

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 2 2026

FOR THE NINTH CIRCUIT

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

ENRIQUE ZACARIAS DIAZ,

Plaintiff - Appellant,

v.

D. LOYA,

Defendant - Appellee.

No. 24-5130

D.C. No.

2:22-cv-01288-YY

MEMORANDUM*

ENRIQUE ZACARIAS DIAZ,

Plaintiff - Appellant,

v.

SPELMAN,

Defendant - Appellee.

No. 24-5135

D.C. No.

2:22-cv-01395-YY

ENRIQUE ZACARIAS DIAZ,

Plaintiff - Appellant,

v.

OREGON DEPARTMENT OF
CORRECTIONS; J. DOUGLAS,
Correctional Officer,

No. 24-5174

D.C. No.

2:22-cv-01311-YY

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

Defendants - Appellees.

Appeal from the United States District Court
for the District of Oregon
Michael H. Simon, District Judge, Presiding

Argued and Submitted March 9, 2026
Portland, Oregon

Before: COLLINS and FORREST, Circuit Judges, and FITZWATER, District Judge.**

Partial Concurrence and Partial Dissent by Judge COLLINS.

Plaintiff Enrique Diaz appeals the grant of summary judgment on exhaustion grounds to Defendants, the Oregon Department of Corrections (ODOC) and three corrections officers, in this prison civil-rights case. We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand.

Summary judgment is appropriate when “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). We review de novo the district court’s summary judgment order and interpretation of the Prison Litigation Reform Act (PLRA). *Eaton v. Blewett*, 50 F.4th 1240, 1244 (9th Cir. 2022).

1. The district court erred in concluding that Diaz failed to exhaust his available administrative remedies as to his first grievance against Officer

** The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

“Douglas.”¹ Under the PLRA, a “prisoner confined in any jail, prison, or other correctional facility” must exhaust all *available* administrative remedies before bringing a federal action. 42 U.S.C. § 1997e(a); *Eaton*, 50 F.4th 1245. That means prisoners “must complete the administrative review process in accordance with the applicable procedural rules . . . as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548 U.S. 81, 88 (2006). But only as to those grievance procedures that are “‘capable of use’ to obtain ‘some relief for the action complained of.’” *Ross v. Blake*, 578 U.S. 632, 642 (2016) (quoting *Booth v. Churner*, 532 U.S. 731, 738 (2001)).

The parties agree that ODOC’s grievance process was generally available to prisoners, including Diaz. Thus, the burden shifts to Diaz “to show that something in his particular case made the generally available administrative remedies effectively unavailable to him.” *Fordley v. Lizarraga*, 18 F.4th 344, 351 (9th Cir. 2021). Key here, we have recognized that remedies are effectively unavailable when a prisoner is required to obtain unobtainable information. *See Albino v. Baca*, 747 F.3d 1162, 1177 (9th Cir. 2014) (en banc), *overruled in part on other grounds*, *Perttu v. Richards*, 605 U.S. 460, 475, 479 (2025); *see also Nunez v. Duncan*, 591 F.3d

¹ ODOC asserts that Diaz “affirmatively disclaimed” his exhaustion arguments. We disagree. Taken in context, Diaz’s statements before the district court are consistent with his briefing in this court, especially given the liberal construction we give pro se filings. *See Ross v. Williams*, 950 F.3d 1160, 1173 n.19 (9th Cir. 2020) (citing *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)).

1217, 1225–26 (9th Cir. 2010).

Diaz has established that there is a factual dispute over whether he was prevented from accessing information necessary to comply with ODOC’s grievance procedures. ODOC requires each grievance to identify the individual responsible for the incident. *See* Or. Admin. R. 291-109-0220(4). Diaz asserts that he was unable to acquire the name of the corrections officer that harassed him despite attempting to learn the officer’s name for nearly three months. Diaz also submits that he was ignored by ODOC staff during his search. And it is undisputed that the name the prison ultimately gave Diaz—Officer Douglas—does not correspond to any ODOC employee. Those facts, laid out in a declaration and a “written objection,” create a material factual dispute. *Cf. Soto v. Sweetman*, 882 F.3d 865, 873 (9th Cir. 2018) (recognizing that a material factual dispute *did not* exist where similar facts were absent from the record). As such, summary judgment is inappropriate. *See Albino*, 747 F.3d at 1169.

ODOC and the Dissent generally suggest that Diaz’s name-based argument is irrelevant because his grievance was denied for violating rules governing the timing and frequency of grievance filings and that Diaz could have ultimately found a way to submit his complaint in compliance with the regulations. That suggestion proves too much. If Diaz had filed his grievance earlier, complying with these rules, the

record indicates that it would have been rejected for failing to identify the officer.² *See* Or. Admin. R. 291-109-0220(4). We have not previously required prisoners who demonstrated the unavailability of necessary information to also demonstrate that their eventual grievance complied with timing rules. *See Nunez*, 591 F.3d at 1221, 1225–26 (excusing exhaustion when a complaint was initially denied as untimely). We decline to do so here.

And to the extent the filing-frequency limitation is not strictly about timing, we note that had Diaz had the officer’s name and been able to timely file his grievance, he also would have complied with the frequency limitation. Moreover, it is not clear that with the frequency limitations the administrative grievance process is “‘capable of use’ to obtain ‘some relief for the action complained of.’” *Ross*, 578 U.S. at 642 (quoting *Booth*, 532 U.S. at 738). But we need not answer that question to resolve this case.

In sum, Diaz has established a dispute of material fact regarding the availability of grievance procedures for exhaustion purposes. Because the district court concluded to the contrary, we reverse.

2. Diaz acknowledges that he did not exhaust his grievances related to Officers

²We are unpersuaded by ODOC’s and the Dissent’s reliance on the fact that Diaz’s grievance was rejected for reasons other than failing to properly identify the officer involved. The theory of unavailability here is premised on the allegations that Diaz was forced to wait to discover the officer’s name, not that Diaz’s complaint was improperly rejected.

Loya and Spelman, instead asserting that the continuing-violations doctrine exhausts them. We disagree.

“[U]nder the continuing-violations doctrine, a properly exhausted prison grievance asserting ‘one, continuing harm or a single course of conduct’ can exhaust events arising out of the same alleged violation that occur after the grievance was made.” *Sheltra v. Christensen*, 124 F.4th 1195, 1203 (9th Cir. 2024) (quoting *Morgan v. Trierweiler*, 67 F.4th 362, 369–70 (6th Cir. 2023)). But the doctrine does not apply when prisoners raise “similar *but different* problems,” *id.* at 1204, or when the initial grievance does not provide notice of a larger course of conduct, *id.* (discussing *Johnson v. Johnson*, 385 F.3d 503, 519–20 (5th Cir. 2004)); *see also Morgan*, 67 F.4th at 370.

Diaz’s grievances did not put ODOC on notice of a systemic problem. His first grievance addressed a discrete incident between himself and Officer “Douglas.” It did not reference or suggest an ongoing course of discrimination. *See Siggers v. Campbell*, 652 F.3d 681, 693 (6th Cir. 2023) (concluding that a grievance about the rejection of a single piece of mail did not provide notice of systemic problems with the mail system). Indeed, as we have previously implied, it is only when the grievances are “considered collectively” that “Diaz’s allegations suggest a pattern and practice of racial harassment.” *Diaz v. Loya*, No. 22-35889, 2023 WL 2639299 at *1 (9th Cir. March 21, 2023). Accordingly, the continuing-violations doctrine

does not apply to Diaz’s claims against Officers Loya and Spelman—they remain unexhausted.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.

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Diaz v. Loya, No. 24-5130+MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

COLLINS, Circuit Judge, concurring in the judgment in part and dissenting in part:

In my view, the district court correctly granted summary judgment to Defendants Douglas and the Oregon Department of Corrections (“ODOC”) on the ground that Plaintiff-Appellant Enrique Diaz failed to properly exhaust his claim that on May 22, 2022 Douglas, a correctional officer, discriminated against him by calling him a “spic” and speaking to him in a profane and rude manner. And because Diaz’s argument that he exhausted his remaining claims against Defendants ODOC, Loya, and Spelman concededly depends upon his having exhausted the May 22 claim, the district court properly entered summary judgment in favor of Defendants on all claims. To the extent that the majority concludes otherwise, I respectfully dissent.

In order to satisfy the exhaustion requirement of § 7(a) of the Civil Rights of Institutionalized Persons Act, as added by the Prison Litigation Reform Act (“PLRA”), a prisoner seeking to file an action under 42 U.S.C. § 1983 must first “exhaust[]” “such administrative remedies as are available.” 42 U.S.C. § 1997e(a). That requires “proper exhaustion,” *i.e.*, it requires compliance with the prison’s “applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court.” *Woodford v. Ngo*, 548 U.S. 81, 88 (2006). Here, Diaz’s August 23 grievance concerning the May 22 incident was properly rejected by ODOC

because it violated multiple procedural requirements: (1) it had not been submitted within 14 days of the incident and no explanation was given for the untimely filing; (2) it was the sixth grievance Diaz had filed in August, which exceeded the monthly limit of four grievances; and (3) it exceeded the allowable number of simultaneously pending grievances, which is also capped at four. *See* OR. ADMIN. R. 291-109-205(1), -215(1)–(2) (2022).

The majority nonetheless concludes that there is a factual issue as to whether the grievance process was actually “available” to Diaz with respect to the May 22 incident. According to the majority, there is sufficient evidence to raise a triable issue of fact as to whether Defendants improperly withheld information that Diaz needed to file a grievance (namely, the identity of the officer involved). *See* Memo. Dispo. at 4. Had that information been promptly provided to Diaz, the majority concludes, he could have timely filed the grievance in late May or early June, and he would have avoided all three obstacles he later encountered in August. *Id.* This reasoning is flawed. Diaz ultimately did file a grievance concerning the May 22 incident, and it was *not* rejected for failing to properly identify the officer involved. Rather, it was rejected due to three problems that were entirely of Diaz’s own making.

As to the untimeliness of Diaz’s August 23 grievance, the regulations specifically allow for a prisoner to present an otherwise untimely grievance if the

prisoner “can satisfactorily demonstrate why the grievance could not be timely filed.” OR. ADMIN. R. 291-109-205(1) (2022). Nothing prevented Diaz from presenting in his grievance the very justification he now presses—namely, that ODOC officials’ failure to supply the officer’s name thwarted Diaz from presenting the grievance earlier. Diaz thus had an available route to address this problem, and he simply failed to avail himself of it. *See Sapp v. Kimbrell*, 623 F.3d 813, 823 (9th Cir. 2010) (noting that the purpose of the exhaustion requirement is to give the prison “an opportunity to correct its own mistakes with respect to the programs it administers before it is haled into federal court.” (simplified)).¹

As to Diaz’s excessive number of grievances (both by number per month and by number pending), those problems, too, were entirely of Diaz’s own making. Indeed, Diaz violated both limits by submitting multiple other grievances around the same time that he submitted the one concerning the May 22 incident. Three of

¹ The majority claims that Diaz’s failure to properly submit his grievance in August is irrelevant because the relevant “unavailability” here is that he “was forced to wait to discover the officer’s name,” and any effort to submit the grievance without that name would have been futile. *See* Memo. Dispo. at 4–5 & n.2. Under this novel theory, once the identity of the officer was first assertedly withheld, the grievance system was then not “available” within the meaning of the PLRA, and Diaz apparently could have bypassed the prison’s grievance process altogether and proceeded straight to federal court. The majority has not cited any authority to support this extraordinary reading of the PLRA’s exhaustion requirement.

these grievances appear to reflect precisely the sort of frivolous abuse of the grievance system that the numerical limits are designed to prevent: they complained that he “would like staff to change the channel more often”; that an officer had “turned off the lights too soon”; and that an officer would not give him “3 bars of soap.” Had Diaz not filed these three grievances—all of which were docketed ahead of the grievance concerning the May 22 incident—he would not have violated either numerical limit. Accordingly, Diaz’s inability to file this grievance was not caused by prison officials, but by his own abuse of the grievance system.

Moreover, Diaz could have *resubmitted* his denied grievance in an effort to address the three grounds given for its denial. The regulations state that an inmate “may elect to resubmit a grievance or grievance appeal that has been returned for correction to the [inmate] because it does not comply with these rules,” “within 14 calendar days from the date when the grievance or grievance appeal was originally returned to the [inmate].” OR. ADMIN. R. § 291-109-225(2)(a)–(b) (2022). Diaz’s grievance against Douglas was submitted and rejected on August 23, 2022 for failure to comply with ODOC’s rules, meaning that Diaz could have resubmitted his grievance in September 2022 without running afoul of either of the numerical limits on grievances. Moreover, in such a resubmission, Diaz could also have remedied his untimeliness violation by providing the reason for his failure to

timely file his complaint—*i.e.*, he was unable to ascertain the name of the offending officer. *See* OR. ADMIN. R. § 291-109-205(1) (2022).

Because Diaz had available means for presenting his grievance in August or September, and because his failure to take advantage of those opportunities was attributable to his own inexcusable failure to follow the regulations and not to the conduct of prison officials, Diaz failed to exhaust his available remedies, and that failure to exhaust is not excused. The district court therefore properly granted summary judgment, on failure-to-exhaust grounds, with respect to Diaz’s claims concerning the May 22 incident.

With respect to his other § 1983 claims, Diaz invokes the continuing violations doctrine. His theory is that, *if* his claim based on the May 22 incident is deemed exhausted, “then any *subsequent* incidents in the continuing violation”—including those underlying his other § 1983 claims—“would also be exhausted” (emphasis added). Because his claim concerning the May 22 incident is *not* properly exhausted, the predicate for this argument is absent. On that basis, I conclude that Diaz’s invocation of the continuing violations doctrine fails, and I concur in the judgment affirming dismissal of the remaining § 1983 claims.

For the foregoing reasons, I respectfully concur in the judgment in part and dissent in part.