

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Edgar Plascencia v. Samuel Ko, Doctor; Chirag Bhavsar, Doctor;
Kyle Seeley, RN; Christina Betacourt, LVN

Plascencia · No. 3:23-cv-895-RSH-SBC · Decided December 17, 2025

SUMMARY

The United States District Court for the Southern District of California denied Edgar Plascencia’s motion seeking equitable tolling or relief from the dismissal of his civil rights action. The court held that any motion construed under Federal Rule of Civil Procedure 60 was untimely and declined to issue an advisory opinion on whether a future action would be barred by the statute of limitations.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Robert S. Huie
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 17, 2025
DOCKET	3:23-cv-895-RSH-SBC
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for equitable tolling of the statute of limitations to refile a 42 U.S.C. § 1983 claim, or alternatively for relief from the prior dismissal under Federal Rule of Civil Procedure 60. The district court denied the motion.
STANDARD OF REVIEW	The court applied the timeliness requirements of Federal Rule of Civil Procedure 60(c)(1) and declined to issue an advisory opinion concerning a possible future lawsuit.
PRECEDENTIAL VALUE	Unknown; district court order with no reported citation
PARTIES	Edgar Plascencia v. Samuel Ko, Doctor, Chirag Bhavsar, Doctor, Kyle Seeley, RN, Christina Betacourt, LVN

TOPICS

- motion for reconsideration
- statute of limitations
- prisoners rights
- section 1983
- civil procedure

PRACTICE AREAS

civil procedure

prisoner civil rights

statute of limitations

constitutional law

QUESTIONS PRESENTED

1. Whether plaintiff's motion could be granted as relief from judgment under Federal Rule of Civil Procedure 60.
2. Whether the court could determine in advance whether a future § 1983 action would be barred by the statute of limitations.

HOLDINGS

1. To the extent the motion sought relief from judgment under Rule 60, it was untimely because plaintiff filed it nearly two years after the voluntary dismissal, beyond the one-year period applicable to motions based on mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence.
2. The court could not determine whether a future lawsuit would be time-barred because doing so would constitute an impermissible advisory opinion.

KEY QUOTATIONS

“At this stage, any ruling from a federal district court would be an advisory opinion, something federal courts cannot give.” (at 2)

FACTUAL BACKGROUND

Plaintiff alleged that medical officials at Centinela State Prison violated his Eighth and Fourteenth Amendment rights by failing to provide adequate postoperative care and failing to assign him to a lower bunk after left-knee arthroscopic surgery. The court dismissed his complaint for failure to state a plausible claim but allowed him to amend. Plaintiff voluntarily dismissed the action to avoid the filing fee and later sought equitable tolling based partly on medical issues and a June 2025 consultation with specialists.

PROCEDURAL HISTORY

Plaintiff filed a pro se § 1983 complaint alleging inadequate postoperative medical care and failure to assign him to a lower bunk. The court dismissed the complaint for failure to state a plausible claim but granted leave to amend. Plaintiff did not file an amended pleading and instead voluntarily dismissed the action; the court entered a dismissal without prejudice on October 26, 2023. Nearly two years later, plaintiff moved for equitable tolling and relief from judgment, which the court denied.

DISPOSITION

other

CASES CITED

- Partington v. Gedan, 961 F.2d 852, 862 (9th Cir. 1992)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 EDGAR PLASCENCIA, Case No.: 3:23-cv-895-RSH-SBC CDCR #BG-
9161, 12 ORDER DENYING PLAINTIFF'S 13 MOTION FOR RELIEF FROM Plaintiff,
JUDGMENT 14 v. 15 [ECF No. 12] 16 SAMUEL KO, Doctor; CHIRAG BHAVSAR, Doctor;
KYLE SEELEY, RN; 17 CHRISTINA BETACOURT, LVN, 18 Defendants. 19 20 21 On May 15,
2023, plaintiff Edgar Plascencia, proceeding pro se, filed a civil rights 22 Complaint pursuant to
42 U.S.C. § 1983 (ECF No. 1), together with a motion to proceed 23 in forma pauperis ("IFP")
(ECF No. 2).

Plaintiff alleged that medical officials at Centinela 24 State Prison violated his Eighth and
Fourteenth Amendment rights by failing to provide 25 adequate post-operative care or assign him
to a lower bunk after doctors at Alvarado 26 Hospital performed arthroscopic surgery on his left
knee on May 23, 2022. ECF No. 1 at 27 9–11. 28 /// 1 On August 7, 2023, the Court granted
Plaintiff's motion for leave to proceed IFP, 2 and assessed an initial partial filing fee to be
collected only if sufficient funds existed in 3 Plaintiff's inmate account.

ECF No. 5 at 3. In the same order, the Court dismissed the 4 Complaint for failure to state a
plausible claim for relief. *Id.* at 6–13. The Court granted 5 Plaintiff leave to file an amended
pleading within 45 days of the order. *Id.* at 14. Thereafter, 6 at Plaintiff's request, the Court
granted Plaintiff a further extension until October 18, 2023 7 to file an amended pleading.

ECF Nos. 6; 7. 8 On October 19, 2023, Plaintiff filed a notice of voluntary dismissal. ECF No. 8. 9
Plaintiff stated that he was seeking dismissal to avoid the filing fee, and also stated that he 10
lacked the skills and resources to pursue his claim. *Id.* at 1–2.

On October 26, 2023, the 11 Court entered an order of dismissal without prejudice. ECF No. 9. 12
On September 29, 2025, Plaintiff filed a "motion for equitable tolling [of] the statute 13 of
limitations to re-file Plaintiff's claim under 42 U.S.C. § 1983." ECF No. 12. Plaintiff's 14 motion
states that he did not timely file an amended pleading "due to medical issues and 15 the impact of
the disadvantages of incarceration." *Id.* at 1.

The motion also refers to a 16 consultation that Plaintiff had with two specialists on June 12, 2025.
Id. at 1–2. 17 To the extent Plaintiff's motion is construed as a motion seeking relief from 18
judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure, such a motion is not 19
timely. See Fed. R. Civ. P. 60(c)(1) (providing that a motion under Rule 60(b) "must be 20 made
within a reasonable time," and must be made within one year of entry of judgment 21 where the
motion is based on "mistake, inadvertence, surprise, or excusable neglect" or 22 "newly
discovered evidence").

Plaintiff brings the motion almost two years after he voluntarily dismissed his case. To the extent Plaintiff is seeking a ruling on whether, in the event Plaintiff files a new lawsuit, such a lawsuit would be time-barred, the Court, respectfully, cannot provide an advisory opinion in that regard. See *Partington v. Gedan*, 961 F.2d 852, 862 (9th Cir.

1992) (“At this stage, any ruling from a federal district court would be an advisory opinion, something federal courts cannot give.”). For the foregoing reasons, Plaintiff’s motion [ECF No. 12] is DENIED. IT IS SO ORDERED. || Dated: December 17, 2025 ☐ 4 fektut ¢ Howe 5 Hon. Robert S. Huie United States District Judge 6 7 8 9 10 1] 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28