

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Daniel C. Ramsey v. N. Thompson

Ramsey · No. 23-cv-1920-JAH-DDL · Decided October 30, 2025

SUMMARY

This Report and Recommendation addresses Defendant N. Thompson’s motion for partial dismissal of Daniel C. Ramsey’s Second Amended Complaint in a prisoner civil-rights action. The court recommends dismissal without leave to amend of Ramsey’s Fourteenth Amendment procedural due process claim and any substantive due process claim, concluding that he alleged no protected liberty interest in his medical classification, prison facility, or transfer location. The court also grants in part and denies in part Ramsey’s motion for judicial notice.

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
CALIFORNIA 11 Case No.: 23-cv-1920-JAH-DDL 12 DANIEL C. RAMSEY, 13 Plaintiff, (1)
REPORT AND 14 v. RECOMMENDATION FOR ORDER GRANTING 15 DEFENDANT’S
MOTION FOR 16 N. THOMPSON, PARTIAL DISMISSAL AND (2) ORDER DENYING IN 17
Defendants. PART AND GRANTING IN 18 PART PLAINTIFF’S MOTION FOR THE COURT
TO TAKE 19 JUDICIAL NOTICE OF 20 ADJUDICATIVE FACTS 21 [Dkt.

Nos. 48, 62] 22 23 This Report and Recommendation is submitted to United States District 24
Judge John A. Houston pursuant to 28 U.S.C. § 636(b) and Civil Local Rules 25 72.1(c) and
72.3(f) of the United States District Court for the Southern District of 26 California.

For the following reasons, the Court RECOMMENDS that Defendant’s 27 28 1 Motion for Partial
Dismissal of Plaintiff’s Second Amended Complaint be 2 GRANTED. 3 I. 4 PROCEDURAL
BACKGROUND 5 On October 16, 2023, Plaintiff Daniel C. Ramsey, a state prisoner proceeding
6 pro se and in forma pauperis, filed a complaint under the Civil Rights Act, 42 U.S.C. 7 § 1983
against N. Thompson and H. Moseley.1 Dkt.

No. 1. 8 On December 16, 2024, Plaintiff filed a motion for a preliminary injunction. 9 Dkt. No.
18. 10 On December 27, 2024, N. Thompson answered the complaint. Dkt. No. 22. 11 On
February 12, 2025, Judge Houston held a hearing on Plaintiff’s motion 12 for a preliminary
injunction, denied the motion, and granted Plaintiff leave to amend 13 his complaint. Dkt.

No. 33. 14 On February 24, 2025, Plaintiff filed the First Amended Complaint (“FAC”) 15
alleging that John Doe #1, Warden (RJD) violated his right to Due Process and 16 failed to protect

him and that Defendant N. Thompson was deliberately indifferent¹⁷ to his medical needs, and failed to protect him from harm, in violation of his Eighth¹⁸ Amendment rights.

Dkt. No. 36 at 2-7.¹⁹ On February 28, 2025, Defendant N. Thompson² moved for partial dismissal²⁰ of the FAC. Dkt. No. 37.²¹ 22 23 24 25 1 Defendant H. Moseley was terminated from the case on January 22, 2024. See Docket; see also Dkt. No. 5.²⁶ 27 2 Warden Doe has not been identified and thus has never been served nor²⁸ appeared in the action. 1 On March 25, 2025, the Court issued an Order Granting Plaintiff's Motion for 2 Leave to File a Second Amended Complaint and Report and Recommendation for 3 Order Denying Defendant's Motion to Dismiss as Moot.

Dkt. No. 41.⁴ On April 20, 2025, Plaintiff filed a Second Amended Complaint ("SAC") under 5 the Civil Rights Act, 42 U.S.C. § 1983, against Defendant N. Thompson. Dkt. No. 6 47 at 1. Plaintiff alleges claims under the Eighth and Fourteenth Amendments for 7 deliberate indifference, failure to protect, and procedural due process violations. 8 Id. at 2. 9 On May 5, 2025, Defendant N. Thompson filed a Motion for Partial Dismissal¹⁰ of Plaintiff's SAC for failure to state a claim regarding the Fourteenth Amendment¹¹ and procedural due process.

Dkt. No. 48-1 ("MTD"). On May 21, 2025, Plaintiff¹² filed an opposition to Defendant's MTD. Dkt. No. 50-1 ("Oppo."). Defendant¹³ replied on June 19, 2025. Dkt. No. 56 ("Reply"). 14 II. 15 COMPLAINT ALLEGATIONS 16 This action arises out of Plaintiff's transfer to High Desert State Prison¹⁷ ("HDSP"). SAC at 4. Plaintiff alleges he is a wheelchair-bound, disabled inmate¹⁸ who suffers from paraplegia and other unspecified medical conditions, and as a¹⁹ result has a "high-risk" medical designation.

Id. at 5, 8-9. In early 2023, Plaintiff,²⁰ who was housed at Richard J. Donovan ("RJD"), was informed by his counselor²¹ that he was up for an annual review for good behavior and that due to his medical²² status, the options for housing were the California Health Care Facility and the 23 California Medical Facility. Id. at 4-5. Plaintiff preferred the California Health Care²⁴ Facility, and that information was forwarded to the Inmate Classification Committee²⁵ ("ICC").

Id. at 5.²⁶ On March 3, 2023, Plaintiff alleges that Defendant Thompson filed an Auditor²⁷ Action removing Plaintiff's medical conditions, overriding Plaintiff's high risk²⁸ medical designation without any stated reason, and recommending Plaintiff's 1 transfer to HDSP, a non-high risk medical facility. Id. at 6-7. Plaintiff alleges this 2 was done without approval by the California Correctional Health Care Service³ ("CCHCS") or his primary care provider.

Id. at 6. After learning of the proposed 4 transfer to HDSP, Plaintiff filed a 602 grievance requesting the transfer be placed 5 on hold as he did not belong in a facility unable to house individuals with high-risk 6 medical needs and an inability to defend themselves. Id. at 7-8.

In his grievance, 7 Plaintiff also noted that he was scheduled for another surgery and a follow-up 8 appointment with his neurosurgeon. Id. at 8. Plaintiff's grievance was denied and 9 on March 21, 2023, Plaintiff was transferred to HDSP. Id. at 7-8. 10 Plaintiff alleges that Defendant Thompson's decision to override his high-risk 11 designation and authorize the transfer to HDSP violated his Eighth Amendment 12 rights as it was deliberately indifferent to his medical needs, failed to protect him, 13 and recklessly ignored the excessive risk the transfer posed to Plaintiff's health.

14 Id. at 13. Plaintiff further alleges that his Fourteenth Amendment due process 15 rights were violated because he was not asked about the decision to remove his 16 high-risk medical designation and Defendant Thompson failed to receive approval 17 from CCHCS, ICC, or Plaintiff before making her decisions related to the Audit. Id. 18 at 14.

In addition, Plaintiff was not informed of his transfer until the day it took 19 place and had no opportunity to research, investigate, or be heard on the issue. 20 Id. 21 Plaintiff seeks injunctive relief preventing him from being housed in a facility that 22 is not considered a high-risk facility, \$880,00 in damages, \$2,000,000 in punitive 23 damages, and fees.

Id. at 17. 24 III. 25 PARTIES' ARGUMENTS 26 Defendant argues Plaintiff's procedural due process claim "fails as a matter 27 of law." MTD at 2. In support, Defendant argues that because Plaintiff fails to 28 allege the deprivation of a constitutionally protected interest, his due process claim 1 must fail. Id. at 4. Specifically, Plaintiff's allegation that he was deprived of being 2 housed in an a "medical facility institution" "does not implicate a constitutionally 3 protected interest" as prisoners do not have a constitutional right to be housed in 4 the institution of their choice.

Id. at 5-6. Additionally, Defendant argues that 5 Plaintiff failed to allege that his transfer to HDSP created an atypical and significant 6 hardship. Id. at 6. With respect to Defendant's alleged violations of prison 7 procedures and regulations, Defendant argues that those violations alone do not 8 give rise to a federal constitutional claim under section 1983.

Id. Plaintiff's 9 allegations about the dangerous environment and flooded cell fail to establish a 10 substantive due process claim as Plaintiff has not shown that "he suffered 11 restraints outside the normal incidents of prison life." Id. at 7.

The allegations also 12 fail to support a substantive due process claim as any such claims would implicate 13 Plaintiff's Eighth Amendment rights instead and Plaintiff has failed to allege a 14 conditions-of-confinement claim. Id. Finally, Defendant argues that Plaintiff's 15 allegations surrounding his delayed surgery and medical treatment fail to establish 16 a due process violation because prisoners are not guaranteed their choice of 17 treatment or physician and a difference of opinion with medical staff is not 18 actionable.

Id. at 8. Defendant argues that even if Plaintiff's allegations are true and state a plausible claim, she is entitled to qualified immunity from suit with respect to Plaintiff's procedural due process claim as "it was not clearly established in March 2023 that endorsing Ramsey's transfer from RJD to another institution implicated a liberty interest protected by the Due Process Clause such that Counselor Thompson should have been on notice that Ramsey was owed any 24 procedural protections in the process of her audit." Id. at 9.

Defendant requests that Plaintiff's Fourteenth Amendment claim be dismissed with prejudice as permitting Plaintiff to further amend the complaint would be futile. Id. 27 28 1 Plaintiff contends that he has stated a claim for relief and that he has a right to complete due process including notice when his medical status is changed, an interview, and a hearing where he can present evidence.³ Oppo.

4 IV. 5 LEGAL STANDARD 6 Pursuant to Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 8(a), a 7 complaint must contain "a short and plain statement of the claim showing that the 8 pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). "[T]he pleading standard Rule 9 8 announces does not require 'detailed factual allegations,' but it demands more 10 than an unadorned, the-defendant-unlawfully-harmed--me accusation." *Ashcroft 11 v. Iqbal*, 556 U.S. 662, 678 (2009).

4 12 A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the 13 plaintiff's claims. See Fed. R. Civ. P. 12(b)(6). The issue is not whether the plaintiff 14 ultimately will prevail, but whether he has properly stated a claim upon which relief 15 could be granted. *Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003).

In order 16 to survive a motion to dismiss, a plaintiff must set forth "sufficient factual matter, 17 accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 18 U.S. at 678. If the facts alleged in the complaint are "merely consistent with" the 19 defendant's liability, the plaintiff has not satisfied the plausibility standard.

Id. 20 Rather, "[a] claim has facial plausibility when the plaintiff pleads factual content 21 22 23 24 3 In his opposition, Plaintiff argues that Defendant is in default and that he is entitled 25 to a default judgment. Oppo. at 6, 21.

The Court addressed Plaintiff's concerns and related motions regarding Defendant's alleged default in its July 16, 2025 26 Order Denying Plaintiff's Motions for Default Judgement. Dkt. No.64. 27 4 All citations and internal quotation marks are omitted, and emphasis and 28 1 that allows the court to draw the reasonable inference that the defendant is liable 2 for the misconduct alleged." Id. 3 When a plaintiff appears pro se, the court must be careful to construe the 4 pleadings liberally and to afford the plaintiff any benefit of the doubt.

See *Erickson 5 v. Pardus*, 551 U.S. 89, 94 (2007); *Thompson v. Davis*, 295 F.3d 890, 895 (9th Cir. 6 2002). This rule of liberal construction is "particularly important" in civil rights 7 cases. *Hendon*

v. Ramsey, 528 F. Supp. 2d 1058, 1063 (S.D. Cal. 2007); see also 8 Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010) (“we continue to construe pro se filings liberally when evaluating them under Iqbal” and “where the petitioner is pro se, particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt”).).

When giving liberal construction to a pro se civil rights complaint, however, the court is not permitted to “supply essential elements of the claim[] that were not initially pled.” Easter v. CDC, 694 F. Supp. 14 2d 1177, 1183 (S.D. Cal. 2010). “Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss.” Id. 17 The court should allow a pro se plaintiff leave to amend his or her complaint, 18 “unless the pleading could not possibly be cured by the allegation of other facts.” 19 Ramirez v. Galaza, 334 F.3d 850, 861 (9th Cir.

2003). Moreover, “before 20 dismissing a pro se complaint the district court must provide the litigant with notice 21 of the deficiencies in his complaint in order to ensure that the litigant uses the 22 opportunity to amend effectively.” Wayne v. Leal, No. 07 CV 1605 JM (BLM), 2009 23 WL 2406299, at *3 (S.D. Cal. Aug. 4, 2009). 24 To state a claim under § 1983, a plaintiff must allege facts sufficient to show 25 that (1) a person acting under color of state law committed the conduct at issue, 26 and (2) the conduct deprived the plaintiff of some “rights, privileges, or immunities” 27 protected by the Constitution of the laws of the United States.

42 U.S.C. § 1983. 28 To prevail on a § 1983 claim, “a plaintiff must demonstrate that he suffered a 1 specific injury as a result of specific conduct of a defendant and show an affirmative 2 link between the injury and the conduct of that defendant.” Harris v. Schriro, 652 3 F. Supp. 2d 1024, 1034 (D. Ariz. Aug. 11, 2009). A particular defendant is liable 4 under § 1983 only when the plaintiff proves he participated in the alleged violation.

5 Id. 6 V. 7 DISCUSSION 8 A. Judicial Notice 9 Before addressing the merits of Defendant’s Motion for Partial Dismissal, this 10 Court will briefly address Plaintiff’s request for judicial notice. 11 On July 15, 2025, the Court received Plaintiff’s Motion for the Court to Take 12 Judicial Notice of Adjudicative Facts. Dkt. No. 62.

The motion was entered into 13 the docket on July 16, 2025. See Docket. Plaintiff seeks an order taking judicial 14 notice of various documents that he has filed with the Court as exhibits to his SAC 15 and to the instant motion. Id. at 2. Plaintiff specifically identifies Exhibits D and E 16 to the SAC and the “Title 15 Crime Prevention and Corrections Book.” Dkt.

No. 62 17 at 2. In support, Plaintiff states that the documents contain information that the 18 Court and jury should have and that the documents explain the rules, policies and 19 procedures that should be adhered to by all prisoners, prison staff and CDCR 20 officials. Id. Plaintiff also states

that the CDCR provides a copy of the Title 15 21 Rules and Regulations to every inmate upon their arrival.

Id. Plaintiff believes that 22 the documents will help prove his case and the violation of his civil rights. Id. at 3. 23 Plaintiff asks that the Court grant this motion “and file the documents as proof and 24 exhibits” and to acknowledge Exhibits D and E to the SAC as the Title 15 Rules of 25 CDCR and Richard J. Donovan Policies and Procedures. Id. at 3-4.

Defendant 26 did not respond to the motion. See Docket. 27 Pursuant to Federal Rule of Evidence (“Fed. R. Evid.”) 201, the Court may 28 take judicial notice of facts “generally known within [its] territorial jurisdiction” or 1 that “can be accurately and readily determined from sources whose accuracy 2 cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1) and (2).

The motion 3 to dismiss stage does not typically involve considering matters outside the 4 pleadings, but the court may consider items that are properly judicially noticed. 5 *Rosal v. First Fed. Bank of Cal.*, 671 F. Supp. 2d 1111, 1120 (N.D. Cal. 2009). 6 Courts may take judicial notice of state regulations, including prison rules and 7 regulations. See *Harrison v. Kernan*, 971 F.3d 1069, 1071 n.2 (9th Cir.

2020) 8 (taking judicial notice of relevant Title 15 provisions and regulatory history). “The 9 Court may take judicial notice on its own or at the request of any party, and must 10 take judicial notice if a party requests it and the court is supplied with the necessary 11 information.” *Sunkett v. Boerum*, No. 1:21-CV-01137-HBK (PC), 2024 WL 12 4369900, at *2 (E.D.

Cal., Sept. 30, 2024); see also Fed. R. Evid. 201(c). 13 Plaintiff’s request is DENIED IN PART AS MOOT. Plaintiff asks that the 14 documents be filed as exhibits. The documents became exhibits as soon as 15 Plaintiff filed them with his SAC and the instant motion. See Dkt. Nos. 47-4, 47-5, 16 and 62 at 6-25.

Accordingly, the Court need not enter an order filing the documents 17 as exhibits. The Court cautions Plaintiff that while the documents are considered 18 exhibits, they are not “proof” of anything at this stage of the litigation. 19 Attached as Exhibit D to Plaintiff’s SAC are copies of Plaintiff’s Appeal of 20 Grievance, OOA Acknowledgement of Receipt from the Office of Appeals, and the 21 Office of Appeals Decision.

Dkt. No. 47-4 at 2-5. Plaintiff’s request is GRANTED. 22 The Court will take judicial notice of the existence of the documents attached as 23 Exhibit D to the SAC, but not the truth of the statements made in the documents. 24 See *Shockner v. Soltanian*, No. 218CV1948TLNKJNP, 2022 WL 823439, at *4 25 (E.D. Cal., Mar. 18, 2022) (“The court may take judicial notice of the grievances but 26 not for the truth of their contents.”); *Calloway v. Kelley*, No. 1:11-CV-01090-LJO, 27 2015 WL 4722976, at *19 (E.D.

Cal. Aug. 7, 2015) (“The Court can take judicial notice of the existence of the filing of an inmate grievance [within CDCR]; however, the Court cannot take judicial notice of the truth of the facts and matters asserted therein.”). Attached as Exhibit E to Plaintiff’s SAC are handwritten definitions of various terms copied by Plaintiff from the California Department of Corrections and Rehabilitation Health Care Department Operations Manual.

Because the accuracy of the handwritten notes can be reasonably questioned, the Court DENIES Plaintiff’s request for judicial notice of Exhibit E of the SAC. Title 15 regulations can be readily and accurately determined from accurate sources.

In addition, Plaintiff has provided the necessary information, and Defendant has not challenged Plaintiff’s request. Accordingly, Plaintiff’s Motion for Judicial Notice is GRANTED as to the Title 15 regulations and the Court takes judicial notice of the following: California Code of Regulations, Title 15, sections 3375.1, 3375.2, 3375.5, 3375.6, 3376, 3378.10, 3800 - 3800.3, 3379, 3999.98 - 3999.101, 3999.108 – 3999.10, and 3999.307.

See Dkt. No. 62 at 7-25; see also *Johnson v. Kernan*, No. 17-07133 BLF (PR), 2019 WL 3718587, at *1 (N.D. Cal., 16 Aug. 6, 2019) (taking judicial notice of Title 15 regulations filed in support of motion brought pursuant to Fed. R. Civ. P. 12(b)(6)). B. Fourteenth Amendment Claims 1. Procedural Due Process To plead a procedural due process violation, an inmate must allege that the challenged conduct “present[s] the type of atypical, significant deprivation in which a State might conceivably create a liberty interest.” *Sandin v. Conner*, 515 U.S. 472, 485-86 (1995). “Procedural due process claims require (1) a deprivation of a constitutionally protected liberty or property interest, and (2) a denial of adequate procedural protections.” *Kildare v. Saenz*, 325 F.3d 1078, 1085 (9th Cir.

2003). Plaintiff fails to state a procedural due process claim because he does not allege that he was deprived of a constitutionally protected liberty or property interest. “There is no constitutional right to be housed in a particular unit in prison or in a facility of one’s choice.” *Collins v. Lopez*, No. 1:24-CV-00454-DCN, 2025 WL 2402003, at *6 (D.

Idaho, Aug. 19, 2025). Nor is there a right to be housed at a particular location under California law. See *Verwolf v. Hamlet*, No. C03-807 TEH (PR), 2003 WL 22159055, at *3 (N.D. Cal., Sept. 17, 2003) (“And California has not created a protected liberty interest in housing at any particular facility (or temporary release to the community[]): there are no substantive limitations on prison officials’ discretion to grant or refuse the transfer of prisoners.”).

8 Additionally, “prisoners have no constitutional right to a particular classification status, even if the classification status results in a loss of privileges.” *Dilbert v. Fisher*, No. 120CV00655JLTHBKPC, 2023 WL 4848515, at *3 (E.D. Cal., July 28, 2023); see also *Meachum v. Fano*, 427 U.S. 215, 224-25 (1976) (conviction sufficiently extinguishes prisoner’s

liberty interest and empowers the state to 13 confine him in any of its prisons; no liberty interest protected by the Due Process 14 Clause is implicated in a prison's reclassification and transfer decisions); *Jacobs v. CDCR*, 20-cv-00547-DAD-BAM, 2022 WL 20210207, at *10 (E.D.

Cal. Feb. 22, 16 2022) (“Although unclear, it appears that Plaintiff is challenging his medical 17 classification. Prisoners have no federally protected liberty interest in their 18 classification status.”). 19 Plaintiff’s allegation that his right to be housed closer to friends and family 20 was violated fails for the same reason. A claim can be stated where a plaintiff 21 alleges that a change in classification occurred for an unconstitutional reason such 22 as retaliation for exercising certain rights or because of the plaintiff’s religion, race, 23 or politics.

Dilbert, 2023 WL 4848515, at *3. Here, Plaintiff makes no such 24 allegations. *Oppo.*; see also Dkt. No. 47. 25 Plaintiff also alleges that his due process rights were violated because he 26 was not given a hearing on the grievance he submitted about his medial 27 classification and proposed transfer. SAC at 15. This allegation fails to state a 28 claim because the prison “grievance procedure is a procedural right only, it does 1 not confer any substantive right upon the inmates” and “does not give rise to a 2 protected liberty interest requiring the procedural protections envisioned by the 3 Fourteenth Amendment.” *Bussiere v. Sherman*, No. 116CV00899DADJLTPC, 4 2016 WL 5395920, at *4, ((E.D.

Cal., Sept. 26, 2016); see also *Ramirez*, 334 F.3d 5 at 860 (no liberty interest in processing of appeals because no entitlement to a 6 specific grievance procedure). Accordingly, the actions taken by facility officials in 7 reviewing Plaintiff’s inmate appeal cannot serve as the basis of liability for his 8 section 1983 action. Furthermore, Defendant Thompson is the only named 9 Defendant, and Plaintiff does not allege that she was the one who denied his 10 grievances and appeal or prevented him from having an investigation and hearing 11 with witnesses.5 SAC at 15.

12 Because Plaintiff has failed to plead allegations sufficient to support a 13 Fourteenth Amendment procedural due process claim, the Court RECOMMENDS 14 that Defendant’s motion to dismiss Plaintiff’s Fourteenth Amendment procedural 15 due process claim against Defendant Thompson be GRANTED. 16 2. Substantive Due Process 17 To the extent Plaintiff is attempting to allege a substantive due process claim 18 related to the condition of his cell, that claim fails. “Where an amendment provides 19 an explicit textual source of constitutional protection against a particular sort of 20 government behavior, it is that Amendment that must be the guide for analyzing 21 the complaint.” *Picray v. Sealock*, 138 F.3d 767, 770 (9th Cir.

1998). Plaintiff was 22 incarcerated at the time his claims arose.6 Accordingly, the Eighth Amendment's 23 24 25 5 Plaintiff’s appeal was not denied by Defendant Thompson. See Dkt. No. 47-4 at 5 (Office of Appeals Decision signed by reviewing authority H. Moseley). 26 6 Pretrial detainee challenges to conditions of confinement are governed by the 27 Fourteenth Amendment.

Bell v. Wolfish, 441 U.S. 520, 535 n. 16 (1979). Plaintiff 28 1 proscription on cruel and unusual punishments, and not “the more generalized 2 notion of substantive due process, [] must be the guide for analyzing [his] claims.” 3 *Albright v. Oliver*, 510 U.S. 266, 273 (1994). This requirement cannot be met by 4 the allegation of other facts.

The Court therefore RECOMMENDS that any 5 Fourteenth Amendment substantive due process claim against Defendant 6 Thompson be GRANTED WITHOUT LEAVE TO AMEND. 7 C. Qualified Immunity 8 “The doctrine of qualified immunity protects government officials from liability 9 for civil damages insofar as their conduct does not violate clearly established 10 statutory or constitutional rights of which a reasonable person would have known.” 11 *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). “A clearly established right is one 12 that is sufficiently clear that every reasonable official would have understood that 13 what he is doing violates that right.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015). “Put 14 simply, qualified immunity protects all but the plainly incompetent or those who 15 knowingly violate the law.” *Id.* 16 The Court employs a two-step analysis to determine whether a government 17 official is entitled to qualified immunity.

Tolan v. Cotton, 572 U.S. 650, 655 (2014). 18 First, the Court must determine whether the facts, “taken in the light most favorable 19 to the party asserting the injury, show the officer’s conduct violated a federal right.” 20 *Id.* at 655-56.

Second, the Court must determine “whether the right in question 21 was ‘clearly established’ at the time of the violation.” *Id.* at 656. “Courts have 22 discretion to decide the order in which to engage these two prongs.” *Id.* 23 As explained above, the facts alleged by Plaintiff do not establish a violation 24 of his Fourteenth Amendment rights because he does not have a right to (1) be 25 26 27 is not a pretrial detainee but a sentenced inmate and, therefore, any claim regarding his conditions of confinement would be analyzed under the Eighth 28 1 housed in a particular facility, (2) have a particular classification, or (3) be housed 2 near his friends and family.

Accordingly, taking the facts in a light most favorable 3 to Plaintiff, Defendant N. Thompson is entitled to qualified immunity because her 4 alleged conduct did not violate a federal right. *Id.* at 656. 5 D. Leave to Amend 6 “The court should freely give leave [to amend a pleading] when justice so 7 requires.” Fed. R. Civ. P. 15(a)(2). “In exercising its discretion” whether to allow 8 a party to amend, the Court “must be guided by the underlying purpose of Rule 15 9 – to facilitate decision on the merits rather than on the pleadings or technicalities.” 10 *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir.

1987). Thus, while 11 leave to amend is not guaranteed, it “should be granted with extreme liberality.” 12 *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009). The Court must be 13 especially generous permitting a pro se plaintiff to amend his or her pleadings. 14 See *Ramirez*, 334 F.3d at 861. Considering the liberality espoused by the Federal 15 Rules, the Court should not deny a motion to amend “unless amendment would 16 cause prejudice to the opposing party, is

sought in bad faith, is futile, or creates undue delay.” *Yakama Indian Nation v. State of Wash. Dep’t of Revenue*, 176 F.3d 1241, 1246 (9th Cir. 1999); see also *Foman v. Davis*, 371 U.S. 178, 182 (1962). Plaintiff does not seek leave to amend, and the Court does not find that the SAC could be cured by the allegation of other facts. See *Ramirez*, 334 F.3d at 22-861.

Therefore, it is also RECOMMENDED that the District Court grant Defendant’s motion WITHOUT LEAVE TO AMEND. Plaintiff references Federal Rule of Civil Procedure several times and discusses amended complaints and relation back but not in the context of asking the Court for the opportunity to file a Third Amended Complaint. *Oppo*, at 10-15. Plaintiff notes that he has corrected his civil complaint and named the Defendant.

2 CONCLUSION AND RECOMMENDATION 3 For all of the foregoing reasons, IT IS HEREBY RECOMMENDED that the District Judge issue an Order: (1) approving and adopting this Report and Recommendation and (2) granting Defendant’s Motion for Partial Dismissal of Plaintiff’s due process claim without leave to amend. 7 IT IS HEREBY ORDERED that any written objections to this Report must be filed with the Court and served on all parties no later than November 24, 2025.

9 The document should be captioned “Objections to Report and Recommendation.” 10 IT IS FURTHER ORDERED that any reply to the objections shall be filed with the Court and served on all parties no later than December 8, 2025.

The parties are advised that failure to file objections within the specified time may waive the right to raise those objections on appeal of the Court’s order. See *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998). 15 IS SO ORDERED. 16 Dated: October 30, 2025
Hon. David D. Leshner United States Magistrate Judge