

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

Jeffrey Barbosa v. Nkiruka Ndu, et al.

No. 1:21-cv-00251-KES-SAB (PC), United States District Court for the Eastern District of California (August
25, 2025)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 11 JEFFREY BARBOSA, No. 1:21-cv-00251-KES-SAB (PC) 12 Plaintiff, ORDER
ADOPTING FINDINGS AND RECOMMENDATIONS AND GRANTING 13 v.
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT 14 NKIRUKA NDU, et al., Docs. 26,
30 15 Defendants. 16 17 Plaintiff Jeffrey Barbosa is a state prisoner proceeding pro se and in
forma pauperis in 18 this civil rights action filed pursuant to 42 U.S.C. § 1983.

The matter was referred to a United 19 States magistrate judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 20 On October 14, 2022, the assigned magistrate judge issued findings
and 21 recommendations recommending that defendants' motion for summary judgment be
granted. 22 Doc. 30. Specifically, the magistrate judge found that there was no genuine dispute of
material 23 fact as to the finding that (1) defendants acted promptly in seeking authorization for
care for 24 plaintiff's eye condition and (2) any delay in the scheduling of plaintiff's surgery was
due to the 25 Covid-19 pandemic, rather than any deliberate indifference by defendants.

See generally id. 26 The findings and recommendations were served on the parties and contained
notice that any 27 objections thereto were to be filed within twenty-one (21) days of service. Id. at
13. Plaintiff 1 filed objections on November 3, 2022, and Defendants filed a reply on November 4,
2022. 2 Docs. 31, 32. 3 In his objections, plaintiff argues there are at least two material disputes
concerning 4 defendants' care.

Doc. 31. Plaintiff argues defendants failed to provide him a "Vision Impaired 5 Vest" and failed to
transfer his bunk assignment to the bottom bunk. Id. at 5. Plaintiff also 6 argues that defendants
failed to "request referral properly by not deeming [his] condition 7 serious," and he provides a
declaration by another inmate stating that that inmate was able to 8 have cataract surgery in
February 2020 despite the Covid-19 pandemic.

Id. at 5, 21–22. The 9 assertions and attached declarations were not included in plaintiff's
complaint nor his 10 opposition to defendants' motion for summary judgment. 11 Even if the
Court were to consider plaintiff's assertions and evidence raised for the first 12 time in his
objections, they are unpersuasive. Plaintiff does not provide any evidence that 13 defendants'

alleged failure to transfer his bunk assignment and provide him a “Vision Impaired 14 Vest” resulted in any harm.

See *Wood v. Houseright*, 900 F.2d 1332, 1335 (9th Cir. 1990) 15 (holding that a delay in treatment must cause substantial harm to constitute an Eighth 16 Amendment violation). And evidence regarding medical practices in February 2020 is 17 irrelevant as CDCR did not implement Covid-19 policies until at the earliest, March 4, 2020, 18 when Covid-19 was declared an emergency.

Doc. 32 at 6. Moreover, as the magistrate judge 19 found, the undisputed evidence shows that any treatment delays were not caused by defendants 20 and were, instead, due to Covid-19 conditions affecting the outside medical care providers. 21 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court conducted a de 22 novo review of this case.

Having carefully reviewed the file, including plaintiff’s objections 23 and defendant’s reply, the Court concludes that the findings and recommendations are 24 supported by the record and proper analysis. 25 /// 26 /// 27 /// /// 1 Accordingly, 2 1.

The findings and recommendations issued on October 14, 2022, Doc. 30, are 3 ADOPTED in full; 4 2. Defendants’ motion for summary judgment, Doc. 26, is GRANTED; and 5 3. The Clerk of Court shall enter judgment in favor of defendants and CLOSE this 6 case. 4 8 g [T IS SO ORDERED. _ 10 Dated: _ August 24, 2025 4h UNITED STATES DISTRICT JUDGE 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28