

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

**Sep 23, 2021**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

NICHOLAS ANDRES FUENTES,  
III,

Plaintiff,

v.

GALLOWAY and CORRECTIONS  
OFFICER #2,

Defendants.

NO: 2:20-CV-00377-RMP

ORDER DISMISSING ACTION

**§ 1915(g)**

By Order filed August 18, 2021, the Court advised Plaintiff, recently released from incarceration at the Airway Heights Corrections Center, of the deficiencies of his First Amended Complaint and directed him to amend or voluntarily dismiss within thirty (30) days. ECF No. 22. Plaintiff is proceeding *pro se* and *in forma pauperis*. Defendants have not been served.

The Court cautioned Plaintiff that if he failed to comply with the directives in the Second Order to Amend or Voluntarily Dismiss Complaint, ECF No. 22, the Court would dismiss his First Amended Complaint seeking relief in the form of

1 reconstructive facial surgery and monetary damages for alleged violations of his  
2 Eighth and Fourteenth Amendment rights. Specifically, Plaintiff failed to state a  
3 plausible Eighth Amendment failure to protect claim against Defendants. Plaintiff  
4 also failed to allege facts from which the Court could infer that Defendants were  
5 deliberately indifferent to his serious medical needs.

6 Plaintiff did not comply with the Court's Order and has filed nothing further  
7 in this action. Therefore, for the reasons set forth above and in the Court's prior  
8 Order, ECF No. 22, **IT IS ORDERED** that this action is **DISMISSED with**  
9 **prejudice** for failure to state a claim upon which relief may be granted under 28  
10 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

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

19 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
20 Order, enter judgment of dismissal with prejudice, provide copies to Plaintiff at his  
21 last known address, and **close the file**. The District Court Clerk is further directed

1 to provide a copy of this Order to the Office of the Attorney General of  
2 Washington, Corrections Division. The Court certifies that any appeal of this  
3 dismissal would not be taken in good faith.

4 **DATED** September 23, 2021.

5  
6 *s/ Rosanna Malouf Peterson*  
7 ROSANNA MALOUF PETERSON  
8 United States District Judge  
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