

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

**Oct 19, 2023**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MITCHELL JASON RANES,  
  
Plaintiff,

v.

ENRIQUEZ and PENA, *Yakama  
Nation Tribal Police Officers,*

Defendants.

NO: 1:23-CV-3066-RMP

ORDER DISMISSING ACTION

**1915(g)**

BEFORE THE COURT is Plaintiff's First Amended Complaint received on August 30, 2023. ECF No. 9. Plaintiff has twice notified the Court of his change of address. First, he advised the Court on September 15, 2023, of his release from the Yakima County Jail and provided an address in White Swan, Washington. ECF No. 10. On October 6, 2023, Plaintiff notified the Court of a change to an address which houses a treatment center, American Behavioral Health Systems (ABHS), in Spokane, Washington. ECF No. 11.

1 Plaintiff initiated this action while a federal pretrial detainee<sup>1</sup> at the Yakima  
2 County Jail. ECF No. 1. He subsequently filed a complaint on August 7, 2023.  
3 ECF No. 4. He is proceeding *pro se* and *in forma pauperis*. Defendants have not  
4 been served.

5 As a general rule, an amended complaint supersedes the original complaint  
6 and renders it without legal effect. *Lacey v. Maricopa County*, 693 F.3d 896, 928  
7 (9th Cir. 2012). Therefore, “[a]ll causes of action alleged in an original complaint  
8 which are not alleged in an amended complaint are waived.” *King v. Atiyeh*, 814  
9 F.2d 565, 567 (9th Cir. 1987) *overruled in part by Lacey*, 693 F.3d at 928 (any  
10 claims voluntarily dismissed are considered to be waived if not repud).

11 Having reviewed the First Amended Complaint in the light most favorable to  
12 Plaintiff, the Court finds that he has failed to cure the deficiencies of his prior  
13 complaints and the First Amended Complaint fails to state a claim upon which relief  
14 may be granted. The Court cautioned Plaintiff that if he failed to amend to state a  
15 claim upon which relief may be granted, the First Amended Complaint would be  
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18 <sup>1</sup> Court records show that Plaintiff has a pending criminal case, *United States v.*  
19 *Ranes*, No. 1:22-cr-02100-SAB-1, based on one count of being a Felon in  
20 Possession of Firearm and Ammunition.  
21

1 dismissed under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and that such a dismissal  
2 would count as a “strike” under 28 U.S.C. § 1915(g). ECF No. 8 at 7.

3 Plaintiff identifies only Tribal Police Officer as Defendants, claiming that due  
4 to their negligence, his personal property was stolen. ECF No. 9 at 6. As previously  
5 advised, the negligent or intentional unauthorized deprivation of property by state  
6 officials does not state a federal cause of action under section 1983 if the plaintiff  
7 has an adequate post-deprivation state remedy. *Hudson v. Palmer*, 468 U.S. 517,  
8 533 (1984); *Parratt v. Taylor*, 451 U.S. 527, 544 (1981), overruled on other grounds  
9 by *Daniels v. Williams*, 474 U.S. 327, 328 (1986) (holding that negligent loss of  
10 property is not actionable under the Due Process Clause). Washington law provides  
11 that persons, who believe that property of value belonging to them has been lost or  
12 damaged due to the negligence of state officials, may file a claim pursuant to RCW  
13 4.92.100. Because Washington State would provide a plaintiff alleging the negligent  
14 deprivation of property by state officials an adequate post-deprivation state remedy,  
15 regardless of whether he is satisfied with that remedy, a section 1983 personal  
16 property claim lacks an arguable basis in law.

17 Regardless, tribal police officers do not act under color of state law within the  
18 meaning of section 1983. *See R. J. Williams Co. v. Fort Belknap Hous. Auth.*, 719  
19 F.2d 979, 982 (9th Cir. 1983). Native American tribes are separate and distinct  
20 sovereignties and are not constrained by federal constitutional provisions. *See Santa*  
21 *Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978); *Twin Cities Chippewa Tribal*

1 *Council v. Minnesota Chippewa Tribe*, 370 F.2d 529, 533 (8th Cir. 1967).

2 Therefore, Plaintiff has failed to state a section 1983 claim upon which this Court  
3 could grant relief.

4 For the reasons set forth above and in the Order to Amend or Voluntarily  
5 Dismiss Complaint, ECF No. 8, **IT IS ORDERED** that this action is **DISMISSED**  
6 for failure to state a claim upon which relief may be granted under 28 U.S.C. §  
7 1915(e)(2).

8 Pursuant to 28 U.S.C. § 1915(g) a prisoner who brings three or more civil  
9 actions or appeals which are dismissed as frivolous or for failure to state a claim  
10 will be precluded from bringing any other civil action or appeal *in forma pauperis*  
11 “unless the prisoner is under imminent danger of serious physical injury.” 28  
12 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory provisions of 28**  
13 **U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the**  
14 **three dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his**  
15 **ability to file future claims in forma pauperis.**

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**IT IS SO ORDERED.** The District Court Clerk is directed to enter this Order, enter judgment of dismissal, provide copies to Plaintiff at his last known address, and **close the file**. The District Court Clerk is further directed to provide a copy of this Order to the Office of the Attorney General of Washington, Corrections Division. The Court certifies that any appeal of this dismissal would not be taken in good faith.

**DATED** October 19, 2023.

*s/ Rosanna Malouf Peterson*  
 ROSANNA MALOUF PETERSON  
 Senior United States District Judge