

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

Jan 03, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAVID MICHAEL ALVES,

Plaintiff,

v.

YAKIMA COUNTY
DEPARTMENT OF
CORRECTIONS, and BILL
SPLAWN,

Defendants.

NO: 1:21-CV-3120-RMP

ORDER DISMISSING FIRST
AMENDED COMPLAINT

1915(g)

BEFORE THE COURT is Plaintiff's First Amended Complaint, ECF No. 9. Plaintiff, a pretrial detainee at the Yakima County Department of Corrections, is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

Although granted the opportunity to do so, Plaintiff has failed to allege facts from which the Court could infer that named Defendants made an intentional decision to place Plaintiff in conditions that put him at risk of suffering serious harm. *See Gordon v. County of Orange*, 888 F.3d 1118, 1125 (9th Cir. 2018). In the First Amended Complaint, Plaintiff asserts that beginning in May 2021, a toilet at the

1 Yakima County Jail leaked feces and urine and despite several work orders and
2 Defendant Bill Splawn's averments that it had been fixed, it was not fixed until
3 August 2021. ECF No. 9 at 4–5. Plaintiff indicates that the toilet was replaced at
4 that time. *Id.* at 6.

5 Plaintiff claims that there were only two working toilets for 56 inmates over a
6 74-day period, and inmates tracked feces and urine water into the bunk areas. *Id.* at
7 6–7. Plaintiff avers “there was also water leaking into living bunk area & exposed
8 wires on hair clippers that are in our dorm 24/7.” *Id.* at 5. Plaintiff contends that
9 this “exposed to diseases & unsanitary, unadequet living.” *Id.* at 7 (as written in
10 original). Plaintiff presents no facts indicating how these conditions caused him
11 harm.

12 Liberally construing the First Amended Complaint in the light most favorable
13 to Plaintiff, the Court is unable to infer that Defendants have violated Plaintiff's
14 Fourteenth Amendment rights. As previously advised, the Fourteenth Amendment's
15 due process principles, rather than the Eighth Amendment's prohibition of cruel and
16 unusual punishment, governs the treatment and conditions of confinement for
17 pretrial detainees. *Gordon*, 888 F.3d at 1124. Therefore, Plaintiff cannot state an
18 Eighth Amendment claim regarding the conditions of his pretrial confinement.

19 The Court finds that further amendment would be futile. For the reasons set
20 forth above, and in the Court's Order to Amend or Voluntarily Dismiss, ECF No.
21 8, **IT IS ORDERED** that the First Amended Complaint, ECF No. 9, is

1 **DISMISSED with prejudice** for failure to state a claim upon which relief may be
2 granted under 28 U.S.C. § 1915(e)(2).

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

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

17 **DATED** January 3, 2022.

18
19
20 s/ Rosanna Malouf Peterson
ROSANNA MALOUF PETERSON
United States District Judge
21