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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NEIL A. MCGINNIS,

Plaintiff,

vs.

STATE OF WASHINGTON, JOHN
DOE 1-5, and JANE DOE 1-5,

Defendants.

NO. CV-11-404-EFS

**ORDER DISMISSING COMPLAINT
PURSUANT TO § 1915(g) AND CLOSING
FILE**

By Order filed November 29, 2011, the Court advised Plaintiff of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. ECF No. 10. As of this date, Plaintiff has not done so.

I. Plaintiff's Failure to Amend the Complaint

Plaintiff initiated this action while a prisoner at the Spokane County Jail. Mail sent to him at that address on January 25, 2012, was returned as undeliverable on February 1, 2012. ECF Nos. 18 and 19. Although advised of this requirement, Plaintiff has not kept the Court apprised of his current address.

As noted in the Court's November 29, 2011 Order, Plaintiff may not proceed with an action under 18 U.S.C. §§ 241 and 242. These are criminal or jurisdictional statutes that provide no private right of action. *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Only a

1 federal grand jury or United States attorney may initiate such criminal
2 charges. Accordingly, Plaintiff cannot state a claim under 18 U.S.C. §§
3 241 or 242.

4 A claim is legally frivolous when it lacks an arguable basis
5 either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325
6 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir. 1984); see
7 also *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992) (defining a
8 frivolous complaint as one in which the facts alleged are "clearly
9 baseless," "fanciful," "fantastic," or "delusional"). The Court may,
10 therefore, dismiss a claim as frivolous where it is based on an
11 indisputably meritless legal theory or where the factual contentions are
12 clearly baseless. *Neitzke*, 490 U.S. at 327.

13 In his motions and letters, Plaintiff repeatedly asserts he is
14 being tortured. Plaintiff alleges that he has been subjected to daily
15 rapes and electrocution by the Jail Commander, as well as "six years of
16 clandestine government action which is officially recorded." As the
17 Court noted in its November 29, 2011 Order, the idea of objects being
18 placed into the body and then "electronically discharged" by
19 unidentified government actors appears frivolous. See e.g., *McGinnis v.*
20 *Freudenthal*, 426 Fed. Appx. 625, 2011 WL 2312094 (10th Cir. 2011)
21 (upholding dismissal of frivolous complaint alleging plaintiff was
22 subjected to electromagnetic torture). While these allegations are
23 clearly disturbing to Plaintiff, these allegations appear to be
24 frivolous on the record before the Court.

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1 **II. Pending Motions**

2 On January 13, 2012, the Court received a letter from Mr. McGinnis
3 which has been construed as a Motion for Temporary Restraining Order.
4 ECF No. 12. On January 23, 2012, Plaintiff submitted a document titled
5 "Plaintiff's Motion for Preliminary Injunction and/or Protective Order
6 and Belief in Support Demand for a Jury Trial." ECF No. 14.

7 Neither document was properly noted for hearing as required by
8 Local Rule 7.1(h). Furthermore, neither document would qualify as an
9 amended complaint stating a cognizable claim for relief against
10 identified Defendants under 42 U.S.C. § 1983. Consequently, the Court
11 has no jurisdiction to grant the requested injunctive relief. See
12 generally Fed. R. Civ. P. 3 and notes. In addition, Defendants are not
13 parties to a suit before being served with process. See *Neals v.*
14 *Norwood*, 59 F.3d 530, 532 (5th Cir. 1995).

15 Accordingly, for the reasons set forth above and in the Order to
16 Amend or Voluntarily Dismiss, ECF No. 10, **IT IS HEREBY ORDERED:**

17 1. The Complaint is **DISMISSED as frivolous** under 28 U.S.C. §§
18 1915A(b)(1) and 1915(e)(2). The Court certifies any appeal of this
19 dismissal would not be taken in good faith.

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

1 complaint may count as one of the three dismissals allowed by 28 U.S.C.
2 § 1915(g) and may adversely affect his ability to file future claims.¹

3 3. All pending motions are **DENIED as moot** and all hearings and
4 deadlines are **STRICKEN**.

5 4. This file shall be **CLOSED**.

6 **IT IS SO ORDERED.** The District Court Executive is directed to
7 enter this Order, enter judgment, and forward a copy to Plaintiff at his
8 last known address. The District Court Executive is further directed to
9 forward a copy of this Order to the Office of the Attorney General of
10 Washington, Criminal Justice Division.

11 **DATED** this 7th day of February 2012.

12
13 S/ Edward F. Shea
14 EDWARD F. SHEA
15 UNITED STATES DISTRICT JUDGE

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19 The Court takes judicial notice of the fact that the United States
20 District Court for the District of Wyoming has dismissed at least two of
21 Plaintiff's previous civil rights actions as frivolous and for failure
22 to state a claim upon which relief may be granted. See Dist. Wyo. Nos.
23 10-CV-00200-WFD (dismissed as frivolous on December 7, 2010, and
24 affirmed by the Tenth Circuit Court of Appeals, No. 10-8114), and 08-CV-
25 02-B (dismissed for failure to state a claim upon which relief can be
26 granted on February 24, 2009, with no appeal pursued).