirty (30) days. ECF No. 8. Plaintiff is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

1 The Court cautioned Plaintiff that if he failed to comply with the directives  
2 in the Order, the Court would dismiss his First Amended Complaint seeking  
3 monetary damages for alleged First and Eighth Amendment violations related to the  
4 grievance process and failure to provide adequate medical care. ECF No. 8 at 10–  
5 11. As of the date of this Order, Plaintiff has not filed any response.

6 Specifically, Plaintiff failed to state a First Amendment claim against any of  
7 the named Defendants for relief related to his grievances and kites. ECF No. 8 at  
8 5. The Court noted that Plaintiff's mere dissatisfaction with the remedy process or  
9 its results cannot, without more, support a claim for relief for the violation of a  
10 constitutional right. *Id.* Further, Plaintiff failed to state an Eighth Amendment  
11 claim for denial of medical care upon which relief may be granted. *Id.* at 6–9.

12 Plaintiff did not comply with the Court's Order and has filed nothing further  
13 in this action. Moreover, on September 5, 2023, the prison notified the Court that  
14 Plaintiff is out of custody. Plaintiff's community correction officer advised that  
15 Plaintiff does not currently have a mailing address.

16 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who  
17 brings three or more civil actions or appeals which are dismissed as frivolous or for  
18 failure to state a claim will be precluded from bringing any other civil action or  
19 appeal *in forma pauperis* "unless the prisoner is under imminent danger of serious  
20 physical injury." 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**

**provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's First Amended Complaint may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file future claims.**

Therefore, for the reasons set forth above and in the Court's prior Order, ECF No 8, **IT IS ORDERED:**

1. The First Amended Complaint, **ECF No. 7**, is **DISMISSED with prejudice** for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).
2. This dismissal may count as a "strike" under 28 U.S.C. § 1915(g).
3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of this Order would not be taken in good faith and would lack any arguable basis in law or fact.

**IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order, enter judgment, provide copies to Plaintiff at his last known address, and close the file. The Clerk of Court is further directed to forward a copy of this Order to the Office of the Attorney General of Washington, Corrections Division.

**DATED** this 5th day of October 2023.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge