NOT FOR PUBLICATION

FILED

JUN 30 2025

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NORMAN GERALD DANIELS III, Plaintiff-Appellant, v. A. BAER; S. SMITH; S. MARTINS; J. MOLINA, Defendants-Appellees.	No. 22-16664 D.C. No. 1:19-cv-01801-AWI-GSA MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, District Judge, Presiding

Argued and Submitted April 10, 2025
Pasadena, California

Before: BADE and SUNG, Circuit Judges, and SIMON,** District Judge.

Norman Gerald Daniels III appeals the district court's screening order dismissing with prejudice his Second Amended Complaint. We have jurisdiction under 28 U.S.C. § 1291 and review de novo a district court's dismissal under 28

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Michael H. Simon, United States District Judge for the District of Oregon, sitting by designation.

U.S.C. § 1915A(a) for failure to state a claim. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

While incarcerated, Daniels, representing himself, sued several California correctional employees in their personal capacities alleging, among other claims, violations of his rights under the First Amendment. Specifically, he raised an "as-applied" challenge to a California prison regulation that limits inmate-to-inmate correspondence, 15 Cal. Code Regs. ("CCR") § 3139. We reverse in part and affirm in part. Daniels may proceed on his First Amendment claim. In all other respects, we affirm.

As an inmate in a California prison, Daniels was denied permission to correspond with another inmate in a different California prison. Daniels administratively appealed but was told that his request was denied under 15 CCR § 3139(f), which describes "[t]he most restrictive [that] a facility *can be* with respect to inmate mail privileges." 15 CCR § 3139(f) (2019) (emphasis added). Subsection (f) prohibits correctional facilities from preventing inmates from corresponding with their immediate family members, co-litigants on active cases, and the "[i]ncarcerated natural parent of the inmate's child." *Id.*

1. Because Daniels's First Amendment claim concerns the denial of his request to send correspondence to an inmate at another facility, the starting point for our analysis is *Turner v. Safley*, 482 U.S. 78 (1987). There, the Supreme Court

explained that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution." *Id.* at 84. Under *Turner*, we consider four factors in determining whether a prison regulation is constitutional, including, first, whether there is a "valid, rational connection" between the regulation and the "legitimate governmental interest put forward to justify it." *Prison Legal News v. Ryan*, 39 F.4th 1121, 1128 (9th Cir. 2022) (citation omitted). Because Daniels brings an as-applied claim, we consider "whether applying the regulation" to Daniels's correspondence request "was rationally related to the legitimate penological interest asserted by the prison." *Id.* at 1135 (citation omitted).

We conclude that Daniels has adequately alleged a violation of his First Amendment rights and that dismissal under *Turner* was improper. First, defendants have not established a valid "general ban" on inmate correspondence. Defendants argue that 15 CCR § 3139 (2019) is a "[g]eneral [b]an" on inmate-to-inmate correspondence that allows only certain limited exceptions and is essentially the same as what the Supreme Court approved in *Turner*. The district court appears to have agreed. We do not read the California regulation that way. Instead, the regulation requires inmates seeking to correspond with other inmates to obtain written authorization from an appropriate correctional employee, *see* § 3139(a), and provides standards and procedures for correctional employees to follow, *see* § 3139(b)–(c).

What the regulation does *not* do is create a general ban on all inmate-to-inmate correspondence except for immediate family members, co-litigants, or natural parents of an inmate's child. Although § 3139(f) provided that the most restrictive a facility "can be" with respect to inmate mail privileges is to limit correspondence between inmates to those three exceptions, defendants have not shown that the specific facilities involved here have, in fact, promulgated any such general ban. Thus, the fact that the regulation *may* permit a facility to enact a general ban if it can satisfy *Turner*'s four-factor test does not assist the defendants here when the relevant facility has not done so.

Second, defendants have not established that denying Daniels's correspondence request under § 3139 "was rationally related to [a] legitimate penological interest." *Prison Legal News*, 39 F.4th at 1135. Defendants have not identified the penological interests that inform the facilities' regulation of inmate correspondence, nor have they proffered any explanation for denying Daniels's correspondence request in particular. Thus, we cannot determine whether defendants applied appropriate standards and did so in a way that was not arbitrary.

Third, dismissal was improper because Daniels specifically alleged that defendants have applied § 3139 inconsistently. "[U]nequal application" of "an otherwise legitimate policy" can "defeat[] the rational relationship between the policy and the government's asserted justification." *Jones v. Slade*, 23 F.4th 1124,

1137 (9th Cir. 2022). Here, viewing Daniels's complaint in the light most favorable to him, his allegations of inconsistent application are sufficient to survive the pleading stage.

2. Defendants argue in the alternative that they are entitled to qualified immunity. A district court may dismiss a complaint based on qualified immunity under 28 U.S.C. § 1915A(b)(2), "but only if it is clear from the complaint that the plaintiff can present no evidence that could overcome a defense of qualified immunity." *See Chavez v. Robinson*, 817 F.3d 1162, 1169 (9th Cir. 2016) (discussing similar proposition under 28 U.S.C. § 1915(e)(2)(B)). Daniels's "pro se complaint did not clearly show that he would be unable to overcome qualified immunity." *Id.*

3. Finally, we agree with the district court's conclusion that Daniels has failed to adequately state claims for violation of his rights to procedural due process or under the Americans with Disabilities Act. We also agree with the district court that Daniels has failed to adequately allege that defendants conspired to violate his constitutional rights or have otherwise violated his rights under state law. We therefore affirm the district court's rulings on these issues.

AFFIRMED IN PART; REVERSED AND REMANDED IN PART.[1]

[1] The parties shall bear their own costs on appeal.