

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF  
CALIFORNIA

Lewis v. Paramo

Lewis · No. 3:22-cv-0029-GPC-DEB · Decided July 2, 2025

SUMMARY

The United States District Court for the Southern District of California granted Defendant R. Esquilin’s unopposed motion for summary judgment in Brian Deverick Lewis’s 42 U.S.C. § 1983 First Amendment retaliation action. The court concluded that the retaliation claim relied on inadmissible hearsay and that the evidence did not show Esquilin took an adverse action against Lewis, and it ordered the case dismissed and closed.

CASE DETAILS

|                    |                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT              | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                          |
| JURISDICTION       | United States District Court for the Southern District of California                                                                                                                                                                                                                                                                                                                          |
| DECIDED            | July 2, 2025                                                                                                                                                                                                                                                                                                                                                                                  |
| DOCKET             | 3:22-cv-0029-GPC-DEB                                                                                                                                                                                                                                                                                                                                                                          |
| DISPOSITION        | dismissed                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE | Plaintiff brought a 42 U.S.C. § 1983 First Amendment retaliation claim against prison officials. Defendant R. Esquilin moved for summary judgment, and the motion was unopposed after the court provided a briefing schedule and Klingele/Rand notice.                                                                                                                                        |
| STANDARD OF REVIEW | Summary judgment is proper when the movant shows that no genuine dispute as to any material fact exists and the movant is entitled to judgment as a matter of law. The court must view the evidence in the light most favorable to the nonmoving party, may not make credibility determinations or weigh evidence, and may not grant summary judgment solely because the motion is unopposed. |
| PRECEDENTIAL VALUE | Unknown; district court opinion identified as per curiam, with no reporter citation or precedential-status determination in the source.                                                                                                                                                                                                                                                       |

TOPICS

- summary judgment
- hearsay
- prisoners rights
- first amendment
- section 1983

## PRACTICE AREAS

civil rights

prisoner litigation

constitutional law

federal civil procedure

evidence

## QUESTIONS PRESENTED

1. Whether the court could grant an unopposed motion for summary judgment without treating the failure to oppose as an automatic concession.
2. Whether Lewis presented admissible evidence creating a genuine dispute that Esquilin took an adverse action against him in retaliation for protected First Amendment activity.
3. Whether the alleged conversation between Esquilin and Fred Dog could be considered on summary judgment despite its hearsay character.

## HOLDINGS

1. A court may not grant summary judgment solely because the nonmoving party failed to oppose the motion; it must determine whether the movant independently demonstrated entitlement to judgment as a matter of law and the absence of a genuine dispute of material fact.
2. Summary judgment was warranted because Lewis failed to produce evidence creating a genuine dispute that Esquilin took an adverse action against him.
3. The court could not consider the hearsay account of the alleged conversation for its truth on summary judgment, and the claim failed without that evidence.

## KEY QUOTATIONS

*“A district court may not simply grant a motion for summary judgment solely because the nonmoving party failed to file an opposition.”* (at 4)

*“Thus, the Court may grant a defendant's unopposed motion for summary judgment if the moving papers are themselves sufficient to warrant granting the motion and do not on their face reveal a genuine issue of material fact.”* (at 5)

*“Because Plaintiff's retaliation claim is based on hearsay, it cannot be considered on summary judgment, and the Court GRANTS Defendant's motion for summary judgment.”* (at 6)

## FACTUAL BACKGROUND

Lewis, a state inmate at R.J. Donovan Correctional Facility, alleged that Esquilin retaliated against him for filing grievances and reports by showing another inmate a document suggesting that Lewis would be taken to classification and removed from his culinary job. Lewis did not see the document and relied on what the other inmate, known as Fred Dog, allegedly told him. The record showed that Lewis's job reassignment was associated with a rules violation report concerning misuse of eggs, rather than conduct by Esquilin, and Esquilin denied showing the document, causing the reassignment, or orchestrating an assault. Lewis presented no opposition evidence disputing the supported facts.

## PROCEDURAL HISTORY

Lewis filed an operative first amended complaint alleging that Esquilin retaliated against him for filing grievances and reports. Esquilin moved for summary judgment on March 13, 2025. Lewis filed no opposition despite receiving notice that summary judgment could be entered against him. The court granted Esquilin's unopposed motion on the merits and directed the Clerk to dismiss and close the case.

## DISPOSITION

dismissed

## CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 322-25, 327 (1986)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49, 255 (1986)
- Adickes v. S.H. Kress & Co., 398 U.S. 144, 159-60 (1970)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)
- Fontana v. Haskin, 262 F.3d 871, 876 (9th Cir. 2001)
- Cristobal v. Siegel, 26 F.3d 1488, 1494-95 & n.4 (9th Cir. 1994)
- In re Rogstad, 126 F.3d 1224, 1227 (9th Cir. 1997)
- Martinez v. Stanford, 323 F.3d 1178, 1182 (9th Cir. 2003)
- Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir. 1993)
- Watison v. Carter, 668 F.3d 1108, 1114 (9th Cir. 2012)
- Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Jones v. Williams, 791 F.3d 1023, 1032 (9th Cir. 2015)
- Block v. City of Los Angeles, 253 F.3d 410, 419 (9th Cir. 2001)
- Anheuser-Busch, Inc. v. Natural Beverage Distributors, 69 F.3d 337, 345 n.4 (9th Cir. 1995)
- Hurd v. Garcia, 454 F. Supp. 2d 1032, 1050 (S.D. Cal. 2006)

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