

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 05 2022
JEFFREY P. COLWELL
CLERK

Civil Action No. 1:22-cv-00369 GPG
(To be supplied by the court)

NATHANIEL J. HARVEY, Plaintiff

v.

Jury Trial requested:
(please check one)

☒ Yes ☐ No

Capt. Stephanie Martinez

Sgt. Rene Acuna

Sgt. Paul Carrillo Jr.

Z. Garcia, Defendant(s). Continued

(List each named defendant on a separate line. If you cannot fit the names of all defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Section B. Do not include addresses here.)

PRISONER COMPLAINT

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should not contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include only: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Plaintiff need not send exhibits, affidavits, grievances, witness statements, or any other materials to the Clerk's Office with this complaint.

Nathaniel J. Harvey

JUL 25 2022

DOC # 130287

Harvey

Original form provided free of charge by CDOC Legal Services to Offender

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Nurse Practitioner Kathleen Boyd,

Officer Riley,

Nurse Practitioner Renea Morel and,

John Doe (Officer), Defendant(s)

Nathaniel J. Harvey

JUL 25 2022

130287

on

DOC #

Harvey

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A. PLAINTIFF INFORMATION

You must notify the court of any changes to your address where case-related papers may be served by filing a notice of change of address. Failure to keep a current address on file with the court may result in dismissal of your case.

Nathaniel J. Harvey # 130287 Centennial Correctional Facility

(Name, prisoner identification number, and complete mailing address)

P.O. Box 600 Canon City, Co 81215

(Other names by which you have been known)

N/A

Indicate whether you are a prisoner or other confined person as follows: (check one)

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☒ Convicted and sentenced state prisoner

☐ Convicted and sentenced federal prisoner

☐ Other: (Please explain) _____

B. DEFENDANT(S) INFORMATION

Please list the following information for each defendant listed in the caption of the complaint. If more space is needed, use extra paper to provide the information requested. The additional pages regarding defendants should be labeled "B. DEFENDANT(S) INFORMATION."

Defendant 1: Stephanie Martinez Capt. Colorado State Penitentiary

(Name, job title, and complete mailing address)

P.O. Box 777 Canon City Colorado 81215

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ☐ No (check one). Briefly explain:

Defendant was Deliberately Indifferent to Plaintiff's

Serious Medical needs and not Providing additional Medical needs.

Defendant 1 is being sued in his/her ☒ individual and/or ☐ official capacity.

Nathaniel J. Harvey

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 Harvey DOC # 130287 on JUL 25 2022

Defendant 2: Sgt. Rene Acuna Colorado State Penitentiary
 (Name, job title, and complete mailing address)

P.O. Box 777 Canon City Co. 81215

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ___ No (check one). Briefly explain:

Defendant Used Unnecessary excessive Force and retaliatory
Conduct For Plaintiff Filing grievances against his Staff.

Defendant 2 is being sued in his/her ☒ individual and/or ___ official capacity.

Defendant 3: Sgt. Paul Carrillo Jr. Colorado State Penitentiary P.O. Box 777
 (Name, job title, and complete mailing address)

Canon City, Co 81215

At the time the claim(s) in this complaint arose, was this defendant acting under color of state or federal law? ☒ Yes ___ No (check one). Briefly explain:

Defendant Used Unnecessary excessive Force.

Defendant 3 is being sued in his/her ☒ individual and/or ___ official capacity.

C. JURISDICTION

Indicate the federal legal basis for your claim(s): (check all that apply)

☒ 42 U.S.C. § 1983 (state, county, and municipal defendants)

☐ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971)
 (federal defendants)

☒ Other: (please identify) THE court has jurisdiction Under 28 U.S.C. 1331(a)

Nathaniel J. Harvey

Defendant 4: Z. Garcia Colorado State Penitentiary P.O. Box 777

Canon City, Co 81215

Defendant acted under Color of State law ☒ Yes — NO

Defendant used unnecessary excessive Force

Defendant 4 is being Sued in his ☒ individual and/or — Official Capacity.

Defendant 5: Kathleen Boyd Nurse Practitioner Colorado State Penitentiary

P.O. Box 777 Canon City, Co 81215

Defendant acted under Color of State law ☒ Yes — NO

Defendant has shown to be deliberately indifferent to Plaintiff's
Serious Medical Needs.

Defendant 5 is being Sued in her ☒ individual and/or — Official Capacity.

Defendant 6: Officer Riley Colorado State Penitentiary P.O. Box 777

Canon City, Co 81215

Defendant acted under Color of state law ☒ Yes — NO

Defendant denied Plaintiff a reasonable opportunity to
Practice his religion.

Defendant 6 is being Sued in her ☒ individual and/or — Official Capacity

Nathaniel J. Harvey

Defendant 7: Nurse Practitioner RENEA MOREL Centennial Correctional Facility

P.O. Box 6000 Canon City, Co 81215

Defendant acted Under Color of State law ☒ Yes — No

DEFENDANT has Inflicted Cruel and Unusual Punishment and has shown to be deliberately indifferent to plaintiff's Serious Medical Needs.

Defendant 7 is being Sued in her ☒ Individual Capacity.

DEFENDANT 8: JOHN DOE OFFICER Colorado Dept. OF Corrections

Defendant acted Under Color of State law ☒ Yes — No

Defendant is responsible for deleting Sgt. Acuna's Body Cam and Sprite Video of Medical and observation 6149 video.

Defendant 8 is being Sued in his/her ☒ individual Capacity.

Nathaniel J. Harvey

D. STATEMENT OF CLAIM(S)

State clearly and concisely every claim that you are asserting in this action. For each claim, specify the right that allegedly has been violated and state all facts that support your claim, including the date(s) on which the incident(s) occurred, the name(s) of the specific person(s) involved in each claim, and the specific facts that show how each person was involved in each claim. You do not need to cite specific legal cases to support your claim(s). If additional space is needed to describe any claim or to assert additional claims, use extra paper to continue that claim or to assert the additional claim(s). Please indicate that additional paper is attached and label the additional pages regarding the statement of claims as "D. STATEMENT OF CLAIMS."

CLAIM ONE: 8th Amendment Prohibiting Cruel and Unusual Punishment/Excessive Force

1. Supporting facts: At all times relevant, Plaintiff was housed at C.S.P. Correctional Facility,
 2. Fremont County. On May 26, 2021, Plaintiff suffered a medical emergency in his cell.
 3. Mental health Ms. Huff saw Plaintiff fall unconscious, cutting my right eye open.
 4. At this time Plaintiff suffered a concussion. Defendant Acuna ordered Plaintiff to
 5. get up off the floor and cuff up. Plaintiff complied and fell to the floor again,
 6. as seen on Sgt. Acuna's Body Cam. Defendant Acuna violated Plaintiff's 8th Amendment
 7. right by physically pushing Plaintiff into the wall using unnecessary force for
 8. filing grievances against officer Riley. As seen in the Body Cam, Plaintiff agreed
 9. to sit in the restraint chair after inmate Colon, Erick #173183 yelled out of his
 10. cell telling Plaintiff to get checked out by medical. See Body Cam. Defendant Acuna
 11. smashed Plaintiff's shoulder (left) into the wall causing injury. Defendant Carrillo came
 12. up from behind and snatched Plaintiff's hat off of his head backwards causing injury
 13. to Plaintiff's lower neck. See Medical Report. Plaintiff suffered uncontrollable tremors
 14. and was told to stop moving and was tased by Z. Garcia for no reason while in
 15. handcuffs. These defendants acted maliciously and sadistically for the very purpose of
 16. causing harm rather than in a good faith effort to maintain discipline. Plaintiff was hand-
 17. cuffed while force was being used. Plaintiff requests that this Court grant punitive
 18. and compensatory relief for the acts and omissions in this complaint violating
 19. Plaintiff's 8th Amendment rights. Plaintiff requests relief for emotional pain and suffering.

Nathaniel J. Harvey

1ST Amendment Free Exercise of Religion

CLAIM TWO:

Supporting Facts:

1. At all times relevant, Plaintiff was housed at Colorado State Penitentiary Fremont County,
2. when this Constitutional violation occurred. On April 24, 2021, during the Holy Month
3. of Ramadan, Plaintiff was given diced Prunes and Peaches for breakfast, part
4. of Plaintiff's Islamic Halal Diet. Plaintiff per POR 150-DIP-1663 Saved Fruit to
5. break his fast for later that day. Defendant Riley Confiscated plaintiff's fruit. Plaintiff
6. requested defendant Riley to replace the fruit and she refused to. Officer Riley violated
7. Plaintiff's 1st Amendment to free exercise of religion by denying Plaintiff a reasonable
8. opportunity to practice his religion. Lt. Anaya had the fruit tested for alcohol and
9. it came back negative. Plaintiff alleges Riley's Practice of Searching for alcohol
10. 300-06 is not being challenged. Plaintiff alleges the denial of replacing the fruit
11. Substantially burdened Plaintiff's Sincerely held religious beliefs. Plaintiff was
12. not afforded a reasonable opportunity to pursue his religion. This act Substantially
13. burdened Plaintiff to Modify his religious beliefs. Breaking the fast is a tenet
14. of my Faith. See shake down slip dated 4-24-2021. Also See Anatomical done
15. on 4-24-2021 reporting to Medical Shortness of breath and dizziness.
16. Plaintiff request that this Court find that the acts and omissions Violated
17. Plaintiff's rights. Plaintiff request declaratory judgement that Defendant
18. Violated Plaintiff's rights of 1st Amendment and punitive damages.

Nathaniel J. Harvey

1st Amendment Retaliation

CLAIM THREE:

Supporting facts:

1. At all times relevant, Plaintiff was housed at Colorado State Penitentiary, Fremont
2. County when this Constitutional Violation occurred. Between the months of
3. April and May 2021, Defendant Sgt. Acuna and Plaintiff had a discussion.
4. Plaintiff told the Defendant Acuna that he is filing grievances and a
5. lawsuit against Defendant Riley. Defendant Acuna responded to me saying
6. "that since you like filing lawsuits, I will search your cell for contraband."
7. On May 26th, 2021, Defendant Acuna packed out Plaintiff's cell without
8. providing a pack-out sheet, although he provided a shakedown slip
9. dated May 26th, 2021. Defendant violated the 1st Amendment by destroying
10. Plaintiff's Health Care appliance 4-inch ace wrap during the pack-out.
11. See Medical Health care Contract. Plaintiff was diagnosed with osteo-
12. arthritis for the health care appliance. Defendant never replaced the
13. Medical ace-wrap. Defendant also retaliated by exchanging Plaintiff's
14. undamaged coax cable for another prisoner's damaged coax cable and
15. had Plaintiff sign a Unauthorized Property Sheet dated May 27th, 2021.
16. Defendant Acuna admitted to Captain Turner and Lt. Anaya that he
17. destroyed Plaintiff's property. Plaintiff requests that this Court grant
18. emotional pain and suffering and Punitive Damages.

Nathaniel J. Harney

Claim Four: 8th Amendment Cruel and Unusual Punishment/ Deliberate Indifference

1. Supporting Facts:
2. At all times relevant, Plaintiff was housed at Colorado State Penitentiary,
3. Fremont County when this Constitutional Violation Occurred. Plaintiff is
4. a Prisoner in Priority group, diagnosed with chronic Medical Conditions.
5. On May 26th, 2021, Plaintiff Suffered injury due to Medications Defendant
6. Boyd Prescribed. Plaintiff Suffered Injury and Poisoning because Boyd
7. Prescribed Medications Hctz and Lasartan, which Plaintiff should have
8. been Monitored more closely. See Fact Sheet. Plaintiff complained on
9. February 17th, 2021 of chest pain, shortness of breath, but Defendant
10. Boyd Failed to take action. Plaintiff Complained on April 24th, 2021 of
11. Shortness of breath to Nurse Amy, but Defendant Boyd Failed to take
12. action. Defendant Boyd violated the 8th Amendment because On June 29th,
13. 2021, Defendant lied Under oath in Case # 43295 about effects of
14. medication. Plaintiff alleges Defendant Boyd was Deliberate Indifferent
15. and Knew of and disregarded an excessive risk to Plaintiff's Serious
16. Medical needs. Plaintiff Seeks declaratory Judgment that the defendant
17. acts and Omissions violated the 8th Amendment. Plaintiff request Punitive
18. and Compensatory damages. This Defendant and claim is related to
19. claims two and three.

Nathaniel J. Harvey

CLAIM FIVE: 8th Amendment Cruel and Unusual Punishment / Deliberate Indifference

Supporting Facts:

1. At all times relevant, Plaintiff was housed at Colorado State Penitentiary Fremont
2. County when this Constitutional Violation Occured. On May 26, 2021, Captain
3. Martinez was the Shift Commander. On May 26, 2021, Plaintiff refused Medical treat-
4. ment with first responders at his door. Because Plaintiff refused Medical
5. treatment, Defendant Martinez gave the order for Plaintiff to be removed
6. From his cell to G-144 observation Cell. Defendant Martinez decision to
7. have Plaintiff removed from his Cell because she became Suspicious was
8. the moving force behind this Constitutional Violation. Defendant violated the
9. 8th Amendment Prohibiting Cruel and Unusual Punishment because She had Knowledge
10. that Plaintiff was Suffering a medical Emergency, but ordered for Plaintiff
11. to sit in observation Soiled in his own Urine and feces. Defendant claims
12. she became Suspicious and Ordered for Plaintiffs Cell to be Searched For
13. dangerous Contraband by Sgt. Acuna. Plaintiff was placed in Universal
14. restraints in his Soiled boxers with the air Conditioner on Full blast. See
15. Video. Defendant Possessed responsibility For the Continued operation of Policy
16. 300 - 56. Plaintiff was not afforded to shower or to change boxers, So he washed
17. his own boxers out in the Sink when the restraints were taken off. See Video.
18. Defendant left Plaintiff in Universal restraints with no additional chronic care
19. Medical treatment. On August 15th 2021, Defendant showed to be deliberately
20. Indifferent to Plaintiffs Serious medical needs by not Providing additional Medical
21. aid. Plaintiff was accused of using drugs. Plaintiff requested a J-21 Panel
22. Urinalysis but was denied. Plaintiff Seeks declaratory Judgment that the
23. acts and omissions did violate Plaintiffs rights. Plaintiffs also Seeks Punitive
24. and Compensatory damages and Emotional Pain and Suffering.

Nathaniel J. Harvey

CLAIM SIX: 8th Amendment Cruel and Unusual Punishment / Deliberate Indifference

Supporting facts:

1. At all times relevant, Plaintiff was housed at Centennial Correctional Facility
2. Fremont County, when this Constitutional Violation occurred, Plaintiff is diagnosed
3. with chronic Hypertension. On February 23rd, 2022, Plaintiff suffered injury to
4. his head Presently due to Medication Nurse Practitioner Renae Morel Prescribed.
5. This claim is related to claim Four because Nurse Practitioner Kathleen Boyd had
6. discontinued Losartan when Plaintiff was housed in Colorado State Penitentiary.
7. On February 22nd, 2022, Plaintiff was called to Nurse Practitioner RENAE MORELS
8. Office as a follow up for Left shoulder Cortizone Injection due to Injury Sustained
9. by excessive force in C.S.P. Defendant Morel Violated the 8th Amendment Prohibiting
10. Cruel and Unusual Punishment because on February 22nd, 2022, Morel Lied to her
11. Boss Rachel Conico stating in her encounter, Plaintiff stated that he would
12. like a new prescription for Losartan. As a result of taking 50^{mg} of Losartan
13. on the Morning of February 23rd, 2022 in K D207, Plaintiff, after some time became
14. extremely dizzy, stood up and fell out to the Cell Floor. Plaintiff Filed a Sick Call
15. Kites on February 24th, 2022 and March 1st, 2022, but Practitioner Morel
16. refuses to see me. Plaintiff alleges that he currently suffers from dizzy spells,
17. and constant headaches. Practitioner Morel is deliberately Indifferent to Plaintiff
18. Serious medical needs because as of the date of this Filing, Plaintiff's Medical
19. Kites have gone Unanswered. Records Prove that 50^{mg} Losartan was Packed
20. by D.O.C. Pharmacy on 02/17/2022, Five days before Our encounter.
21. Defendant Morel Knew of and disregarded an excessive risk of death to
22. Plaintiff by raising deadly dose to 50^{mg} from 25^{mg}. Plaintiff request
23. Punitive and Compensatory damages for the Pain and Suffering and emotional
24. anguish.

Nathaniel J. Harney

CLAIM SEVEN: 5th Amendment Right to Due Process of Law

Supporting Facts:

1. At all times relevant, Plaintiff was housed at Centennial Correctional Facility
2. Fremont County, when Plaintiff became aware of Constitutional violation.
3. Plaintiff alleges that from the time of allegations made in connection
4. to "all video footage that was preserved," Thon Doe Defendant or
5. Defendants violated the 5th Amendment to Confront Due Process by
6. tampering and deleting Body worn Camera of Sgt. Renea Acuna, Medical
7. assessment and Sutures by Nurse Krystal Kammrad and Footage of
8. Plaintiff washing Urine and Feces From his boxers in Observation Cell
9. G-149. Video Footage was shown to Plaintiff on June 28th of 2022,
10. of which shows that Footage was deleted of Medical emergency to Cell
11. F-3-14 Harvey falling to the Floor for the Second time while being
12. recorded by Sgt. RENAE Acuna. The date in question is May 26th, 2021
13. because this was the day of Unnecessary Excessive Force, Medical
14. Emergency, and Observation Cell G-149 video. The observation Cell video
15. does not show when Plaintiff was taken off Universal restraints, and Plaintiff
16. washing Soiled boxers. There is a Permissive Inference in the investigation
17. of Heather DeLaurentis (12467) and legal proceeding against
18. Thon Doe Defendant or Defendants, that the missing Footage would have
19. reflected Misconduct with the Intent to Conceal unlawful or Inappropriate
20. actions or obstruction of Justice. Plaintiff request that this Court grant
21. Punitive damages for the acts and omissions that Violated Plaintiff's
22. Right to Due Process.

Nathaniel J. Harvey

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 DOC # 130287 on JUL 25 2022
 Harvey

E. PREVIOUS LAWSUITS

Have you ever filed a lawsuit, other than this lawsuit, in any federal or state court while you were incarcerated? ☒ Yes ☐ No (check one).

If your answer is "Yes," complete this section of the form. If you have filed more than one previous lawsuit, use additional paper to provide the requested information for each previous lawsuit. Please indicate that additional paper is attached and label the additional pages regarding previous lawsuits as "E. PREVIOUS LAWSUITS."

Name(s) of defendant(s): Colorado Department of Corrections

Docket number and court: Last Previous effects and legal Box in Facility Transfer 2018, To Sterling.

Claims raised: n/a "

Disposition: (is the case still pending?
has it been dismissed?; was relief granted?) n/a "

Reasons for dismissal, if dismissed: n/a "

Result on appeal, if appealed: n/a "

F. ADMINISTRATIVE REMEDIES

WARNING: Prisoners must exhaust administrative remedies before filing an action in federal court regarding prison conditions. See 42 U.S.C. § 1997e(a). Your case may be dismissed or judgment entered against you if you have not exhausted administrative remedies.

Is there a formal grievance procedure at the institution in which you are confined?

☒ Yes ☐ No (check one)

Did you exhaust administrative remedies?

☒ Yes ☐ No (check one)

Nathaniel J. Harvey

G. REQUEST FOR RELIEF

State the relief you are requesting or what you want the court to do. If additional space is needed to identify the relief you are requesting, use extra paper to request relief. Please indicate that additional paper is attached and label the additional pages regarding relief as "G. REQUEST FOR RELIEF." wherefore: Plaintiff respectfully Prays that this Court enter judgment:

1. Granting Plaintiff Judgment that the acts and omissions herein violated Plaintiff's rights,
2. Granting Plaintiff compensatory damages in the amount of \$50,000 against each Defendant, jointly and severally,
3. Plaintiff Seeks Punitive damages against each defendant in the amount of \$50,000 jointly and severally,
4. Plaintiff Seeks a Jury trial on all issues triable by a jury,
5. Plaintiff Seeks recovery of his cost in this suit and any additional relief this Court deems just, proper, and equitable.

Respectfully Submitted,

H. PLAINTIFF'S SIGNATURE

I declare under penalty of perjury that I am the plaintiff in this action, that I have read this complaint, and that the information in this complaint is true and correct. See 28 U.S.C. § 1746; 18 U.S.C. § 1621.

Under Federal Rule of Civil Procedure 11, by signing below, I also certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending or modifying existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Nathaniel J. Harvey II
(Plaintiff's signature)

July 28th 2022 Amended
(Date) Complaint

Nathaniel J. Harvey

(Revised February 2022)

CERTIFICATE OF SERVICE

I hereby certify that the Amended Complaint was mailed to the clerk of the Court via U.S. Postal Service at:

Alfred A. Arraj United States Courthouse
901 19th Street, Room A 105
Denver, CO 80294-3589
on 8-1-2022

Nathaniel J. Harney
130287
P.O. Box 600
CCF Canon City, CO
81215

Colorado Department of Corrections

Name NATHANIEL HARVEY

Register # 130287

Unit K D 108

Box# 600

City, State, Zip CCF Carbon City, CO
81215



CLERK OF COURT

ALFRED A. ARRAJ United STATES COURTHOUSE
901 14th STREET, ROOM A-105
DENVER, CO 80294-3589

OUT-GOING
PRIVILEGED
LEGAL MAIL

LEGAL MAIL



CCF 8-1-22

FACILITY	DATE RECD	
Rapachuk	24971 (15)	
STAFF LAST NAME	ID#	INT
130287 Harvey		Not
DOC#	OFFENDER LAST NAME	INT

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 22-CV-00369 GPG

Plaintiff NATHANIEL J. HARVEY *Pro Se*,
v. CAPTAIN STEPHANIE MARTINEZ,
Sgt. RENE ACUNA,
v. Sgt. PAUL CARRILLO JR,
OFFICER Z. GARCIA,
Nurse Practitioner KATHLEEN BOYD,
OFFICER RILEY,
Defendant. NURSE PRACTITIONER RENEA MOREL and,
OFFICER Jhon DOE

S U M M O N S

TO THE ABOVE-NAMED DEFENDANTS:

You are hereby Summoned and required to serve upon Plaintiff whose address is CENTENNIAL CORRECTIONAL FACILITY P.O. Box 6000 CANON CITY, COLORADO 81215 an answer to the Complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service, or 60 days if the U.S. Government or officer/agent thereof is a defendant.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

CLERK OF THE COURT
DATE: _____

Nathaniel J. Harvey
130287
July 28th, 2022