

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

Braggs v. San Diego Sheriff's Department

No. 3:24-cv-01772-RBM-VET (S.D. Cal. May 9, 2025) · No. 3:24-cv-01772-RBM-VET · Decided May 9, 2025

OPINION

1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 SOUTHERN DISTRICT OF CALIFORNIA
8 9 MICHAEL THOMAS LEKEITH Case No.: 3:24-cv-01772-RBM-VET BRAGGS,
BOOKING #24723149, 10 ORDER: 11 Plaintiff, (1) DENYING MOTION TO 12 vs. PROCEED
IN FORMA PAUPERIS 13 AS MOOT [Doc. 5] SAN DIEGO SHERIFF'S 14 DEPARTMENT
and SAN DIEGO (2) DISMISSING FIRST AMENDED DEPUTY SERGEANT Q. BROCK, 15
COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO 28 16 Defendants.

U.S.C. §§ 1915(e)(2)(B) AND 1915A(b) 17 18 19 On October 3, 2024, Plaintiff Michael Thomas
Le'Keith Braggs ("Plaintiff"), an 20 inmate at the George Bailey Detention Facility in Santee,
California, proceeding pro se, 21 filed a Complaint under 42 U.S.C. § 1983 ("Complaint"),
claiming he was subjected to the 22 use excessive of force while being booked into the San Diego
Central Jail.

(Doc. 1.) He 23 also filed a Motion to Proceed in Forma Pauperis ("IFP"). (Doc. 2.) On October
28, 2024, 24 the Court granted Plaintiff leave to proceed IFP and dismissed the Complaint without
25 prejudice for failure to state a claim ("Dismissal Order"). (Doc. 3.) 26 On November 29, 2024,
Plaintiff filed an Amended Complaint ("FAC") against 27 Defendants San Diego Sheriff's
Department and Sergeant Q. Brock ("Defendants").

(Doc. 28 4.) Plaintiff also filed a second motion to proceed IFP ("Second IFP Motion"). (Doc. 5.)
1 For the reasons set forth below, Plaintiff's Second IFP Motion (Doc. 4) is DENIED 2 as moot,
and Plaintiff's FAC is DISMISSED with leave to amend. 3 I. SECOND IFP MOTION 4 As set
forth above, the Court granted Plaintiff leave to proceed IFP on October 28, 5 2024.

(Doc. 3.) For this reason, Plaintiff's Second IFP Motion (Doc. 4) is DENIED as 6 moot. 7 II.
SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) AND 1915A(b) 8 Because Plaintiff is a
prisoner proceeding IFP, his Complaint requires a pre-answer 9 screening pursuant to 28 U.S.C.
§§ 1915(e)(2) and 1915A(b).

Under these provisions, the 10 Court must sua sponte dismiss a prisoner's IFP complaint, or any
portion of it, which is 11 frivolous, malicious, fails to state a claim, or seeks damages from
defendants who are 12 immune. See *Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en

banc) (quoting 13 and analyzing 28 U.S.C. § 1915(e)(2)); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir.

14 2010) (quoting 28 U.S.C. § 1915A(a)–(b)(1)). 15 “The standard for determining whether a plaintiff has failed to state a claim upon 16 which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of 17 Civil Procedure 12(b)(6) standard for failure to state a claim.” *Watison v. Carter*, 668 F.3d 18 1108, 1112 (9th Cir. 2012) (citation omitted); see also *Wilhelm v. Rotman*, 680 F.3d 1113, 19 1121 (9th Cir.

2012) (noting that § 1915A screening “incorporates the familiar standard 20 applied in the context of failure to state a claim under Federal Rule of Civil Procedure 21 12(b)(6)”) (citations omitted). Rule 12(b)(6) requires a complaint to “contain sufficient 22 factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” 23 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*

Corp. v. Twombly, 550 U.S. 24 544, 570 (2007)). “Determining whether a complaint states a plausible claim for relief [is] 25... a context-specific task that requires the reviewing court to draw on its judicial 26 experience and common sense.” *Id.* (citation omitted). 27 “Section 1983 creates a private right of action against individuals who, acting under 28 color of state law, violate federal constitutional or statutory rights.” *Devereaux v. Abbey*, 1 263 F.3d 1070, 1074 (9th Cir.

2001) (citing 42 U.S.C. § 1983). Section 1983 “is not itself 2 a source of substantive rights, but merely provides a method for vindicating federal rights 3 elsewhere conferred.” *Graham v. Connor*, 490 U.S. 386, 393-94 (1989) (quotation 4 omitted). “To establish § 1983 liability, a plaintiff must show both (1) deprivation of a 5 right secured by the Constitution and laws of the United States, and (2) that the deprivation 6 was committed by a person acting under color of state law.” *Tsao v. Desert Palace, Inc.*, 7 698 F.3d 1128, 1138 (9th Cir.

2012) (quotation omitted). 8 A. Plaintiff’s Allegations 9 In his FAC, Plaintiff alleges that, during his arrest on May 28, 2024, the police 10 allowed emergency medical responders to inject a numbing agent into his hands, break off 11 the tips of the needles, place electrodes on his body, shock him, and inject him with a 12 sleeping agent. (Doc. 4 at 3.) Plaintiff woke up at a hospital and police transported him to 13 the San Diego Central Jail, where he was surrounded by about nine to twelve Sheriff’s 14 Deputies while being booked and fingerprinted who without warning shouted, “stop 15 resisting.” (*Id.*)

The Deputies grabbed Plaintiff “and swung [him] in multiple directions, 16 using joint locks.” (*Id.*) One of the Deputies “put his hands around [Plaintiff’s] throat and 17 shook/slammed [his] head to [the] ground, over and over. Then punched [his] skull into 18 the ground repeatedly.” (*Id.*) Other Deputies used “pain compliance” even while he was 19 shackled and strapped to a gurney.

(Id.) A Deputy placed a baton between Plaintiff's 20 ankles and continued twisting even after his ankle cracked. (Id.) 21 Plaintiff then alleges that he was rolled into a cell "covered in white power/Nazi 22 symbolism," unstrapped from the gurney, and dropped to the floor. (Id. at 4.) Deputies 23 began using pain compliance again for no reason, even after he was unshackled, by twisting 24 his limbs, kneeling him in the neck and spine, pulling his ears and nose, and kicking him 25 until a supervisor forced them to stop.

(Id.) Defendant Sergeant Brock held a riot shield 26 on his back and cut off his clothes while straddling his legs. (Id.) Nurses thereafter force 27 fed him pills to reduce swelling of his head and face. (Id.) He suffered a fractured jaw, 28 collar bone, and rotator cuff; detached retinas; and permanent damage to his eyes. (Id. at 1 3–4.) Plaintiff now claims that his rights under the First, Fourth, Eighth, and Fourteenth 2 Amendments were violated by Defendants San Diego Sheriff's Department and Sergeant 3 Brock.

(Id. at 3–5.) 4 B. Discussion 5 Because Plaintiff was a pretrial detainee at a state facility at the time of the alleged 6 events, the Court construes his excessive force claims as arising under the Due Process 7 Clause of the Fourteenth Amendment rather than under the Eighth Amendment. See 8 *Ingraham v. Wright*, 430 U.S. 651, 671 n.40 (1977) ("[T]he State does not acquire the 9 power to punish with which the Eighth Amendment is concerned until after it has secured 10 a formal adjudication of guilt in accordance with due process of law.

Where the State seeks 11 to impose punishment without such an adjudication, the pertinent constitutional guarantee 12 is the Due Process Clause of the Fourteenth Amendment."); *Kingsley v. Hendrickson*, 576 13 U.S. 389, 391–92 (2015) (holding that a pretrial detainee bringing excessive force claims 14 against jail officers, in violation of the Fourteenth Amendment's Due Process clause, must 15 show that the officers' use of force was objectively unreasonable).

16 In bringing a claim for excessive force, "a pretrial detainee must show only that the 17 force purposely or knowingly used against him was objectively unreasonable." *Kingsley*, 18 576 U.S. at 396–97. "A court (judge or jury) cannot apply this standard mechanically. 19 Rather, objective reasonableness turns on the facts and circumstances of each particular 20 case." Id. at 397 (internal citations and quotations omitted). "A court must make this 21 determination from the perspective of a reasonable officer on the scene, including what the 22 officer knew at the time, not with the 20/20 vision of hindsight.

A court must also account 23 for the legitimate interests that stem from the government's need to manage the facility in 24 which the individual is detained, appropriately deferring to policies and practices that in 25 the judgment of jail officials are needed to preserve internal order and discipline and to 26 maintain institutional security." Id. (internal citations and quotations omitted).

27 “Considerations such as the following may bear on the reasonableness or 28 unreasonableness of the force used: the relationship between the need for the use of force 1 and the amount of force used; the extent of the plaintiff’s injury; any effort made by the 2 officer to temper or to limit the amount of force; the severity of the security problem at 3 issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively 4 resisting.” Id. (citation omitted).

5 1. San Diego Sheriff’s Department 6 In its prior Dismissal Order, the Court informed Plaintiff that he could not state a 7 § 1983 claim against the San Diego Sheriff’s Department because it is not a “person” 8 within the meaning of § 1983. (Doc. 3 at 4.) See also Tsao, 698 F.3d at 1138 (“To establish 9 § 1983 liability, a plaintiff must show... that the deprivation was committed by a person 10 acting under color of state law.”) (quotation omitted) (emphasis added); Johnson v. Cnty.

11 of San Diego, Case No. 3:18-cv-01846-LAB-RBB, 2018 WL 5630503, at *3 (S.D. Cal. 12 Oct. 30, 2018) (“Local law enforcement departments, like the San Diego Sheriff’s 13 Department, municipal agencies, or subdivisions of that department or agency, are not 14 proper defendants under § 1983.”). Despite the Court’s instruction, Plaintiff named 15 Defendant San Diego Sheriff’s Department in his FAC.

(Doc. 4 at 1.) Accordingly, 16 Plaintiff’s claim against the San Diego Sheriff’s Department is DISMISSED. 17 2. Sergeant Brock 18 Plaintiff has now added Defendant Sergeant Brock as a Defendant. (Doc. 4 at 1–2.) 19 Plaintiff alleges that Defendant Sergeant Brock held him down with a riot shield and cut 20 off his clothes. (Id. at 2.) Plaintiff then alleges that Defendant Sergeant Brock and others 21 beat and tortured Plaintiff while they straddled his naked body.

(Doc. 4 at 2.) However, 22 Plaintiff has not included any allegations regarding the actions that precipitated the alleged 23 “use of force” incident, his compliance (or lack thereof), or what injuries he sustained 24 because of such incident.

Therefore, Plaintiff has failed to allege that the “use of force” 25 incident was “objectively unreasonable.” See Kingsley, 576 U.S. at 396–97. Accordingly, 26 Plaintiff’s claim against Defendant Sergeant Brock is DISMISSED. 27 *** 28 Because Plaintiff is proceeding pro se, the Court will grant Plaintiff the opportunity 1 ||to amend his FAC. See Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir.

2015) (“A district 2 court should not dismiss a pro se complaint without leave to amend unless ‘it is absolutely 3 || clear that the deficiencies of the complaint could not be cured by amendment.’”) (quoting 4 || Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)). 5 itl. CONCLUSION 6 Based on the foregoing, the Court DISMISSES Plaintiff’s FAC for failing to state a 7 ||{claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)q1) and 8 ||} 1915A(b)(1) and GRANTS Plaintiff leave to file a second amended complaint curing the 9 || deficiencies of pleading noted.

Any second amended complaint must be complete by itself 10 || without reference to his original pleading. Defendants not named and any claim not re- 11 alleged will be considered waived. See S.D. Cal. Civ. R. 15.1; Lacey v. Maricopa Cnty., 12 || 693 F.3d 896, 928 (9th Cir. 2012) (noting that claims may be considered waived if not re- 13 pled). Any second amended complaint must also be filed on or before June 20, 2025.

14 If Plaintiff fails to timely file a second amended complaint, the Court will enter a 15 || final order dismissing this civil rights action based on Plaintiffs failure to state a claim 16 |}upon which relief can be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i) and 17 1915A(b)(1), as well as Plaintiff's failure to prosecute in compliance with this Order 18 ||requiring amendment.

See Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005) ("If a 19 || plaintiff does not take advantage of the opportunity to fix his complaint, a district court 20 convert the dismissal of the complaint into dismissal of the entire action.") (citation 21 || and parenthetical omitted). 22 IT IS SO ORDERED. 23 ||DATE: May 9, 2025 24 ☐☐☐ Baertnsdde, Wf ottasypsD 25 ON.

RUTH BERMUDEZ! MONTENEGRO UNITED STATES DISTRICT JUDGE 26 27 28 AAA.
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