

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

John Anthony Cole v. F. Ortega, et al.

No. CV-26-00973-PHX-JAT (ASB) (D. Ariz. Apr. 14, 2026) · No. No. CV-26-00973-PHX-JAT (ASB) · Decided April 14, 2026

SUMMARY

This is an order from the United States District Court for the District of Arizona addressing a prisoner’s pro se civil rights action under 42 U.S.C. § 1983. The court grants the application to proceed in forma pauperis, denies several motions without prejudice, allows certain excessive-force and failure-to-intervene claims to proceed, and dismisses other claims and defendants without prejudice. The order also permits limited discovery to identify unnamed defendants.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	James A. Teilborg
JURISDICTION	United States District Court for the District of Arizona
DECIDED	April 14, 2026
DOCKET	No. CV-26-00973-PHX-JAT (ASB)
DISPOSITION	other
PROCEDURAL POSTURE	Initial screening of a pro se prisoner civil-rights complaint under 28 U.S.C. § 1915A, together with rulings on an application to proceed in forma pauperis and motions for injunctive relief, a protective order, preservation of evidence, and limited early discovery.
STANDARD OF REVIEW	The court screened the complaint under 28 U.S.C. § 1915A and evaluated whether the allegations, liberally construed, stated plausible claims under Federal Rule of Civil Procedure 8 and governing constitutional standards. Motions for temporary restraining orders and preliminary injunctions were evaluated under Federal Rule of Civil Procedure 65 and Winter v. Natural Resources Defense Council, Inc.
PRECEDENTIAL VALUE	Nonprecedential district-court screening order
PARTIES	John Anthony Cole v. F. Ortega, Simmons, Chris Sanchez, Meyers, Rheem, Bachman, McCormick, Diaz, Benmen, Fulks, Levine, NaphCare, Ryan Thornell, Rogers, John Does 1-10

TOPICS

section 1983 prisoners rights civil procedure injunctions equal protection

PRACTICE AREAS

Civil rights Prisoner litigation Federal civil procedure Constitutional torts Injunctive relief

QUESTIONS PRESENTED

1. Whether the complaint stated plausible claims under § 1983 and survived statutory prisoner-complaint screening under § 1915A.
2. Whether the allegations stated claims for excessive force, failure to intervene, deliberate indifference to serious medical needs, First Amendment retaliation, or equal protection.
3. Whether the complaint adequately pleaded municipal or private-entity liability, official-capacity liability, supervisory liability, or civil conspiracy.
4. Whether the alleged wedgie and related conduct stated an Eighth Amendment sexual-assault claim.
5. Whether the state-law and criminal allegations in Count Eleven stated a viable claim.
6. Whether plaintiff was entitled to a temporary restraining order, preliminary injunction, preservation order, or early discovery.

HOLDINGS

1. Liberally construed, the complaint stated excessive-force claims arising from the February 22 incident against Simmons, Ortega, Sanchez, Meyers, Rheem, Bachman, McCormick, and John Does 1-6, and from the February 28 incident against Diaz, Simmons, Ortega, Meyers, Sanchez, Rheem, McCormick, and John Does 1-5.
2. Plaintiff stated a failure-to-intervene claim against Levine based on the allegation that Levine witnessed the February 28 assault and failed to intervene.
3. The allegation that Diaz gave plaintiff a wedgie, even in the alleged circumstances, did not state an Eighth Amendment sexual-assault claim, and Count Three was dismissed without prejudice.
4. Plaintiff stated deliberate-indifference claims against Benmen and Fulks in Counts Four and Eight, but did not state medical-care claims against the correctional officers who allegedly assaulted him.
5. Plaintiff stated a retaliation claim against Simmons in Count Five and against Simmons and Ortega in Count Nine; the retaliation allegations against the remaining defendants were dismissed at screening.
6. Plaintiff stated an equal-protection claim against Simmons, Ortega, Bachman, and Diaz based on alleged racial slurs and racial animus; the claim against the remaining defendants was dismissed.
7. The court dismissed NaphCare and Thornell without prejudice, dismissed Rogers without prejudice, and construed the remaining claims as individual-capacity claims because the complaint did not plausibly allege a policy, custom, or personal participation sufficient for entity, official-capacity, or supervisory liability.

8. Count Seven failed to state a § 1983 civil-conspiracy claim and was dismissed without prejudice.
9. Count Eleven was dismissed without prejudice because plaintiff could not initiate criminal charges and because the combined state-law allegations were vague, conclusory, and improperly joined in a single count.
10. The motions for injunctive relief, a temporary restraining order, preservation of evidence, and limited early discovery were denied without prejudice.

KEY QUOTATIONS

“whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” (Discussion § IV.D)

“A viable claim of First Amendment retaliation contains five basic elements: (1) an assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct” (Discussion § IV.H)

“that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” (Discussion § V.B.2)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that correctional officers assaulted him during separate incidents on February 22 and February 28, 2025, while he was restrained. He alleged excessive force, failure to intervene, denial of medical care, retaliation for grievances and PREA reports, racial animus, conspiracy, and related state-law claims. He also sought emergency and preliminary injunctive relief based on alleged later harassment, food deprivation, threats, and retaliation at the prison.

PROCEDURAL HISTORY

Plaintiff filed a 12-count complaint under 42 U.S.C. § 1983 while confined in the Arizona State Prison Complex-Eyman. The court granted in forma pauperis status, dismissed specified claims and defendants without prejudice, allowed other claims to proceed, ordered identified defendants to answer, authorized limited time to identify John Doe defendants, and denied the motions without prejudice.

DISPOSITION

other

CASES CITED

- Thornton v. City of St. Helens, 425 F.3d 1158, 1163-64 (9th Cir. 2005)
- Shoshone-Bannock Tribes v. Idaho Fish & Game Commission, 42 F.3d 1278, 1284 (9th Cir. 1994)
- Rizzo v. Goode, 423 U.S. 362, 371-72, 377 (1976)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138-39 (9th Cir. 2012)

- Buckner v. Toro, 116 F.3d 450, 452 (11th Cir. 1997) (per curiam)
- Kentucky v. Graham, 473 U.S. 159, 165-66 (1985)
- Monell v. Department of Social Services, 436 U.S. 658, 694 (1978)
- Barren v. Harrington, 152 F.3d 1193, 1194 (9th Cir. 1998)
- Hamilton v. Endell, 981 F.2d 1062, 1067 (9th Cir. 1992)
- Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989)
- Ashcroft v. Iqbal, 556 U.S. 662, 676, 678-81 (2009)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam)
- Hudson v. McMillian, 503 U.S. 1, 7, 9 (1992)
- Johnson v. Glick, 481 F.2d 1028, 1033 (2d Cir. 1973)
- Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999)
- Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980)
- Cunningham v. Gates, 229 F.3d 1271, 1289 (9th Cir. 2000)
- Lolli v. County of Orange, 351 F.3d 410, 418 (9th Cir. 2003)
- Perez v. City of Fresno, 591 F. Supp. 3d 725, 752 n.21 (E.D. Cal. 2022)
- Schwenk v. Hartford, 204 F.3d 1187, 1197 (9th Cir. 2000)
- Austin v. Terhune, 367 F.3d 1167, 1171 (9th Cir. 2004)
- Wood v. Beauclair, 692 F.3d 1041, 1050 (9th Cir. 2012)
- Hill v. Rowley, 658 F. App'x 840, 841 (9th Cir. 2016)
- Watison v. Carter, 668 F.3d 1108, 1112-14 (9th Cir. 2012)
- Morman v. Dyer, No. 16-cv-01523-SI, 2016 WL 5358592, at *3 (N.D. Cal. Sept. 26, 2016)
- Walker v. Beshara, No. 1:20-cv-01050-JLT-HBK (PC), 2023 WL 8654745, at *6 (E.D. Cal. Apr. 4, 2023)
- Cooper v. Woodford, No. 1:07-cv-00214-AWI-GSA PC, 2008 WL 1734557, at *3 (E.D. Cal. Apr. 11, 2008)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Clement v. California Department of Corrections, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002)
- Broughton v. Cutter Laboratories, 622 F.2d 458, 460 (9th Cir. 1980)
- Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989)
- Shapley v. Nevada Board of State Prison Commissioners, 766 F.2d 404, 407 (9th Cir. 1985)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Hines v. Gomez, 108 F.3d 265, 267 (9th Cir. 1997)
- Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989)
- Thornton v. City of St. Helens, 425 F.3d 1158, 1166-67 (9th Cir. 2005)
- Gilbrook v. City of Westminster, 177 F.3d 839, 856-57 (9th Cir. 1999)
- Margolis v. Ryan, 140 F.3d 850, 853 (9th Cir. 1998)
- Delew v. Wagner, 143 F.3d 1219, 1223 (9th Cir. 1998)

- *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.), amended on other grounds, 275 F.3d 1187 (9th Cir. 2001)
- *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (10th Cir. 1989)
- *Karim-Panahi v. Los Angeles Police Department*, 839 F.2d 621, 626 (9th Cir. 1988)
- *Miss Universe, Inc. v. Flesher*, 605 F.2d 1130, 1132-33 (9th Cir. 1979)
- *Environmental Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal. 2000)
- *Boardman v. Pacific Seafood Group*, 822 F.3d 1011, 1022 (9th Cir. 2016)
- *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44-45 (1991)
- *Ewing v. Freedom Forever, LLC*, No. 23-CV-1240 JLS (AHG), 2024 WL 4668144, at *3 (S.D. Cal. Nov. 4, 2024)
- *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992)