

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Nieto v. Allison

No. 22-cv-06983-JST (N.D. Cal. Mar. 12, 2025) · No. 22-cv-06983-JST · Decided March 12, 2025

SUMMARY

The United States District Court for the Northern District of California denies Plaintiff Michael Nieto’s motion to strike and denies Defendants’ motion for summary judgment in his 42 U.S.C. § 1983 action. The order addresses allegations of sexual assault, retaliation, and interference with prison grievances, focusing primarily on whether administrative remedies were available and exhausted under the Prison Litigation Reform Act. The Court directs the parties to proceed with briefing on the merits of Plaintiff’s claims.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Jon S. Tigar
JURISDICTION	United States District Court for the Northern District of California
DECIDED	March 12, 2025
DOCKET	22-cv-06983-JST
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, opposed Defendants' motion for summary judgment based principally on failure to exhaust administrative remedies and opposed a motion to strike declarations under Federal Rule of Civil Procedure 56(h).
STANDARD OF REVIEW	Summary judgment is proper when the pleadings, discovery, and affidavits show no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court must view evidence in the light most favorable to the nonmoving party, draw justifiable inferences in that party's favor, and refrain from credibility determinations or weighing conflicting evidence. Failure to exhaust is an affirmative defense that Defendants bear the burden of pleading and proving. Where disputed factual questions concern exhaustion, the district judge must resolve them in a preliminary proceeding rather than on summary judgment. Qualified immunity is evaluated by

asking whether the alleged conduct violated a constitutional right and whether that right was clearly established.

PRECEDENTIAL VALUE

nonprecedential

TOPICS

section 1983

prisoners rights

summary judgment

qualified immunity

first amendment

PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

federal civil procedure

QUESTIONS PRESENTED

1. Whether Plaintiff's motion to strike prison officials' declarations under Federal Rule of Civil Procedure 56(h) should be granted.
2. Whether Defendants were entitled to summary judgment for failure to exhaust administrative remedies as to Plaintiff's claims against Peeffley and Perez-Pantoja.
3. Whether disputed factual issues concerning the alleged threats, their connection to Plaintiff's protected grievance activity, and the availability of administrative remedies precluded summary judgment on Plaintiff's First Amendment retaliation claim.
4. Whether Perez-Pantoja was entitled to qualified immunity at the summary judgment stage.

HOLDINGS

1. The motion to strike was denied because Plaintiff did not show that the declarations were submitted in bad faith or that the alleged inaccuracies warranted striking them.
2. Administrative remedies were effectively unavailable to Plaintiff because prison officials improperly rejected his sexual-misconduct grievance as untimely and then informed him that the administrative process was exhausted.
3. Summary judgment was denied because a triable issue existed as to whether Plaintiff submitted grievances concerning Perez-Pantoja's alleged retaliation and whether prison officials refused to process them, rendering administrative remedies effectively unavailable.
4. The alleged threats could constitute adverse action because a threat of harm that would chill a person of ordinary firmness may support a First Amendment retaliation claim even if the threat is not carried out.
5. Perez-Pantoja was not entitled to summary judgment on qualified immunity because disputed facts concerning whether he made the alleged retaliatory threats and acted with retaliatory intent prevented resolution of the defense at this stage.

KEY QUOTATIONS

"During the relevant time period, 15 Cal. Code Regs. § 3084(c) provided that there was no time limit for filing grievances alleging officer-on-inmate sexual misconduct." (at 14)

“An inmate could reasonably conclude from this decision that he had exhausted his claim and need not take any further action” (at 15)

“an allegation that a person of ordinary firmness would have been chilled is sufficient to state a retaliation claim . . . [and] the mere threat of harm can be an adverse action, regardless of whether it is carried out because the threat itself can have a chilling effect.” (at 23)

FACTUAL BACKGROUND

Plaintiff alleged that Officer Peefley sexually assaulted him during a body search on April 28, 2021, by grabbing and squeezing his penis and testicles, making a gang-related remark, and pulling down his clothing to expose his genitals. Plaintiff also alleged that Officer Perez-Pantoja later threatened him in his cell after the alleged assault, warning him to remember that the hallway incident was an accident and that he would never go home. Plaintiff claimed that grievances concerning the assault and retaliation were submitted through prison lockboxes but disappeared or were not logged, while prison officials maintained that the relevant grievances were either untimely, duplicative, or never received. The record included a later grievance concerning the assault, an Office of Appeals rejection stating that administrative remedies were exhausted, and evidence supporting competing accounts of whether the grievances were submitted and whether Perez-Pantoja made the alleged threats.

PROCEDURAL HISTORY

Plaintiff filed this § 1983 action against correctional officers Peefley and Perez-Pantoja based on an alleged sexual assault and subsequent retaliatory threats. Defendants moved for summary judgment, arguing that Plaintiff failed to exhaust administrative remedies, that Perez-Pantoja did not make the alleged statements, that the retaliation claim failed as a matter of law, and that qualified immunity applied. The court denied Plaintiff's motion to strike and denied Defendants' motion for summary judgment, finding that exhaustion was unavailable as to the Peefley claim and that disputed factual issues remained as to the Perez-Pantoja claim. The court directed Defendants to elect between a limited evidentiary hearing on exhaustion and waiver of the exhaustion defense.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. Defendants were directed, within 14 days of the order, to inform the court whether they would proceed with a limited evidentiary hearing concerning the availability of administrative remedies for the Perez-Pantoja claims or waive the exhaustion defense and proceed to the merits. If Defendants elected the hearing, the court stated that it would appoint counsel for Plaintiff for the limited purpose of representing him at that hearing.

CASES CITED

- *Platte Anchor Bolt, Inc. v. IHI, Inc.*, 352 F. Supp. 2d 1048, 1057 (N.D. Cal. 2004)
- *Cruz v. Bank of New York Mellon*, No. 12-00846, 2012 WL 2838957, at *2 (N.D. Cal. July 10, 2012)

- Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 973 (9th Cir. 2010)
- Rielly v. D.R. Horton, Inc., No. SACV 06-0867 AG (ANx), 2008 WL 4330299, at *3 (C.D. Cal. 2008)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-24 (1986)
- AXIS Reinsurance Co. v. Northrop Grumman Corp., 975 F.3d 840, 844 (9th Cir. 2020)
- Furnace v. Sullivan, 705 F.3d 1021, 1026 (9th Cir. 2013)
- Scott v. Harris, 550 U.S. 372, 380 (2007)
- Manley v. Rowley, 847 F.3d 705, 711 (9th Cir. 2017)
- Jones v. Bock, 549 U.S. 199, 211, 216, 218 (2007)
- Woodford v. Ngo, 548 U.S. 81, 90-93 (2006)
- Ross v. Blake, 578 U.S. 632, 642 (2016)
- Brown v. Valoff, 422 F.3d 926, 935 (9th Cir. 2005)
- Andres v. Marshall, 867 F.3d 1076, 1079 (9th Cir. 2017) (per curiam)
- Sapp v. Kimbrell, 623 F.3d 813, 822-24 (9th Cir. 2010)
- Albino v. Baca, 747 F.3d 1162, 1166, 1170-72 (9th Cir. 2014)
- Sturgeon v. Frost, 577 U.S. 424, 438 (2016)
- Robinson v. Zambrano, No. 20-CV-2106-GPC-AHG, 2022 WL 1104761, at *4 (S.D. Cal. Apr. 13, 2022)
- Washington v. Sutton, No. 1:20-CV-00983 AWI, 2023 WL 7092081 (E.D. Cal. Oct. 26, 2023)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 283 (1977)
- Shepard v. Quillen, 840 F.3d 686, 688-91 (9th Cir. 2016)
- Brodheim v. Cry, 584 F.3d 1262, 1269-70 (9th Cir. 2009)
- Joseph v. Department of Corrections, No. 3:30-cv-00294-SLG-KFR, 2024 WL 1389539, at *6 (D. Alaska Feb. 13, 2024)
- Wray v. Garton, No. 3:18-cv-01617-SB, 2020 WL 1330234, at *4 (D. Or. Mar. 2, 2020)
- Pearson v. Callahan, 555 U.S. 223, 231-32, 239 (2009)
- Mueller v. Auker, 576 F.3d 979, 993 (9th Cir. 2009)
- Santos v. Gates, 287 F.3d 846, 855 n.12 (9th Cir. 2002)