

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 23 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ALI KANE, AKA Abdoulaye Toumbou,

Plaintiff - Appellant,

v.

WALDO, Correctional Officer; TROY
STULL,

Defendants - Appellees.

No. 25-3597

D.C. No.

2:23-cv-00368-TOR

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted July 15, 2026**

Before: McKEOWN, OWENS, and LEE, Circuit Judges.

Ali Kane—a former inmate at the Airway Heights Corrections Center—filed a pro se action under 42 U.S.C. § 1983 against Tyler Waldo and Troy Stull, both of whom work at that prison. Kane alleges violations of his First Amendment rights to

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

exercise his religion and be free from retaliation. The district court granted summary judgment to Waldo and Stull and denied Kane's motion for partial summary judgment. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review the district court's summary judgment decisions de novo. *Jones v. Williams*, 791 F.3d 1023, 1030 (9th Cir. 2015). Summary judgment is appropriate when, viewing the evidence in the light most favorable to the nonmoving party, there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). While the burden of initially demonstrating no genuine issue as to any material fact falls upon a movant, once he has done so, Rule 56(e) obligates the non-moving party to produce competent evidence demonstrating a genuine issue of material fact or legal authority that the moving party is not entitled to judgment. *British Airways Bd. v. Boeing Co.*, 585 F.2d 946, 950-51 (9th Cir. 1978).

1. Retaliation claims. The district court properly dismissed Kane's retaliation claims. Inmates hold a First Amendment right to file grievances against prison officials and to be free from retaliation for doing so. *Rhodes v. Robinson*, 408 F.3d 559, 567 (9th Cir. 2005). The same is true for an inmate threatening to file a grievance. *Entler v. Gregoire*, 872 F.3d 1031, 1039 (9th Cir. 2017). To prevail on a First Amendment retaliation claim under 42 U.S.C. § 1983, a plaintiff must show: (1) an adverse action against the inmate by a state actor, (2) taken because of (3) the

inmate's protected conduct, and that the adverse action (4) chilled the inmate's exercise of First Amendment rights, and (5) that the action did not reasonably advance a legitimate correctional goal. *Rhodes*, 408 F.3d at 567-68; *Watison v. Carter*, 668 F.3d 1108, 1114 (9th Cir. 2012).

Here, Kane failed to produce sufficient evidence to satisfy his claims of retaliation against Waldo. First, the record shows that Waldo took no adverse action "because of" any protected conduct by Kane. *See Rhodes*, 408 F.3d at 567. Timing of an adverse action alone is insufficient to satisfy this element. *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir. 1995). Kane alleged that Waldo ordered him to "cell in" on November 23 in retaliation for requesting a grievance form moments earlier. But Kane points to no evidence that Waldo knew Kane intended to use the form to grieve Waldo specifically. In fact, Waldo had no knowledge of any actual grievance filed against him until November 30 when he was questioned during an investigation into Kane's grievance. Without knowledge of protected conduct, Waldo could not have acted "because of" it. *Hartman v. Moore*, 547 U.S. 250, 260 (2006) (requiring proof of causal connection through knowledge and motive).

Second, there is little evidence that either Waldo's order that Kane cell-in or his cell search on November 24 was retaliatory. For example, the record shows that Waldo's search of Kane's cell the next day was mandated by Department of Corrections (DOC) policy, which requires general population cells to be searched at

least once every 60 days. Moreover, even if causation existed, meaning Waldo's actions were "because of" Kane's protected conduct, Waldo's search, like his order to cell-in, advanced a legitimate penological goal to ensure compliance with security protocols to prevent contraband. *See Rhodes*, 408 F.3d at 568 (no retaliation if action serves legitimate goal).

The district court also properly granted summary judgment on Kane's retaliation claim against Stull. Kane alleged that Stull retaliated by asking Kane what he had done to "piss Waldo off" during the cell search. This isolated question does not constitute an "adverse action" under the retaliation standard. *See Watison*, 668 F.3d at 1115 (adverse action must be more than minimal and reasonably likely to chill First Amendment activity). Kane further argues that Stull violated Kane's First Amendment rights when Stull allegedly threatened Kane's porter job if he did not withdraw his grievance against Waldo. Stull disputes that he made such a threat, but that question of fact is immaterial because no jury could find that this threat "chilled" Kane's right to file grievances, as he made additional grievances against both Waldo and Stull on November 27 and 30, 2023; December 19 and 28, 2023; and February 13, 2024. These additional grievances soon following the events giving rise to Kane's lawsuit demonstrate that Kane did not feel any chilling effect on his right to file grievances against prison officials.

2. Free Exercise of Religion Claim. The district court properly dismissed

Kane's free exercise of religion claim. To prevail on a First Amendment free exercise claim, a plaintiff must demonstrate that the practice at issue reflects his sincerely held religious beliefs. *Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir. 2008). Once a plaintiff has made the threshold "sincerity" showing, the court applies the multi-factor balancing test from *Turner v. Safley*, 482 U.S. 78 (1987), to determine whether the prison may permissibly limit the plaintiff's free exercise right to further a legitimate penological interest. *See Malik v. Brown*, 16 F.3d 330 (9th Cir. 1994); *see also Walker v. Beard*, 789 F.3d 1125, 1138 (9th Cir. 2015).

Prison regulations impinging on inmates' free exercise rights are valid if reasonably related to legitimate penological interests. *Turner v. Safley*, 482 U.S. 78, 89-90 (1987). To determine whether a penological interest justifies an impinging on an inmate's free exercise, courts consider: (1) a rational connection to the interest; (2) alternative means of exercise; (3) impact on staff, inmates, and resources; and (4) ready alternatives. *Id.* at 89-91.

Here, the district court properly found that Waldo's cell search and alleged confiscation satisfied *Turner*. Kane argues that the alleged confiscation of his English Quran made practicing his religious beliefs more difficult. Assuming Kane's argument is rooted in his sincerely held religious beliefs, the search was still rationally connected to the legitimate penological interest of security and order, as DOC policy mandates cell searches every 60 days. This prevents contraband and

maintains safety. *See O’Lone v. Estate of Shabazz*, 482 U.S. 342, 350 (1987). And on the day that Waldo searched Kane’s cell, his cell was due to be searched by staff. During the search, several books with missing or altered DOC numbers were located, allegedly including a copy of the English Quran. DOC policy dictates that all personal property retained by an individual will be itemized and documented in the individual’s electronic property group. Items will be “marked with the individual’s DOC number for identification, when possible.” Personal property not in compliance with DOC policy is considered contraband and subject to confiscation. Because these books did not display Kane’s DOC number, they violated DOC policy. Kane also admitted that his property matrix did not mention his English Quran. Confiscation was thus proper to enforce property rules, which rationally serve interests in accountability, safety, and order.

Moreover, the record shows that Kane could have obtained another English Quran through the proper process. And when officials offered Kane an English Quran later, he refused it. Kane thus had alternative means to exercise his religion with an English Quran and he was not barred from obtaining one through proper channels. *See Cutter v. Wilkinson*, 544 U.S. 709, 720 (2005) (noting that free exercise accommodates religion but defers to prison expertise).

AFFIRMED.