

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

My Ngo v. Dan Goss

Ngo v. Goss, No. 1:24-cv-01300-SAB (PC) (E.D. Cal. Apr. 25, 2025) · No. 1:24-cv-01300-SAB (PC) · Decided
April 25, 2025

OPINION

(PC) Ngo v. Goss

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 MY NGO, No. 1:24-cv-01300-SAB (PC) 12 Plaintiff, ORDER DIRECTING CLERK OF
COURT TO

RANDOMLY ASSIGN A DISTRICT JUDGE

13 v. TO THIS ACTION

14 DAN GOSS, FINDINGS AND RECOMMENDATION

RECOMMENDING DISMISSAL OF ACTION

15 Defendant. FOR FAILURE TO STATE A COGNIZABLE
CLAIM FOR RELIEF

16 (ECF No. 12) 17 18 19 Plaintiff is proceeding pro se and in forma pauperis in this action filed
pursuant to 42 20 U.S.C. § 1983. 21 Currently before the Court is Plaintiff’s second amended
complaint, filed January 2, 2025. 22 I.

23 SCREENING REQUIREMENT

24 The Court is required to screen complaints brought by prisoners seeking relief against a 25
governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
26 Court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
legally 27 “frivolous or malicious,” that “fail[] to state a claim on which relief may be granted,” or
that 28 1 “seek[] monetary relief against a defendant who is immune from such relief.” 28 U.S.C.
§ 2 1915(e)(2)(B); see also 28 U.S.C. § 1915A(b). 3 A complaint must contain “a short and plain
statement of the claim showing that the 4 pleader is entitled to relief. . . .” Fed. R. Civ. P. 8(a)(2).
Detailed factual allegations are not 5 required, but “[t]hreadbare recitals of the elements of a cause
of action, supported by mere 6 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S.
662, 678 (2009) (citing *Bell 7 Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Moreover,
Plaintiff must demonstrate 8 that each defendant personally participated in the deprivation of
Plaintiff’s rights. *Jones v. 9 Williams*, 297 F.3d 930, 934 (9th Cir. 2002). 10 Prisoners proceeding
pro se in civil rights actions are entitled to have their pleadings 11 liberally construed and to have

any doubt resolved in their favor. *Wilhelm v. Rotman*, 680 F.3d 12 1113, 1121 (9th Cir. 2012) (citations omitted). To survive screening, Plaintiff's claims must be 13 facially plausible, which requires sufficient factual detail to allow the Court to reasonably infer 14 that each named defendant is liable for the misconduct alleged. *Iqbal*, 556 U.S. at 678-79; *Moss 15 v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). The "sheer possibility that a defendant 16 has acted unlawfully" is not sufficient, and "facts that are 'merely consistent with' a defendant's 17 liability" falls short of satisfying the plausibility standard. *Iqbal*, 556 U.S. at 678; *Moss*, 572 F.3d 18 at 969. 19 II.

20 COMPLAINT ALLEGATIONS

21 The Court accepts Plaintiff's allegations in the complaint as true only for the purpose of 22 the screening requirement under 28 U.S.C. § 1915. 23 On February 22, 2024, Plaintiff was wrongly and unlawfully detained without probable 24 cause regarding an erroneous and false complaint of plants appears on the appearing on 4B yard 25 and smuggling plants for sale. Defendants maliciously and corruptly provided the arrest without 26 probable cause or other justification as determined by a preponderance of the evidence. 27 Defendants Dan Goss and B. Butler who applied the arrest deliberately or recklessly made false 28 statements or omissions in the prosecution of the proceedings. 1 On April 23, 2024, Plaintiff was wrongfully detained without probable cause for any 2 offense. Plaintiff was reporting to his job assignment when officer Flores, without probable 3 cause, unreasonably searched Plaintiff's private parts. Plaintiff was subjected to a half nude 4 search on the recreation yard, degrading Plaintiff during recreation time in front of staff and 5 inmates (work change is the proper location where all inmates are stripped search through metal 6 detector to be processed for work each day). The search was negative for any contraband. 7 Approximately five minutes later, officers Flores, Y. Lopez, and Renteria returned. 8 Officer Y. Lopez unlawfully placed restraints on Plaintiff and declared it was a "random arrest." 9 Officers Y. Lopez and Renteria did not have cause to arrest Plaintiff. After Plaintiff was 10 transferred to a holding cell, officer Cooper forced Plaintiff to strip fully nude "spread his private 11 parts, bend over and spread his anal." The search was negative for contraband. 12 After two hours in a small dirty holding cell, sergeant Razo and officer Diaz unlawfully 13 detained Plaintiff and placed him into another dirty holding cell. Both Razo and Diaz at the time 14 of arrest had unreasonable cause to believe the arrest was lawful. Both Razo and Diaz, without 15 probable cause or justification, forced Plaintiff to pull out his penis and urinate for them. 16 Lieutenant Dan Goss participated in directing the above violations against Plaintiff. 17 The Office of Appeals granted Plaintiff's complaints finding that all policies were not 18 being followed. 19 III.

20 DISCUSSION

21 A. Fourth Amendment 22 The Ninth Circuit has held that prisoners retain rights to bodily privacy under the Fourth 23 Amendment. *Bull v. City & County of San Francisco*, 595 F.3d 964, 974-75 (9th Cir. 2010). 24 "Whether a search is reasonable under the Fourth Amendment requires

a case-by-case 25 balancing of the need for the particular search against the invasion of personal rights that the 26 search entails ... The required factors for courts to consider include: (1) the scope of the particular 27 intrusion, (2) the manner in which it is conducted, (3) the justification for initiating it, and (4) the 28 place in which it is conducted.” *Byrd v. Maricopa County Sheriff’s Dept.*, 629 F.3d 1135, 1141 1 (9th Cir. 2011) (citation omitted). 2 The United States Supreme Court and the Ninth Circuit have held that routine visual strip 3 searches do not unreasonably infringe on prisoners’ constitutional rights. *Florence v. Board. of 4 Chosen Freeholders*, 566 U.S. 318, 328 (2012) (upheld, under the Fourth Amendment, a blanket 5 strip search and visual body cavity search for detainees entering detention facilities to detect and 6 deter contraband); *Bell v. Wolfish*, 441 U.S. 520, 558-60 (1979) (found visual body cavity 7 searches conducted after contact visits used to prevent prisoners’ possession of weapons and 8 contraband, even absent probable cause, reasonable under the Fourth Amendment); *Michenfelder 9 v. Sumner*, 860 F.2d 328, 333-34 (9th Cir. 1988) (held that routine visual body cavity searches 10 conducted in hallways did not violate the Fourth Amendment after situations where inmates had 11 been presented with the opportunity to obtain contraband or a weapon); *Rickman v. Avani*, 854 12 F.2d 327 (9th Cir. 1988) (upheld prison policy requiring visual strip and body cavity searches 13 every time administrative segregation prisoners left their cells). 14 Here, Plaintiff claims that he was unlawfully “detained” “arrested” and subjected to an 15 “unreasonable search” on April 23, 2024. The mere claim that Plaintiff was subjected to a half- 16 nude search on the recreation yard in front of staff and inmates does not render the search 17 unreasonable. The presence of other male inmates and staff during the visual strip-search does 18 not alter the fact that courts find such visual strip-searches are reasonable and reasonably related 19 to legitimate penological security interests. *Michenfelder*, 860 F.2d at 333-34; see also *Thompson 20 v. Souza*, 111 F.3d 694, 701 (9th Cir. 1997) (rejecting claim that strip searches must be conducted 21 out of view of other prisoners and reaffirming that court would not question prison officials’ 22 judgment that conditions might require searches outside cells in order to protect the safety of the 23 officers conducting them). Although the manner in which a bodily search is conducted may 24 become so unreasonable that it can violate the Fourth Amendment, Plaintiff’s allegations do not 25 plausibly suggest that the search on April 23, 2024, was “excessive, vindictive, harassing, or 26 unrelated to any legitimate penological purpose.” *Michenfelder*, 860 F.2d at 332-33; see also 27 *Hudson v. Palmer*, 468 U.S. 517, 528 (1984) (“The uncertainty that attends random searches of 28 cells renders these searches perhaps the most effective weapon of the prison administrator in the 1 constant fight against the proliferation of knives and guns, illicit drugs, and other contraband.”); 2 *cf.* *Cates v. Stroud*, 976 F.3d 972, 979–80 (9th Cir. 2020) (upholding routine suspicion-less pat- 3 down searches and metal detector screenings as prerequisite for visitation privileges on Fourth 4 Amendment grounds given “weighty institutional safety concerns” and because “[s]uch searches 5 are ‘relatively inoffensive’ and ‘less intrusive than alternative methods.’ ”) (citing *McMorris v. 6 Alioto*, 567 F.2d 897, 900- 01 (9th Cir. 1978)). Indeed, the Ninth Circuit upheld such visual 7

strip-searches performed every time an inmate left or returned to his cell, and Plaintiff 8 acknowledges that he was out of his cell reporting to his job assignment. *Michenfelder*, 860 F.2d 9 at 333. Accordingly, the Court finds that Plaintiff fails to state a cognizable claim for relief. 10 B. False Arrest 11 Although Plaintiff repeatedly asserts that he was subjected to false arrest, his real 12 challenge is to an alleged false complaint of smuggling plants for sale within the facility. 13 However, Plaintiff cannot base a claim for relief under section 1983 on the allegation that he was 14 erroneously and falsely accused of a disciplinary violation. Although wrong, such conduct is not 15 unconstitutional and therefore cannot support a cognizable claim. See *Hines v. Gomez*, 108 F.3d 16 265, 268 (9th Cir. 1997) (“[T]here are no procedural safeguards protecting a prisoner from false 17 retaliatory accusations.”); accord, *Sprouse v. Babcock*, 870 F.2d 450, 452 (8th Cir. 1989); 18 *Freeman v. Rideout*, 808 F.2d 949, 951 (2nd Cir. 1986). 19 C. Violation of Prison Policy 20 To the extent Plaintiff is attempting to bring a federal claim based on the alleged violation 21 of prison policy, he may not do so because violations of prison rules and policies do not give rise 22 to a cause of action under § 1983. Section 1983 provides a cause of action for the deprivation of 23 federally protected rights. “To the extent that the violation of a state law amounts to the 24 deprivation of a state-created interest that reaches beyond that guaranteed by the federal 25 Constitution, [s]ection 1983 offers no redress.” *Sweaney v. Ada Cty., Idaho*, 119 F.3d 1385, 1391 26 (9th Cir. 1997) (quoting *Lovell v. Poway Unified Sch. Dist.*, 90 F.3d 367, 370 (9th Cir. 1996)); 27 see also *Davis v. Kissinger*, No. CIV S–04–0878-GEB-DAD-P, 2009 WL 256574, *12 n. 4 (E.D. 28 Cal. Feb. 3, 2009). Nor is there any liability under § 1983 for violating prison policy. *Cousins v. 1 Lockyer*, 568 F.3d 1063, 1070 (9th Cir. 2009). Thus, the violation of any prison regulation, rule 2 or policy does not amount to a cognizable claim under federal law, nor does it amount to any 3 independent cause of action under section 1983. 4 D. Further Leave to Amend 5 If the Court finds that a complaint or claim should be dismissed for failure to state a claim, 6 the Court has discretion to dismiss with or without leave to amend. Leave to amend should be 7 granted if it appears possible that the defects in the complaint could be corrected, especially if a 8 plaintiff is pro se. *Lopez v. Smith*, 203 F.3d 1122, 1130-31 (9th Cir. 2000) (en banc); *Cato v. 9 United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (“A pro se litigant must be given leave to 10 amend his or her complaint, and some notice of its deficiencies, unless it is absolutely clear that 11 the deficiencies of the complaint could not be cured by amendment.” (citation omitted). 12 However, if, after careful consideration, it is clear that a claim cannot be cured by amendment, 13 the Court may dismiss without leave to amend. *Cato*, 70 F.3d at 1105-06. 14 In light of Plaintiff’s failure to provide additional information about his claims despite 15 specific instructions from the Court, further leave to amend would be futile and the second 16 amended complaint should be dismissed without leave to amend. *Hartmann v. CDCR*, 707 F.3d 17 1114, 1130 (9th Cir. 2013) (“A district court may deny leave to amend when amendment would 18 be futile.”). Here, Plaintiff’s allegations fail to give rise to a constitutional violation, and Plaintiff 19 has previously been given leave to amend on two separate occasions. Accordingly, further leave 20 to amend the

complaint should be denied. 21 IV.

22 ORDER AND RECOMMENDATION

23 Based on the foregoing, it is HEREBY ORDERED that the Clerk of Court shall randomly 24
assign a District Judge to this action. 25 Further, it is HEREBY RECOMMENDED that the
instant action be dismissed, without 26 further leave to amend, for failure to state a cognizable
claim for relief. 27 This Findings and Recommendation will be submitted to the United States
District Judge 28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
fourteen (14) 1 | days after being served with this Findings and Recommendation, Plaintiff may
file written 2 | objections with the Court, limited to 15 pages in length, including exhibits. The
document should 3 | be captioned “Objections to Magistrate Judge’s Findings and
Recommendation.” Plaintiff is 4 | advised that failure to file objections within the specified time
may result in the waiver of rights on 5 | appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th
Cir. 2014) (citing *Baxter v. Sullivan*, 6 | 923 F.2d 1391, 1394 (9th Cir. 1991)). 7 g IT IS SO
ORDERED. 2 ee 9 | Dated: _ April 25, 2025 OF

STANLEY A. BOONE

10 United States Magistrate Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28