

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Charles Kinsey v. Susan Pasha, Nurse Practitioner

Kinsey v. Pasha · No. 3:25-cv-1225-JES-DDL · Decided February 5, 2026

SUMMARY

The United States District Court for the Southern District of California screened Charles Kinsey’s Second Amended Complaint under 28 U.S.C. §§ 1915(e)(2) and 1915A(b). The court found that Kinsey plausibly stated an Eighth Amendment failure-to-protect claim against Nurse Practitioner Susan Pasha, but dismissed his First Amendment retaliation and Eighth Amendment medical-care claims for failure to state a claim. Kinsey was given 45 days to proceed only on the surviving claim or file a Third Amended Complaint.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	James E. Simmons Jr.
JURISDICTION	United States District Court for the Southern District of California
DECIDED	February 5, 2026
DOCKET	3:25-cv-1225-JES-DDL
DISPOSITION	other
PROCEDURAL POSTURE	Sua sponte screening of a prisoner proceeding in forma pauperis under 28 U.S.C. §§ 1915(e)(2) and 1915A(b).
STANDARD OF REVIEW	The court applied the Federal Rule of Civil Procedure 12(b)(6) plausibility standard in screening under 28 U.S.C. §§ 1915(e)(2) and 1915A(b), accepting well-pleaded factual allegations as true but disregarding legal conclusions and conclusory assertions.
PRECEDENTIAL VALUE	nonprecedential district court screening order
PARTIES	Charles Kinsey v. Susan Pasha, Nurse Practitioner

TOPICS

- prisoners rights
- section 1983
- civil procedure
- motions to dismiss
- cruel and unusual punishment

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Second Amended Complaint plausibly alleged an Eighth Amendment failure-to-protect claim against Pasha.
2. Whether the Second Amended Complaint plausibly alleged a First Amendment retaliation claim based on Pasha's discontinuation of Kinsey's wheelchair accommodation after he requested privacy during medical questioning.
3. Whether the Second Amended Complaint plausibly alleged an Eighth Amendment deliberate-indifference claim based on Pasha's treatment of Kinsey's broken finger.
4. Whether Kinsey should be permitted to proceed on the surviving claim or amend the complaint again.

HOLDINGS

1. The Second Amended Complaint plausibly stated an Eighth Amendment failure-to-protect claim because it alleged that Pasha knew the path posed a substantial risk of serious harm, drew that inference from prior incidents and injuries, and disregarded the risk, resulting in Kinsey's broken finger.
2. The First Amendment retaliation claim was dismissed for failure to state a claim because Kinsey did not plausibly allege protected conduct, causation, chilling, or the absence of a legitimate correctional goal.
3. The Eighth Amendment medical-care claim was dismissed because the allegations that Pasha improperly set Kinsey's finger amounted at most to negligence or medical malpractice and did not plausibly establish deliberate indifference.
4. The court granted Kinsey 45 days either to proceed only on the surviving failure-to-protect claim or to file a complete Third Amended Complaint curing the deficiencies in the dismissed claims.

KEY QUOTATIONS

"[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." (at 5)

"Medical malpractice does not become a constitutional violation merely because the victim is a prisoner." (at 9)

FACTUAL BACKGROUND

Kinsey, a visually impaired prisoner, alleged that Nurse Practitioner Pasha knew a path at Richard J. Donovan Correctional Facility was dangerously uneven and had previously treated people injured in falls there. He alleged that Pasha discontinued his wheelchair accommodation after he requested privacy concerning COVID-19 symptoms and instead gave him a walker with small wheels. Kinsey alleged that he subsequently fell and broke a finger, which Pasha improperly set and which later required surgery. The court found the allegations sufficient

to plausibly show that Pasha knew of and disregarded a substantial risk of serious harm, but insufficient to establish retaliation or deliberate indifference in medical treatment.

PROCEDURAL HISTORY

Kinsey filed a § 1983 complaint concerning a fall and alleged denial of medical care while incarcerated. The court initially dismissed the action for failure to pay the filing fee or properly seek in forma pauperis status, later granted in forma pauperis status, dismissed the complaint for failure to state a claim, and granted leave to amend. After considering the Second Amended Complaint, the court found that the Eighth Amendment failure-to-protect claim plausibly stated a claim, dismissed the First Amendment retaliation and Eighth Amendment medical-care claims, and granted Kinsey 45 days either to proceed only on the surviving claim or file a Third Amended Complaint.

DISPOSITION

other

CASES CITED

- Hal Roach Studios, Inc. v. Richard Feiner and Co. Inc., 896 F.2d 1542, 1546 (9th Cir. 1990)
- Lopez v. Smith, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
- Rhodes v. Robinson, 621 F.3d 1002, 1004 (9th Cir. 2010)
- Nordstrom v. Ryan, 762 F.3d 903, 907 n.1 (9th Cir. 2014)
- Wheeler v. Wexford Health Sources, Inc., 689 F.3d 680, 681 (7th Cir. 2012)
- Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012)
- Wilhelm v. Rotman, 680 F.3d 1113, 1121, 1123 (9th Cir. 2012)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 & n.7 (9th Cir. 2010)
- Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985)
- Ivey v. Board of Regents of the University of Alaska, 673 F.2d 266, 268 (9th Cir. 1982)
- Devereaux v. Abbey, 263 F.3d 1070, 1074 (9th Cir. 2001)
- Tsao v. Desert Palace, Inc., 698 F.3d 1128, 1138 (9th Cir. 2012)
- Farmer v. Brennan, 511 U.S. 825, 834-37 (1994)
- Wilson v. Seiter, 501 U.S. 294, 298, 302-03 (1991)
- Whitley v. Albers, 475 U.S. 312, 319 (1986)
- Estelle v. Gamble, 429 U.S. 97, 104, 106 (1976)
- Oliver v. Keller, 289 F.3d 623, 627-28 (9th Cir. 2002)
- Goode v. Canedo, S.D. Cal. Case No. 21-cv-2054-GPC-KSC, 2022 WL 16753312, at *6 (S.D. Cal. Nov. 7, 2022)
- Glosson v. Morales, 469 F. Supp. 2d 827, 834 (S.D. Cal. 2007)

- Luong v. Hatt, 979 F. Supp. 481, 486 (N.D. Tex. 1997)
- Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005)
- Valdez v. Marquez, 2022 WL 184662, at *4 (S.D. Cal. Jan. 19, 2022)
- Hudson v. Palmer, 468 U.S. 517, 526 (1984)
- Watison v. Carter, 668 F.3d 1108, 1116-17 (9th Cir. 2012)
- Soranno's Gasco, Inc. v. Morgan, 874 F.2d 1310, 1314 (9th Cir. 1989)
- Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274, 287 (1977)
- Colwell v. Bannister, 763 F.3d 1060, 1066 (9th Cir. 2014)
- Hutchinson v. United States, 838 F.2d 390, 394 (9th Cir. 1988)
- Toguchi v. Chung, 391 F.3d 1051, 1060 (9th Cir. 2004)
- Thompson v. Rodriguez, 2023 WL 4414579, at *4 (S.D. Cal. July 7, 2023)
- Atkins v. Brewer, 2009 WL 29873, at *4 (E.D. Cal. Jan. 5, 2009)
- Turner v. Barajas, 2015 WL 74194, at *4 (D. Ariz. Jan. 6, 2015)
- Duncan v. Wang, 2014 WL 109129, at *4 (E.D. Cal. Jan. 9, 2014)
- Rosati v. Igbinoso, 791 F.3d 1037, 1039 (9th Cir. 2015)
- Akhtar v. Mesa, 698 F.3d 1202, 1212 (9th Cir. 2012)
- Lacey v. Maricopa County, 693 F.3d 896, 928 (9th Cir. 2012) (en banc)