

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rodriguez-Mendez v. Ellred, et al.

Rodriguez-Mendez · No. 2:24-CV-0678-DMC-P · Decided June 13, 2025

SUMMARY

The United States District Court for the Eastern District of California screens a prisoner’s first amended Bivens complaint alleging excessive force and deliberate indifference to serious medical needs. The court finds cognizable excessive-force claims against five correctional defendants but recommends dismissing the medical deliberate-indifference claim against Defendant Ellred with prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dennis M. Cota, United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 13, 2025
DOCKET	2:24-CV-0678-DMC-P
DISPOSITION	other
PROCEDURAL POSTURE	A prisoner proceeding pro se filed a first amended Bivens complaint. On statutory screening under 28 U.S.C. § 1915A, the magistrate judge found excessive-force claims cognizable against five defendants, found the medical deliberate-indifference claim against Ellred deficient, and recommended dismissal of Ellred with prejudice.
STANDARD OF REVIEW	The complaint was screened under 28 U.S.C. § 1915A. The court accepted the allegations as true for screening purposes and assessed whether the pleading was frivolous, malicious, failed to state a claim, or sought monetary relief from an immune defendant. Pleadings were also assessed under Federal Rule of Civil Procedure 8(a)(2), requiring a short and plain statement providing fair notice.
PRECEDENTIAL VALUE	unpublished
PARTIES	Rodrigo Rodriguez-Mendez v. Ellred, Kerney, Birtwell, Fox, Peterson, Waurbaug

TOPICS

prisoners rights

cruel and unusual punishment

civil rights

pleadings

civil procedure

PRACTICE AREAS

prisoner civil rights

constitutional torts

federal civil procedure

QUESTIONS PRESENTED

1. Whether the first amended complaint stated cognizable Eighth Amendment excessive-force claims against Kerney, Birtwell, Fox, Peterson, and Waurbaug.
2. Whether the first amended complaint stated a cognizable Eighth Amendment medical deliberate-indifference claim against physician Ellred.
3. Whether Ellred should be dismissed with prejudice for failure to state a claim under 28 U.S.C. § 1915A.

HOLDINGS

1. The first amended complaint stated cognizable excessive-force claims against Kerney, Fox, Birtwell, Peterson, and Waurbaug arising from the events of March 17, 2022.
2. The amended complaint failed to state a cognizable Eighth Amendment medical deliberate-indifference claim against Ellred.
3. The court recommended that Ellred be dismissed with prejudice for failure to state a claim upon which relief could be granted.

KEY QUOTATIONS

“The Court must dismiss a complaint or portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can be granted; or (3) seeks monetary relief from a defendant who is immune from such relief.” (at 2)

“A prison official violates the Eighth Amendment only when two requirements are met: (1) objectively, the official’s act or omission must be so serious such that it results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm.” (at 4)

“Assuming Plaintiff’s allegations are true, Plaintiff cannot establish the subjective prong of a medical deliberate indifference claim against Defendant Ellred.” (at 5)

FACTUAL BACKGROUND

Rodriguez-Mendez, a federal prisoner, alleged that on March 17, 2022, severe lower-body pain prevented him from standing or sitting and that correctional officers dragged him by his hands, feet, and neck after he could not move as directed. He alleged that Kerney, Birtwell, Fox, Peterson, and Waurbaug used excessive force and subjected him to obscenities and racial slurs. He also alleged that physician Ellred initially discounted his pain and did not provide care until confirming a prior similar condition, but then provided medical treatment shortly thereafter.

PROCEDURAL HISTORY

Plaintiff previously filed an original complaint, as to which the court had found a plausible medical deliberate-indifference claim against Ellred. Plaintiff then filed a first amended complaint adding factual detail. The court concluded that the amended complaint stated cognizable excessive-force claims against Kerney, Fox, Birtwell, Peterson, and Waurbaug, but failed to state a cognizable claim against Ellred. The magistrate judge ordered random assignment of a district judge and recommended dismissal of Ellred with prejudice, subject to objections under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Bivens v. Six Unknown Agents, 403 U.S. 388 (1971)
- Olivas v. Nevada ex rel. Dep’t of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017)
- McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996)
- Kimes v. Stone, 84 F.3d 1121, 1129 (9th Cir. 1996)
- Helling v. McKinney, 509 U.S. 25, 31 (1993)
- Farmer v. Brennan, 511 U.S. 825, 832, 834, 837 (1994)
- Estelle v. Gamble, 429 U.S. 97, 102, 105-06 (1976)
- Rhodes v. Chapman, 452 U.S. 337, 347 (1981)
- Toussaint v. McCarthy, 801 F.2d 1080, 1107, 1111 (9th Cir. 1986)
- Hoptowit v. Ray, 682 F.2d 1237, 1253 (9th Cir. 1982)
- Sandin v. Conner, 515 U.S. 472 (1995)
- McGuckin v. Smith, 974 F.2d 1050, 1059-60 (9th Cir. 1992)
- WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc)
- Doty v. County of Lassen, 37 F.3d 540, 546 (9th Cir. 1994)
- Lopez v. Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc)
- Hunt v. Dental Dep’t, 865 F.2d 198, 200 (9th Cir. 1989)
- Jackson v. McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)
- Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 IN THE UNITED STATES DISTRICT COURT 9 FOR THE EASTERN
DISTRICT OF CALIFORNIA 10 11 RODRIGO RODRIGUEZ-MENDEZ, No. 2:24-CV-0678-
DMC-P 12 Plaintiff, 13 v. ORDER 14 ELLRED, et al., and 15 Defendants. FINDINGS AND

RECOMMENDATIONS 16 17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 18 *Bivens v. Six Unknown Agents*, 403 U.S. 388 (1971).

Pending before the Court is Plaintiff's first 19 amended complaint, ECF No. 16. 20 The Court is required to screen complaints brought by prisoners seeking relief 21 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. 22 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was 23 initiated even if the litigant was subsequently released from custody.

See *Olivas v. Nevada ex rel. 24 Dep't of Corr.*, 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or 25 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can 26 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See 27 28 U.S.C. § 1915A(b)(1), (2).

Moreover, the Federal Rules of Civil Procedure require that 28 complaints contain a "... short and plain statement of the claim showing that the pleader is 1 entitled to relief." Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply, 2 concisely, and directly. See *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to 3 Fed. R. Civ.

P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice 4 of the plaintiff's claim and the grounds upon which it rests. See *Kimes v. Stone*, 84 F.3d 1121, 5 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity 6 overt acts by specific defendants which support the claims, vague and conclusory allegations fail 7 to satisfy this standard.

Additionally, it is impossible for the Court to conduct the screening 8 required by law when the allegations are vague and conclusory. 9 10 I. PLAINTIFF'S ALLEGATIONS 11 As with the original complaint, Plaintiff names the following as defendants in the 12 first amended complaint: (1) Ellred, a physician at Federal Correctional Institution – Herlong 13 (FCI Herlong); (2) Kerney, a correctional lieutenant at FCI Herlong; (3) Birtwell, a correctional 14 officer at FCI Herlong; (4) Fox, a correctional officer at FCI Herlong; (5) Peterson, a correctional 15 officer at FCI Herlong; and (6) Waurbaug, a correctional officer at FCI Herlong.

See ECF No. 16, 16 pgs. 5-6. Plaintiff asserts that Defendants Kerney, Birtwell, Fox, Perterson, and Waurbaug used 17 excessive force on him, and that Defendant Ellred was deliberately indifferent to Plaintiff's 18 serious medical needs. See *id.* at 7. 19 Plaintiff contends that on March 17, 2022, he experienced great pain in the lower 20 half of his body, making him unable to stand or sit.

See *id.* at 8. Plaintiff contends that he was at 21 work at that time, and two other inmates helped him get to the infirmary. See *id.* Plaintiff claims 22 that when he got to the infirmary he got down on the floor because he was in great pain and was 23 instructed to get up and sit. See *id.* Plaintiff

claims that he replied he could not do so because of 24 the pain and repeated the conversation when another officer who arrived on the scene.

See id. at 25 9. Plaintiff claims that the other officer threatened him that he would be placed in a Special 26 Housing Unit if he did not move, so Plaintiff tried to move slowly and carefully to the area 27 pointed out by the officer. See id. 28 / / / 1 Plaintiff asserts that Defendant Ellred arrived after this encounter and told Plaintiff 2 to get up or the lieutenant's office would be called.

See id. Plaintiff asserts that when he tried to 3 explain his situation, Defendant Ellred replied that he did not care. See id. Plaintiff claims that he 4 apologized to Defendant Ellred, and when the pain Plaintiff was suffering made him lie down on 5 the floor again, Defendant Ellred informed Plaintiff that he had called the lieutenant's office. Id. 6 Plaintiff claims that soon thereafter, Defendants Kerney, Fox, Birtwell, Perterson, 7 and Waurbaug arrived.

See id. Plaintiff claims that despite Plaintiff's explanation of the situation 8 and pleading, these five defendants grabbed Plaintiff by his hands, feet, and neck and dragged 9 him to the lieutenant's office, all while shouting obscenities and racial slurs at Plaintiff. See id. at 10 10. Plaintiff claims that he was placed on a bench outside of the lieutenant's office and, after their 11 conversation, the lieutenant told Plaintiff to get up and go back to his unit.

See id. at 10-11. 12 Plaintiff asserts that he stated again that he was unable to walk, and Defendants grabbed Plaintiff 13 and pulled him up, and then pushed him towards his unit. See id. at 11. Plaintiff claims that he 14 walked a short distance and then had to stop and sit on the floor. See id. Plaintiff asserts that 15 Defendants again grabbed him by his arms, legs, and neck and dragged him to his unit.

See id. 16 Plaintiff alleges that these five defendants' conduct made his suffering worse. See id. at 13. 17 Plaintiff claims that he was seen by Defendant Ellred later that day. See id. at 12. 18 Plaintiff asserts that Defendant Ellred initially stated that Plaintiff's pain was not credible because 19 he could not find any relevant record in his medical history.

See id. Plaintiff asserts that 20 Defendant Ellred gave him medical treatment only after Plaintiff stated that he suffered from the 21 same condition in 2009 in another facility and Defendant Ellred checked his records to confirm 22 that this was true. See id. at 12-13. 23 24 II. DISCUSSION 25 The Court finds that Plaintiff's first amended complaint states cognizable 26 excessive force claims against Defendants Kerney, Fox, Birtwell, Perterson, and Waurbaug 27 arising from events occurring on March 17, 2022.

By separate order, the Court will direct 28 Plaintiff to submit documents necessary for service on these defendants by the United States 1 Marshal. The Court otherwise finds that Plaintiff has failed to state a cognizable medical 2 deliberate indifference claim against Defendant Ellred. 3 The treatment a prisoner receives in prison and the conditions under which the 4 prisoner is confined

are subject to scrutiny under the Eighth Amendment, which prohibits cruel and unusual punishment.

See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The Eighth Amendment “...embodies broad and idealistic concepts of dignity, civilized standards, humanity, and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). Conditions of confinement may, however, be harsh and restrictive. See *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981).

Nonetheless, prison officials must provide prisoners with “food, clothing, shelter, sanitation, medical care, and personal safety.” *Toussaint v. McCarthy*, 11 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when two requirements are met: (1) objectively, the official’s act or omission must be so serious such that it results in the denial of the minimal civilized measure of life’s necessities; and (2) subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of inflicting harm.

See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison official must have a “sufficiently culpable mind.” See *id.* Deliberate indifference to a prisoner’s serious illness or injury, or risks of serious injury or illness, gives rise to a claim under the Eighth Amendment. See *Estelle*, 429 U.S. at 105; see also *Farmer*, 511 U.S. at 837.

This applies to physical as well as dental and mental health needs. See *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982), abrogated on other grounds by *Sandin v. Conner*, 515 U.S. 472 (1995). An injury or illness is sufficiently serious if the failure to treat a prisoner’s condition could result in further significant injury or the “... unnecessary and wanton infliction of pain.” *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.

1992), overruled on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); see also *Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness are: (1) whether a reasonable doctor would think that the condition is worthy of comment; (2) whether the condition significantly impacts the prisoner’s daily activities; and (3) whether the condition is chronic and accompanied by substantial pain.

See *Lopez v. Smith*, 203 F.3d 1122, 1131-32 (9th Cir. 2000) (en banc). The requirement of deliberate indifference is less stringent in medical needs cases than in other Eighth Amendment contexts because the responsibility to provide inmates with medical care does not generally conflict with competing penological concerns. See *McGuckin*, 974 F.2d at 1060.

Thus, deference need not be given to the judgment of prison officials as to decisions concerning medical needs. See *Hunt v. Dental Dep’t*, 865 F.2d 198, 200 (9th Cir. 1989). The complete denial of medical attention may constitute deliberate indifference. See *Toussaint v. McCarthy*, 801 F.2d

1080, 1111 (9th Cir. 1986). Delay in providing medical treatment, or interference with medical treatment, may also constitute deliberate indifference.

See *Lopez*, 203 F.3d at 1131. Where delay is alleged, however, the prisoner must also demonstrate that the delay led to further injury. See *McGuckin*, 974 F.2d at 1060. Negligence in diagnosing or treating a medical condition does not, however, give rise to a claim under the Eighth Amendment. See *Estelle*, 429 U.S. at 106.

Moreover, a difference of opinion between the prisoner and medical providers concerning the appropriate course of treatment does not generally give rise to an Eighth Amendment claim. See *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

However, a claim involving alternate courses of treatment may succeed where the plaintiff shows: (1) the chosen course of treatment was medically unacceptable under the circumstances; and (2) the alternative treatment was chosen in conscious disregard of an excessive risk to the prisoner's health. See *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir.

2004). In addressing Plaintiff's original complaint, the Court determined that Plaintiff had plausibly stated a medical deliberate indifference claim against Defendant Ellred. See ECF No. 23. Specifically, the Court stated: As currently pleaded, the Court finds that Plaintiff's complaint, when construed liberally, states a plausible Eighth Amendment claim against Defendant Ellred based on Plaintiff's allegation that the "medical doctor" failed to provide Plaintiff with medical care following an assault.

While Plaintiff does not mention Defendant Ellred specifically in his statement of the claim, Defendant Ellred is the only physician named in the lawsuit and, as such, Plaintiff's allegation is sufficient to put Defendant Ellred on fair notice of the claim. *Id.* at 2-3. However, Plaintiff's current allegations, which add more detail than the original complaint, do not support a medical deliberate indifference claim against Defendant Ellred.

Specifically, Plaintiff now alleges that, while Defendant Ellred initially did not provide medical care, Defendant Ellred ultimately provided medical care shortly thereafter once Plaintiff's medical condition had been confirmed. Assuming Plaintiff's allegations are true, Plaintiff cannot establish the subjective prong of a medical deliberate indifference claim against Defendant Ellred.

I. CONCLUSION Based on the foregoing, the undersigned orders and recommends as follows: 1. It is ORDERED that the Clerk of the Court is directed to randomly assign a District Judge to this case. 2. It is RECOMMENDED that Defendant Ellred be dismissed with prejudice for failure to state a claim against whom relief can be granted. These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within 14 days 20 || after being served with these findings and recommendations, any party may file written objections 21 || with the Court. Responses to objections shall be filed within 14 days after service of objections. 32 || Failure to file objections within the specified time may waive the right to appeal. See Martinez v. 23 || Yist, 951 F.2d 1153 (9th Cir.

1991). 24 25 | Dated: June 13, 2025 Co 26 DENNIS M. COTA 7 UNITED STATES
MAGISTRATE JUDGE 28