**NONPRECEDENTIAL DISPOSITION**
To be cited only in accordance with FED. R. APP. P. 32.1

# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted January 16, 2024*
Decided January 19, 2024

**Before**

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1612

MANG Z. SUAN,
*Plaintiff-Appellant*,

*v*.

CONOR ALCALA† and
MICHAEL CANNON,
*Defendants-Appellees*.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

No. 3:21-CV-272-MGG

Michael G. Gotsch, Sr.,
*Magistrate Judge*.

**O R D E R**

Mang Suan, a prisoner at Miami Correctional Facility near Bunker Hill, Indiana, sued two correctional officers alleging that they let a fire burn in his cell and forced him

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

† Conor Alcala's name is spelled differently throughout the briefs and record, but we use the spelling from Alcala's declaration. We updated the caption accordingly.

to sit in sewage from overflowing toilets. He asserts that they acted with deliberate indifference to his health and safety in violation of the Eighth Amendment. *See* 42 U.S.C. § 1983. A magistrate judge, presiding by consent under 28 U.S.C. § 636(c), entered summary judgment for the defendants. Suan appeals, but he challenges only a discovery ruling—namely, the denial of his motion to compel the production of video footage. We see no reason to disturb that ruling and therefore affirm.

According to Suan's complaint, inmates on his cell block set fires and flooded the toilets on December 4, 2020, causing "toxic smoke" and "raw sewage" to fill his cell. Suan asserts that the defendant officers did not put out a "major fire" that burned near him or address the sewage that pooled in his cell. He alleges that as a result he developed eye infections and difficulty breathing.

The magistrate judge set a discovery deadline of February 9, 2022, and later extended the deadline to February 21. On January 4, 2022, Suan served the defendants with a request for production of materials, including all documents and video footage relating to their involvement with "plaintiff's injury and health issue due to fire and flooding on December 4, 2020." *See* FED. R. CIV. P. 33, 34. In their February 22 responses, the defendants objected that the request was overly broad and vague. They also represented that the prison "had no documents regarding a flood or fire" on Suan's cell block, but they produced Suan's grievances about his cell conditions and the responses. Two days later Suan moved for summary judgment, but the magistrate judge denied the motion because Suan had failed to comply with the rules of procedure. On April 11 the defendants filed their own motion for summary judgment.

Suan responded to the motion on June 29, 2022, and listed evidence that he believed raised genuine issues of material fact. He separately moved to compel the defendants to produce the requested video footage, arguing that it would contradict their attestations that there was a fire on another cell block—but not Suan's—on December 4, 2020, and that the cell flooding was minimal and quickly addressed by staff. The magistrate judge denied the motion to compel, explaining that Suan had filed it unreasonably late (four months after discovery closed). The judge then entered summary judgment for the defendants, concluding that Suan lacked evidence that the defendants consciously disregarded a serious risk to his health and safety. *See Farmer v. Brennan*, 511 U.S. 825, 837–39 (1994).

On appeal Suan challenges only the denial of his motion to compel, a ruling we review for an abuse of discretion. *Gonzalez v. City of Milwaukee*, 791 F.3d 709, 713 (7th Cir. 2015).

The magistrate judge reasonably denied Suan's motion as untimely. Judges have broad discretion in discovery-related matters, and we have frequently affirmed decisions to deny motions, like Suan's, that are filed long after they could have been. *See, e.g.*, *id.* at 714 (seven months after close of written discovery); *Packman v. Chi. Tribune Co.*, 267 F.3d 628, 647 (7th Cir. 2001) (one month after close of discovery and days after defendants moved for summary judgment). Suan sought video footage in a request for production filed on January 4, 2022. On February 22 the defendants objected in part to the request, stated that there was no record of a fire on Suan's cell block on the date in question, and did not produce any videos.[1] At that point Suan was aware that the defendants did not intend to produce any footage (if any existed) and could have moved to compel. *See* FED. R. CIV. P. 37(3)(B)(iv). Instead he waited until June 29—four months after the defendants had responded and discovery had closed, and over two months after they had moved for summary judgment. Suan did not explain his tardiness. The magistrate judge thus was within his discretion to conclude that Suan did not file his motion in a reasonable time.

Furthermore, the magistrate judge did not err by declining to interpret the motion to compel as a request for a continuance under Rule 56(d). This rule permits a nonmoving party to request additional time for discovery when faced with a motion for summary judgment, but the party must include an affidavit or declaration with specific reasons why he cannot yet present evidence essential to justify his opposition. *Id.* r. 56(d); *see Smith v. OSF HealthCare Sys.*, 933 F.3d 859, 864 (7th Cir. 2019). Suan's motion did not meet those requirements, so the magistrate judge had no obligation to consider granting a continuance for additional discovery.

AFFIRMED

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[1] To the extent that Suan argues that the defendants waived their objection to his request for video footage by responding one day late to his discovery requests, he did not raise this issue in the district court so the argument is waived. *See Stevens v. U.S. Dep't of State*, 20 F.4th 337, 343 (7th Cir. 2021).