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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8  
9 Jeffrey L. Butler,

10 Plaintiff,

11 v.

12 Salt River Pima Reservation Police, et  
13 al.,

14 Defendants.

No. CV-23-01234-PHX-JAT (CDB)

**ORDER**

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16 On July 3, 2023, pro se Plaintiff Jeffrey L. Butler, who is confined in the Federal  
17 Medical Center in Butner, North Carolina, filed a civil rights Complaint (Doc. 1) pursuant  
18 to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388  
19 (1971), and an Application to Proceed In Forma Pauperis. In a July 12, 2023 Order, the  
20 Court denied the deficient Application to Proceed and gave Plaintiff 30 days to either pay  
21 the filing and administrative fees or file a complete Application to Proceed In Forma  
22 Pauperis.

23 On August 14, 2023, Plaintiff paid the filing and administrative fees. The Court  
24 will dismiss the Complaint and this action.

25 **I. Statutory Screening of Prisoner Complaints**

26 The Court is required to screen complaints brought by prisoners seeking relief  
27 against a governmental entity or an officer or an employee of a governmental entity. 28  
28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff

1 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which  
2 relief may be granted, or that seek monetary relief from a defendant who is immune from  
3 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

4 A pleading must contain a “short and plain statement of the claim *showing* that the  
5 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does  
6 not demand detailed factual allegations, “it demands more than an unadorned, the-  
7 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
8 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere  
9 conclusory statements, do not suffice.” *Id.*

10 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a  
11 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,  
12 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content  
13 that allows the court to draw the reasonable inference that the defendant is liable for the  
14 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for  
15 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial  
16 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual  
17 allegations may be consistent with a constitutional claim, a court must assess whether there  
18 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

19 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts  
20 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342  
21 (9th Cir. 2010). A “complaint [filed by a *pro se* prisoner] ‘must be held to less stringent  
22 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551  
23 U.S. 89, 94 (2007) (per curiam)).

24 If the Court determines that a pleading could be cured by the allegation of other  
25 facts, a *pro se* litigant is entitled to an opportunity to amend a complaint before dismissal  
26 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).  
27 Plaintiff’s Complaint will be dismissed without leave to amend because the defects cannot  
28 be corrected.

## 1     **II.     Complaint**

2             In his one-count Complaint, Plaintiff seeks monetary damages from Defendants Salt  
3 River Pima Reservation Police, the Federal Bureau of Prisons, and the United States  
4 Department of Justice. Plaintiff asserts Defendant Salt River Pima Reservation Police  
5 arrested him in September 2019 and “denied [his] medication,” which resulted in his leg  
6 being amputated “due to an infection.” He also contends he has been denied his rights to  
7 due process and a speedy trial because he has “been incarcerated now for 5 years.”

## 8     **III.    Dismissal of Complaint**

### 9             **A.     Defendant Salt River Pima Reservation Police**

10            “Indian tribes are neither states, nor part of the federal government, nor subdivisions  
11 of either.” *N.L.R.B. v. Pueblo of San Juan*, 276 F.3d 1186, 1192 (10th Cir. 2002) (en banc).  
12 “Indian tribes are separate and distinct sovereignties and are not constrained by the  
13 provisions of the fourteenth amendment.” *R.J. Williams Co. v. Fort Belknap Hous. Auth.*,  
14 719 F.2d 979, 982 (9th Cir. 1983) (internal citations omitted). Tribal officials acting **under**  
15 **color of tribal law** cannot be sued under 42 U.S.C. § 1983 or *Bivens*. *Id.* (“[N]o action  
16 under 42 U.S.C. § 1983 can be maintained in federal court for persons alleging deprivation  
17 of constitutional rights under color of tribal law.”); *see also Sanchez v. Baracker*, CV-01-  
18 00299-WJ (DJS), 2002 WL 35649877, at \*2 (D.N.M. June 10, 2002) (“It is an elementary  
19 Indian Law concept that tribal officials acting under color of tribal law cannot be held liable  
20 for violations of the federal constitution, and Plaintiffs cannot state a *Bivens* claim against  
21 tribal Defendants for violations of Plaintiffs’ Fifth and Eighth amendment rights.”).

22            “[A]ctions taken under color of tribal law are beyond the reach of § 1983, and may  
23 only be examined in federal court under the provisions of the Indian Civil Rights Act.”  
24 *R.J. Williams*, 719 F.2d at 982. However, “[a] habeas petition is the only avenue for relief  
25 from a violation of ICRA [(the Indian Civil Rights Act)].” *Boozer v. Wilder*, 381 F.3d 931,  
26 934 n.2 (9th Cir. 2004); *see also Pink v. Modoc Indian Health Project, Inc.*, 157 F.3d 1185,  
27 1189 (9th Cir. 1998) (“ICRA only provides a basis for an individual to bring a habeas  
28 corpus civil claim.”).

1           Because Plaintiff cannot obtain monetary relief against Defendant Salt River Pima  
2 Reservation Police under § 1983, *Bivens*, or the Indian Civil Rights Act, the Court will  
3 dismiss Defendant Salt River Pima Reservation Police.

4           **B. Defendants Federal Bureau of Prisons and United States Department of**  
5           **Justice**

6           A remedy does not exist under *Bivens* against Defendants Federal Bureau of Prisons  
7 and United States Department of Justice because a *Bivens* action is only available against  
8 federal *officers*, not agencies of the federal government. *F.D.I.C. v. Meyer*, 510 U.S. at  
9 484-86. Thus, the Court will dismiss Defendants Federal Bureau of Prisons and United  
10 States Department of Justice.

11           Even if Plaintiff had sued federal officers for failing to bring him to trial in a timely  
12 manner, this action would have been dismissed because prosecutors are absolutely immune  
13 from liability for damages under *Bivens* for their conduct in “initiating a prosecution and  
14 in presenting the State’s case” insofar as that conduct is “intimately associated with the  
15 judicial phase of the criminal process.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 270 (1993)  
16 (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976)). Moreover, the sole remedy  
17 for a violation for the right to a speedy trial is dismissal of the charges. *Betterman v. Mont.*,  
18 578 U.S. 437, 444 (2016); *see also Starks v. Moore*, 51 F. Supp. 3d 782, 797 (S.D. Ind.  
19 2014) (“monetary damages are not available for [plaintiff], as the typical remedy for a Sixth  
20 Amendment speedy trial violation is dismissal of the charge.”).

21           **IT IS ORDERED:**

22           (1) The Complaint (Doc. 1) is **dismissed** pursuant to 28 U.S.C. § 1915A(b)(1)  
23 and (2), and the Clerk of Court must enter judgment accordingly.

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