

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Jevarien Zymell Dunlap v. Ross Stores

Dunlap · No. 25-cv-08214-LJC · Decided January 27, 2026

SUMMARY

The United States District Court for the Northern District of California ordered Plaintiff Jevarien Zymell Dunlap to show cause why the action against Ross Stores should not be dismissed. The court concluded that the complaint did not state a claim under 42 U.S.C. § 1983 or 18 U.S.C. § 242, lacked sufficient allegations supporting racial profiling or intentional infliction of emotional distress, and did not establish subject-matter jurisdiction. The court granted four weeks to file an amended complaint or a response and continued the case management conference.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Lisa J. Cisneros
JURISDICTION	United States District Court for the Northern District of California
DECIDED	January 27, 2026
DOCKET	25-cv-08214-LJC
DISPOSITION	other
PROCEDURAL POSTURE	The court, after granting Plaintiff's application to proceed in forma pauperis, conducted statutory screening of the complaint and issued an order to show cause why the case should not be dismissed.
STANDARD OF REVIEW	On in forma pauperis screening, the court must dismiss an action that is frivolous, malicious, or fails to state a claim. The court applied the Rule 12(b)(6) plausibility standard, liberally construed the pro se pleading, and independently considered subject matter jurisdiction.
PRECEDENTIAL VALUE	unpublished
PARTIES	Jevarien Zymell Dunlap v. Ross Stores

TOPICS

- motions to dismiss
- subject matter jurisdiction
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

constitutional law

federal jurisdiction

QUESTIONS PRESENTED

1. Whether the complaint stated a claim under 42 U.S.C. § 1983 against Ross Stores or its employees.
2. Whether 18 U.S.C. § 242 provides a private civil cause of action.
3. Whether the complaint alleged sufficient facts to support a potential intentional-infliction-of-emotional-distress claim and establish federal subject matter jurisdiction.
4. Whether the complaint plausibly alleged racial profiling or another federal claim.

HOLDINGS

1. The complaint failed to state a § 1983 claim because it did not allege that Ross Stores or its employees were government actors or acted under color of state law.
2. The complaint failed to state a civil claim under 18 U.S.C. § 242 because § 242 is a criminal statute and does not provide a private right of action.
3. The complaint did not establish a basis for federal jurisdiction over a potential intentional-infliction-of-emotional-distress claim and did not allege facts sufficient to support the claim.
4. The complaint did not plausibly allege racial profiling or identify another federal law supporting a claim based on the alleged facts.

KEY QUOTATIONS

“When a complaint fails to state a claim on which relief may be granted, a court may also dismiss the case sua sponte (meaning on the court’s own initiative) under Rule 12(b)(6) of the Federal Rules of Civil Procedure, regardless of whether a plaintiff is proceeding in forma pauperis.” (at 2)

“That statute’s requirement that the defendant act “under color of” state law usually only allows for a claim against a government entity or employee.” (at 4)

“Private citizens generally cannot bring civil claims to enforce criminal laws, and § 242 is no exception to that general rule.” (at 5)

FACTUAL BACKGROUND

Dunlap alleged that, while shopping at a Ross Stores location in Daly City, California, an officer watched Dunlap and a Ross Stores manager picked up items Dunlap intended to purchase and gave them to the officer. Dunlap characterized the conduct as intimidation and humiliation, asserted racial profiling, and sought \$530,000 in emotional-distress damages. The complaint did not allege that Ross Stores or its employees were government actors or acted under color of state law, and it did not provide factual allegations showing disparate treatment based on race.

PROCEDURAL HISTORY

Dunlap filed a pro se complaint against Ross Stores asserting claims under 42 U.S.C. § 1983 and 18 U.S.C. § 242. The court granted in forma pauperis status and reviewed the complaint under 28 U.S.C. § 1915(e)(2)(B). Rather than dismissing immediately, the court ordered Dunlap to file an amended complaint or explain why the existing complaint was sufficient, and continued the case management conference.

DISPOSITION

other

CASES CITED

- Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)
- Denton v. Hernandez, 504 U.S. 25, 32-33 (1992)
- Arbaugh v. Y&H Corp., 546 U.S. 500, 514 (2006)
- Franklin v. Murphy, 745 F.2d 1221, 1235 n.9 (9th Cir. 1984)
- Lee v. Katz, 276 F.3d 550, 554 (9th Cir. 2002)
- Solomon v. Las Vegas Metro. Police Dep't, 441 F. Supp. 3d 1090, 1097-99 (D. Nev. 2020)
- Rockefeller v. U.S. Ct. of Appeals Off. for Tenth Cir. Judges, 248 F. Supp. 2d 17, 23 (D.D.C. 2003)
- United States v. Price, 383 U.S. 787, 794 n.7 (1966)
- McIntosh v. Thomaz, No. 19-cv-00800-JCS, 2019 WL 3363792, at *2 (N.D. Cal. May 14, 2019), report and recommendation adopted, 2019 WL 3804671 (N.D. Cal. Aug. 13, 2019)
- Sandoval v. Pali Inst., Inc., 113 Cal. App. 5th 616, 629 (2025)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992)