

**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

OPINION

(PC) Rodriguez-Mendez v. Ellred, et al

PER CURIAM.

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 5 and unusual punishment. See *Helling v. McKinney*, 509 U.S. 25, 31 (1993); *Farmer v. Brennan*, 6 511 U.S. 825, 832 (1994). The Eighth Amendment "...embodies broad and idealistic concepts of 7 dignity, civilized standards, humanity, and decency." *Estelle v. Gamble*, 429 U.S. 97, 102 8 (1976). Conditions of confinement may, however, be harsh and restrictive. See *Rhodes v. 9 Chapman*, 452 U.S. 337, 347 (1981). Nonetheless, prison officials must provide prisoners with 10 "food, clothing, shelter, sanitation, medical care, and personal safety." *Toussaint v. McCarthy*, 11 801 F.2d 1080, 1107 (9th Cir. 1986). A prison official violates the Eighth Amendment only when 12 two requirements are met: (1) objectively, the official's act or omission must be so serious such 13 that it results in the denial of the minimal civilized measure of life's necessities; and (2) 14 subjectively, the prison official must have acted unnecessarily and wantonly for the purpose of 15 inflicting harm. See *Farmer*, 511 U.S. at 834. Thus, to violate the Eighth Amendment, a prison 16 official must have a "sufficiently culpable mind." See *id.* 17 Deliberate indifference to a prisoner's serious illness or injury, or risks of serious 18 injury or illness, gives rise to a claim under the Eighth Amendment. See *Estelle*, 429 U.S. at 105; 19 see also *Farmer*, 511 U.S. at 837. This applies to physical as well as dental and mental health 20 needs. See *Hoptowit v. Ray*, 682 F.2d 1237, 1253 (9th Cir. 1982), abrogated on other grounds by 21 *Sandin v. Conner*, 515 U.S. 472 (1995). An injury or illness is sufficiently serious if the failure to 22 treat a prisoner's condition could result in further significant injury or the "... unnecessary and 23 wanton infliction of pain." *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled 24 on other grounds by *WMX Techs., Inc. v. Miller*, 104 F.3d 1133 (9th Cir. 1997) (en banc); see 25 also *Doty v. County of Lassen*, 37 F.3d 540, 546 (9th Cir. 1994). Factors indicating seriousness 26 are: (1) whether a reasonable doctor would think that the condition is worthy of comment; (2) 27 whether the condition significantly impacts the prisoner's daily activities; and (3) whether the 28 condition is chronic and accompanied by substantial pain. See *Lopez v. Smith*, 203 F.3d 1122, 1 1131-32 (9th Cir. 2000) (en banc). 2 The requirement of deliberate indifference is less stringent in medical needs cases 3 than in other Eighth Amendment contexts because the responsibility to provide inmates with 4 medical care does not generally conflict with competing penological concerns. See *McGuckin*, 5 974 F.2d at 1060. Thus, deference need not be given to the judgment of prison officials as to 6 decisions concerning medical needs. See *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 7 1989). The complete denial of medical attention may constitute deliberate indifference. See 8 *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. 15. 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 initially 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. 1]

12 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 after being served with these findings and recommendations, any party may file written objections with the Court. Responses to objections shall be filed within 14 days after service of objections. Failure to file objections within the specified time may waive the right to appeal. See *Martinez v. 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

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/united-states-district-court-for-the-eastern-district-of-california-united-states-district-court-for/2025/rodriguez-mendez-v-ellred-et-al-1i9ff0o0>