

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Kakowski v. SGT Gonzales

Kakowski · No. 24-cv-1314-AGS-BLM · Decided April 1, 2025

SUMMARY

The United States District Court for the Southern District of California screened Brian Kakowski’s second amended prisoner civil-rights complaint. The court allowed a First Amendment retaliation claim to proceed against Sergeant Gonzales and Officer Torres, dismissed all other claims and Lieutenant Moore without further leave to amend, and directed the U.S. Marshal to effect service. The order was dated April 1, 2025.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Andrew G. Schopler
JURISDICTION	United States District Court for the Southern District of California
DECIDED	April 1, 2025
DOCKET	24-cv-1314-AGS-BLM
DISPOSITION	other
PROCEDURAL POSTURE	Screening of a prisoner’s second amended complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
STANDARD OF REVIEW	The court applied the screening standards under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), using the same failure-to-state-a-claim standard as Federal Rule of Civil Procedure 12(b)(6), and assessed whether the complaint alleged sufficient facts to state a facially plausible claim.
PRECEDENTIAL VALUE	Unreported district court order; precedential status is unknown.
PARTIES	Brian Kakowski v. Correctional Sergeant Gonzales, Officer Torres, Lieutenant Moore

TOPICS

- section 1983
- prisoners rights
- first amendment
- pleadings
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the second amended complaint plausibly stated a First Amendment retaliation claim against Gonzales, Torres, and Moore.
2. Whether Kakowski adequately pleaded a backward-looking access-to-the-courts claim based on an allegedly reduced settlement offer in a prior case.
3. Whether Kakowski adequately pleaded a conspiracy to violate his constitutional rights.
4. Whether Kakowski adequately pleaded a due-process claim based on the disciplinary hearing and finding of guilt.
5. Whether the surviving claims should be served by the United States Marshal.

HOLDINGS

1. The retaliation claim against Sergeant Gonzales and Officer Torres plausibly stated a claim and may proceed beyond screening.
2. The retaliation claim against Lieutenant Moore failed to state a claim because the complaint did not plausibly allege that Moore acted because of Kakowski's protected conduct or that his conduct lacked a legitimate correctional purpose.
3. The backward-looking access-to-the-courts claim failed because Kakowski did not identify a remedy that was unavailable in the underlying litigation or otherwise clarify the injury and remedy sought.
4. The conspiracy claim failed because the complaint alleged no facts showing an agreement or meeting of the minds to violate Kakowski's constitutional rights.
5. The due-process claim based on the Rules Violation Report hearing failed for the same reasons stated in the court's prior dismissal order and was dismissed without leave to amend.
6. Because the retaliation claim survived screening against Gonzales and Torres and Kakowski was proceeding in forma pauperis, the court directed the Clerk and United States Marshal to issue and effect service.

KEY QUOTATIONS

"To prove First Amendment retaliation in the prison context, a plaintiff must show: (1) '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 5)

"A mere allegation of conspiracy without factual specificity is insufficient." (at 7)

FACTUAL BACKGROUND

Kakowski alleged that Sergeant Gonzales ordered a search of his prison cell on January 11, 2023, during which a hypodermic needle was allegedly found under his bunk and he received a Rules Violation Report. He contended

that the search was coordinated with Officer Torres to retaliate against him in connection with a separate civil-rights action and that Gonzales later remarked about his anticipated settlement. Kakowski also alleged that Lieutenant Moore conducted the disciplinary hearing, relied on fabricated evidence, and found him guilty. The court found the retaliation allegations sufficient to proceed against Gonzales and Torres but insufficient as to Moore, and found the other claims inadequately pleaded.

PROCEDURAL HISTORY

The court previously dismissed Kakowski's first amended complaint with leave to amend. The second amended complaint named Gonzales, Torres, and Moore. On screening, the court allowed the First Amendment retaliation claim to proceed against Gonzales and Torres, dismissed the retaliation claim against Moore and the access-to-courts, conspiracy, and due-process claims, dismissed all remaining claims and defendants without further leave to amend, and directed the United States Marshal to serve Gonzales and Torres.

DISPOSITION

other

CASES CITED

- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Pena v. Gardner, 976 F.2d 469, 471 (9th Cir. 1992)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Watison v. Carter, 668 F.3d 1108, 1114-15 (9th Cir. 2012)
- Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989)
- Christopher v. Harbury, 536 U.S. 403, 413-15, 418 (2002)
- Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2002)
- Karim-Panahi v. Los Angeles Police Department, 839 F.2d 621, 626 (9th Cir. 1988)
- Lucas v. Department of Corrections, 66 F.3d 245, 248 (9th Cir. 1995)

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