

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Khan v. Presley

No. 24-cv-03905 BLF (PR) (N.D. Cal. May 27, 2025) · No. 24-cv-03905 BLF (PR) · Decided May 28, 2025

SUMMARY

The United States District Court for the Northern District of California grants Muhammad Khan’s motion for an extension of time and grants leave to proceed in forma pauperis. The court dismisses with prejudice the retaliation, due process, and excessive-force claims, while dismissing with leave to amend an Eighth Amendment claim concerning alleged deprivation of sitting and restroom access in a holding cell. The court directs Khan to file a second amended complaint within twenty-eight days.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Beth Labson Freeman                                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | United States District Court for the Northern District of California                                                                                                                                                                                                                                                                                                                 |
| DECIDED               | May 28, 2025                                                                                                                                                                                                                                                                                                                                                                         |
| DOCKET                | 24-cv-03905 BLF (PR)                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | other                                                                                                                                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Plaintiff, a state parolee proceeding under 42 U.S.C. § 1983, filed an amended complaint after the court dismissed his original complaint with leave to amend. The court screened the amended complaint, granted an extension of time and leave to proceed in forma pauperis, dismissed several claims with prejudice, and dismissed one Eighth Amendment claim with leave to amend. |
| STANDARD OF REVIEW    | Under 28 U.S.C. § 1915A, the court must screen a prisoner's complaint and dismiss claims that are frivolous, malicious, fail to state a claim, or seek monetary relief from an immune defendant. Pro se pleadings are liberally construed. A § 1983 claim requires an alleged violation of a federal right by a person acting under color of state law.                              |
| PRECEDENTIAL VALUE    | Unpublished district court order; limited persuasive value.                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | Muhammad Khan v. Presley, et al.                                                                                                                                                                                                                                                                                                                                                     |

TOPICS

section 1983

prisoners rights

civil rights

due process

cruel and unusual punishment

## PRACTICE AREAS

civil rights

prisoner civil rights

constitutional law

civil procedure

## QUESTIONS PRESENTED

1. Whether the amended complaint adequately stated a First Amendment retaliation claim.
2. Whether the allegation that Plaintiff was denied sitting and restroom access in a holding cell adequately stated an Eighth Amendment claim.
3. Whether the alleged procedures at Plaintiff's administrative-segregation retention hearing stated a due process claim.
4. Whether Plaintiff adequately stated an Eighth Amendment excessive-force claim against Defendant Presley.
5. Whether Plaintiff should receive another opportunity to amend the retaliation, due process, and excessive-force claims.

## HOLDINGS

1. The amended complaint failed to state a First Amendment retaliation claim because it did not adequately allege that the challenged actions were taken because of protected conduct, that the actions chilled Plaintiff's First Amendment activity, and that the actions did not reasonably advance a legitimate correctional goal.
2. The amended complaint did not yet state an Eighth Amendment claim because Plaintiff failed to allege the duration of the deprivation or identify the responsible defendant, but Plaintiff was granted leave to amend this claim.
3. The amended complaint failed to state a due process claim based on the administrative-segregation retention hearing because Plaintiff was not constitutionally entitled to witnesses or documentary evidence and failed to allege that the hearing officer was not impartial.
4. The amended complaint failed to state an excessive-force claim against Defendant Presley because it did not provide sufficient facts showing that the force was used maliciously and sadistically to cause harm rather than in a good-faith effort to maintain or restore discipline.

## KEY QUOTATIONS

*"Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."* (at 6)

*"Due process does not require detailed written notice of charges, representation by counsel or counsel-substitute, an opportunity to present witnesses, a written decision describing the reasons for placing the*

*prisoner in administrative segregation or disclosure of the identity of any person providing information leading to placement of a prisoner in administrative segregation.” (at 9)*

## FACTUAL BACKGROUND

Plaintiff alleged that correctional officers Presley and Andrade entered and damaged his cell after Plaintiff took extra time to prepare for an appointment while wearing a mobility-impaired vest. He further alleged that he was denied the ability to sit and use a restroom while confined in a holding cell, later placed in administrative segregation, and denied witnesses and documentary evidence at an administrative-segregation retention hearing. Plaintiff also alleged that Presley used excessive force and later made comments referring to Plaintiff's disability and the prior incident.

## PROCEDURAL HISTORY

The court dismissed Plaintiff's original complaint on December 2, 2024, with leave to amend and directed him to submit a non-prisoner in forma pauperis application. Plaintiff received an extension until February 1, 2025, then filed a further extension motion, an amended complaint, and the required application on February 13, 2025. The court granted the extension, screened the amended complaint, dismissed the retaliation, due process, and excessive-force claims with prejudice, and allowed Plaintiff to amend only the holding-cell deprivation claim.

## DISPOSITION

other

## CASES CITED

- *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990)
- *West v. Atkins*, 487 U.S. 42, 48 (1988)
- *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005)
- *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2004)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992)
- *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)
- *Wilson v. Seiter*, 501 U.S. 294, 297-98 (1991)
- *Johnson v. Lewis*, 217 F.3d 726, 731-33 (9th Cir. 2000)
- *Toussaint v. McCarthy*, 801 F.2d 1080, 1100-01 (9th Cir. 1986)
- *Wilkinson v. Austin*, 545 U.S. 209, 228-29 (2005)
- *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U.S. 1 (1979)
- *Hewitt v. Helms*, 459 U.S. 460 (1983)
- *Leer v. Murphy*, 844 F.2d 628, 633-34 (9th Cir. 1988)
- *Harris v. City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992)

## OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF  
CALIFORNIA 10 11 MUHAMMAD KHAN, Case No. 24-cv-03905 BLF (PR) 12 ORDER  
GRANTING MOTION FOR Plaintiff, EXTENSION OF TIME; OF 13 PARTIAL DISMISSAL  
AND v. GRANTING LEAVE TO FILE 14 SECOND AMENDED COMPLAINT; GRANTING  
LEAVE TO PROCEED 15 PRESLEY, et al., IN FORMA PAUPERIS 16 Defendants. (Docket No.  
9) 17 18 Plaintiff, a state parolee, filed the instant civil rights action pursuant to 42 U.S.C. § 19  
1983 for unconstitutional acts that took place at the Correctional Training Facility 20 (“CTF”),  
where he was formerly housed.

Dkt. No. 1. On December 2, 2024, the Court 21 dismissed the complaint with leave to amend and  
directed Plaintiff to file a non-prisoner 22 IFP application. Dkt. No. 6. Plaintiff was directed to file  
an amended complaint to correct 23 the deficiencies to avoid dismissal with prejudice of this  
action for failure to state a claim 24 for relief. Id. at 6. He was granted an extension of time until  
February 1, 2025.

Dkt. No. 25 8. On February 13, 2025, Plaintiff filed another motion for extension of time along  
with 26 the amended complaint and a non-prisoner IFP application. Dkt. Nos 9-1, 9-2. Good 27  
cause appearing, the motion is GRANTED.

The Court will proceed with a screening of 1 the amended complaint. 2 3 DISCUSSION 4 A.  
Standard of Review 5 A federal court must conduct a preliminary screening in any case in which a  
6 prisoner seeks redress from a governmental entity or officer or employee of a 7 governmental  
entity. See 28 U.S.C. § 1915A(a).

In its review, the court must identify any 8 cognizable claims and dismiss any claims that are  
frivolous, malicious, fail to state a claim 9 upon which relief may be granted or seek monetary  
relief from a defendant who is immune 10 from such relief. See id. § 1915A(b)(1), (2). Pro se  
pleadings must, however, be liberally 11 construed. See *Balistreri v. Pacifica Police Dep’t*, 901  
F.2d 696, 699 (9th Cir.

1988). 12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential 13  
elements: (1) that a right secured by the Constitution or laws of the United States was 14 violated,  
and (2) that the alleged violation was committed by a person acting under the 15 color of state law.  
See *West v. Atkins*, 487 U.S. 42, 48 (1988). 16 B. Plaintiff’s Claims 17 In dismissing the original  
complaint, the Court found the allegations were 18 insufficient to state any cognizable claim,  
specifically for retaliation against any named 19 defendant, excessive force against Defendant  
Presley, and violation of due process during 20 his retention in administrative segregation.

Dkt. No. 6 at 3-5. Plaintiff asserts that the 21 Court did not address his “due process/reprisal  
claims” against Defendant Borjorquez, the 22 hearing officer. Dkt. No. 9 at 1. However, in its  
screening order, the Court stated that the 23 allegations were insufficient to state a retaliation

claims “against any Defendant” or to 24 state a due process claim at all in connection with the ASU retention hearing.

Dkt. No. 6 25 at 3, 5. 26 In the amended complaint, Plaintiff alleges that on or about October 5, 2020, he was 1 Dkt. No. 9-1 at 2. Plaintiff states he is mobility impaired and wore such an “identifying 2 vest.” Id. He told Defendant Presley that he needed more time. Id. On his way out, 3 Defendant Presley told Plaintiff that he “took too long, now I have to hit your cell.” Id. 4 After Plaintiff returned from his appointment, in inmate informed Plaintiff that Defendant 5 Presley had gone into Plaintiff’s cell.

Id. Plaintiff saw that his cell was “trashed,” as his 6 property was all over the place, including his legal paperwork. Id. He was not provided 7 with a cell inspection receipt. Id. Plaintiff alleges that A. Andrade was Defendant 8 Presley’s partner and participated in this action. Id. Plaintiff claims defendants trashed his 9 cell because of his disability and taking longer to get ready.

Id. 10 Plaintiff was taken to a holding cell and “denied sitting and using restroom the 11 whole time.” Id. at 3. He claims this violated his Eighth Amendment rights and 12 constitutes cruel and unusual punishment. Id. 13 Plaintiff was placed in adseg and told he was the aggressor. Id. Plaintiff spent 14 several months in ASU. Id. Plaintiff claims Defendant Lt.

Bojorquez denied him a fair 15 and impartial hearing by denying him witnesses, documentary evidence, and due process. 16 Id. He claims Defendant Borjorquez was not impartial and retaliated because Plaintiff 17 filed grievances. Id. He claims this violated his due process rights and amounts to First 18 Amendment retaliation. Id. 19 Plaintiff claims that around the “first half of 2024,” he went to medical at CTC 20 Soledad; he was wearing a mobility impaired vest.

Id. He claims Defendant Presley was 21 the officer at medical, and stated to Plaintiff, “so you’re still pretending to be handicapped? 22 This is why I beat your ass and threw you in Adseg.” Id. Plaintiff claims these comments 23 further show that Defendant Presley’s motive and intent behind his previous actions. Id. 24 He claims this was the first time he saw Defendant Presley since the 2020 encounter when 25 he was “beat and put into Administrative Segregation.” Id. Plaintiff seeks “declaratory, 26 punitive, compensatory, equitable, special, nominal, and related relief including 1 are again deficient to state any cognizable claim.

2 First, the allegations are insufficient to state a retaliation claim against any 3 Defendant. “Within the prison context, a viable claim of First Amendment retaliation 4 entails five basic elements: (1) An assertion that a state actor took some adverse action 5 against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action 6 (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not 7 reasonably advance a legitimate correctional goal.” Rhodes v. Robinson, 408 F.3d 559, 8 567-68 (9th Cir.

2005) (footnote omitted). Plaintiff's allegations are insufficient to satisfy all five elements to state a retaliation claim. Specifically, he alleges that Defendants Presley and Andrade trashed his cell because of his disability and taking too long to get ready, not because Plaintiff was exercising his First Amendment rights. See *supra* at 3. Plaintiff's allegation that Defendant Borjorquez "retaliated" because Plaintiff filed grievances is also conclusory as there is no allegation that Defendant was aware that Plaintiff filed grievances prior to the adseg hearing such that it can be said that this was the factor for violating Plaintiff's due process rights.

Lastly, Plaintiff again fails to allege that these adverse actions chilled the exercise of his First Amendment rights and did not reasonably advance a legitimate correctional goal. Plaintiff was already afforded one opportunity to amend this retaliation claim, and the Court finds no good cause to grant him another opportunity where the amended complaint fails to correct the deficiencies of the retaliation claim from the original.

*Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830 (9th Cir. 2003) (district court's discretion to deny leave to amend particularly broad where plaintiff has previously filed an amended complaint); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

Accordingly, this retaliation claim must be dismissed for failure to state a claim. Second, Plaintiff alleges for the first time that being held in a holding cell where he was "denied sitting and using restroom" the whole time amounts to cruel and unusual punishment when two requirements are met: (1) the deprivation alleged must be, objectively, sufficiently serious, *Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (citing *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of mind, *id.* (citing *Wilson*, 501 U.S. at 297).

In determining whether a deprivation of a basic necessity is sufficiently serious to satisfy the objective component of an Eighth Amendment claim, a court must consider the circumstances, nature, and duration of the deprivation.

The more basic the need, the shorter the time it can be withheld. See *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000). Substantial deprivations of shelter, food, drinking water or sanitation for four days, for example, are sufficiently serious to satisfy the objective component of an Eighth Amendment claim. See *id.* at 732-733.

Here, Plaintiff's allegations fail to indicate how long he was allegedly deprived of sitting and a restroom for the Court to determine whether he satisfies the objective component of an Eighth Amendment claim. Furthermore, he does not identify which defendant was responsible for this alleged deprivation to satisfy the second element, i.e., the prison official possesses a sufficiently culpable state of mind.

Accordingly, 16 Plaintiff shall be granted leave to amend to attempt to state an Eighth Amendment claim 17 based on the deprivation of “sitting and a restroom.” 18 Third, Plaintiff’s allegations of due process violations by Defendant Borjorquez 19 during his ASU retention hearing again fails to state a claim.

In *Toussaint v. McCarthy*, 20 the Ninth Circuit held that when prison officials initially determine whether a prisoner is to 21 be segregated for administrative reasons due process requires that they comply with the 22 following procedures: (1) they must hold an informal nonadversary hearing within a 23 reasonable time after the prisoner is segregated,<sup>1</sup> (2) the prisoner must be informed of the 24 charges against him or the reasons segregation is being considered, and (3) the prisoner 25 26 1 While a hearing held within 72 hours of segregation constitutes a “reasonable time,” it is 1 must be allowed to present his views.

See *Toussaint v. McCarthy*, 801 F.2d 1080, 1100 2 (9th Cir. 1986).<sup>2</sup> Due process does not require detailed written notice of charges, 3 representation by counsel or counsel-substitute, an opportunity to present witnesses, a 4 written decision describing the reasons for placing the prisoner in administrative 5 segregation or disclosure of the identity of any person providing information leading to 6 placement of a prisoner in administrative segregation.

See *id.* at 1100-01. Accord 7 *Wilkinson v. Austin*, 545 U.S. 209, 228-29 (2005) (determining that prisoners are 8 constitutionally entitled only to the informal, non-adversary procedures set forth in 9 *Greenholtz v. Inmates of Neb. Penal and Correctional Complex*, 442 U.S. 1 (1979), and 10 *Hewitt v. Helms*, 459 U.S. 460 (1983), prior to assignment to “supermax” facility).

As the 11 Court already advised, Plaintiff was not entitled to present witnesses or documentary 12 evidence under *Toussaint*. See Dkt. No. 6 at 5. Plaintiff has otherwise failed to establish 13 that Defendant Borjorquez was not “impartial.” Therefore, his allegations are again 14 insufficient to state a due process claim against Defendant Borjorquez in connection with 15 the ASU retention hearing.

Plaintiff was already afforded one opportunity to amend this 16 claim, and the Court finds no good cause to grant him another opportunity where the 17 deficiencies of this due process claim remain the same as the original. *Wagh*, 363 F.3d at 18 830; *Ferdik*, 963 F.2d at 1261.

Accordingly, this due process claim must be dismissed for 19 failure to state a claim. 20 Lastly, Plaintiff alludes to Defendant Presley “beat[ing]” him in the amended 21 complaint. See *supra* at 3. Plaintiff’s original claim of excessive force against Defendant 22 Presley was dismissed with leave to amend to provide more facts to establish that 23 Defendant “used force ‘maliciously and sadistically to cause harm’” rather than in a good- 24 faith effort to maintain or restore discipline because Plaintiff admitted that he was issued 25 26 2 The official charged with deciding to place an inmate in administrative segregation must 1 an RVR accusing him of being the aggressor.

Dkt. No. 6 at 4. Here, Plaintiff again fails to 2 provide sufficient allegations describing the circumstances of Defendant Presley's conduct 3 to establish an excessive force claim against him. This claim must also be dismissed for 4 failure to state a claim because Plaintiff failed to correct the deficiencies of this claim from 5 the original. Wagh, 363 F.3d at 830; Ferdik, 963 F.2d at 1261.

6 Plaintiff shall be granted leave to amend solely with respect to his Eighth 7 Amendment claim regarding the deprivations he allegedly suffered while in the holding 8 cell. See supra at 5. Plaintiff should keep the following principles in mind in preparing an 9 amended complaint. Liability may be imposed on an individual defendant under § 1983 10 only if Plaintiff can show that the defendant proximately caused the deprivation of a 11 federally protected right.

See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. 12 City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a 13 constitutional right within the meaning of section 1983 if he does an affirmative act, 14 participates in another's affirmative act or omits to perform an act which he is legally 15 required to do, that causes the deprivation of which the plaintiff complains.

See Leer, 844 16 F.2d at 633. 17 18 CONCLUSION 19 For the reasons state above, the Court orders as follows: 20 1. The following claims are DISMISSED with prejudice for failure to state a 21 claim for relief: (1) retaliation claim against all named defendants; (2) due process claim 22 against Defendant Borjorquez; and (3) excessive force claim against Defendant Presley.

23 Plaintiff may not raise these claims in the second amended complaint. 24 2. The Eighth Amendment claim regarding deprivations while in the holding 25 cell is DISMISSED with leave to amend. Within twenty-eight (28) days from the date 26 this order is filed, Plaintiff shall file a second amended complaint using the court's form 1 || 4-5.

The second amended complaint must include the caption and civil case number used 2 || in this order, i.e., Case No. C 24-cv-03905 BLF (PR), and the words "SECOND 3. || AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on 4 || the form in order for the action to proceed. Plaintiff is reminded that the second amended 5 || complaint supersedes the original and first amended complaints, and Plaintiff may not 6 || refer to them in the second amended complaint.

Claims not included in the second 7 || amended complaint are no longer claims and defendants not named therein are no longer 8 || defendants. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir.1992). 9 3. Failure to respond in accordance with this order by filing a second 10 || amended complaint in the time provided will result in the dismissal with prejudice of 11 || this action for failure to state a claim for relief.

3 (12 4. The Clerk shall enclose two copies of the court's form complaint with a copy E 13 of this order. 14 IT IS SO ORDERED. 15 || Dated: \_\_May 27, 2025 foafhacien BETH LABSON



FREEMAN 16 United States District Judge Oo Z 18 19 20 21 22 23 24 25 Order Granting Mot;  
Partial Dism & LTA; Granting IFP 26 PRO-SE\BLF\CR.24\03905Khan\_dwlta2&grant.IFP 27

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