

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY  
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL  
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF  
RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-3-08  
J. Steele  
DEPUTY CLERK

**FILED**  
NOV - 3 2008  
CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION AT SANTA ANA  
BY *[Signature]* DEPUTY

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

FLOYD WILLIAMS III and )  
FREDERICK LEROY HAYES, JR., )  
Plaintiffs, )  
v. )  
BOARD OF PAROLE HEARINGS, )  
Defendant. )

Case No. EDCV 08-00402-CBM (MLG)  
MEMORANDUM OPINION AND ORDER  
DISMISSING COMPLAINT WITH  
LEAVE TO AMEND

**I. Factual and Procedural Background**

Plaintiffs Floyd Williams III and Frederick Leroy Hayes, Jr. ("Plaintiffs") are state prisoners currently incarcerated at the Ironwood State Prison in Blythe, California. On April 15, 2008, Plaintiffs filed this *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, naming as defendants the California Board of Parole Hearings and its commissioners and officers acting in their official capacity. Plaintiffs claim that Defendant violated Plaintiffs' right to due process under the 14th Amendment of the United States Constitution by employing a "preponderance of the evidence" standard in parole hearings, rather than a more stringent "clear and

1 convincing evidence" standard. (Compl., App. ¶ 13.) Plaintiffs seek  
2 a declaration that the use of a "preponderance of the evidence"  
3 standard in parole hearings is unconstitutional and a permanent  
4 injunction ordering Defendants to discontinue use of the  
5 "preponderance of the evidence" standard of proof in parole  
6 suitability hearings. (Compl., App. ¶ 12.) Plaintiffs also seek a  
7 bench trial, their costs in bringing the complaint, and any other  
8 relief the Court deems just. (Compl., App. ¶¶ 13-17).

9 On September 2, 2008, Defendant filed a motion to dismiss the  
10 complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).  
11 Defendant argues that the complaint should be dismissed for the  
12 following reasons: (1) Defendant is entitled to Eleventh Amendment  
13 immunity from suits for monetary damages brought against State Board  
14 of Parole Hearings officers in their official capacity; (2) Defendant  
15 is entitled to absolute immunity from damages because Board officials  
16 are quasi-judicial officials entitled to immunity for their actions;  
17 (3) Plaintiffs have failed to causally connect Defendant to the  
18 alleged wrongs; (4) Plaintiff Williams' Eighth Amendment claim is  
19 barred by collateral estoppel;<sup>1</sup> (5) Plaintiffs have failed to plead  
20 sufficient facts to state a claim under Federal Rule of Civil  
21 Procedure 8; and (6) Defendant is entitled to qualified immunity from  
22

---

23 <sup>1</sup> Defendant misconstrues Plaintiffs' complaint to include an Eighth  
24 Amendment claim that Williams raised in a previous § 1983 action in the  
25 Southern District of California, in which he argued that his rights  
26 were violated when he was placed on long term lockdown and denied  
27 outdoor exercise. Case No. CV 03-01001-LAB. Defendant points to the  
28 first page of Plaintiffs' § 1983 complaint, but there Plaintiffs are  
simply answering the complaint's question as to whether they have filed  
any other lawsuits in federal court while they have been prisoners. See  
Pls.' Compl. at 1. Plaintiffs have not alleged any Eighth Amendment  
violations in the instant action and as such, the Court declines to  
address any of Defendant's arguments related to this claim.

1 damages.<sup>2</sup> (Def.'s Mot. to Dismiss at 2). On September 29, 2008,  
2 Plaintiffs filed an opposition to the motion to dismiss. The matter  
3 is ready for decision.

4  
5 **II. Standard of Review on a Motion to Dismiss**

6 Federal Rule of Civil Procedure 12(b)(6) allows for the  
7 dismissal of a complaint for "failure to state a claim upon which  
8 relief can be granted." In considering a motion to dismiss, the  
9 Court must accept all factual allegations of the complaint as true  
10 and construe them in the light most favorable to Plaintiff. See  
11 *Knieval v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). *Pro se*  
12 pleadings are held to a less stringent standard than those drafted by  
13 lawyers. *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (per  
14 curiam) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)). The  
15 complaint need only provide "a short and plain statement of the claim  
16 showing that the pleader is entitled to relief." Fed. R. Civ. P.  
17 8(a)(2). Detailed factual allegations are not required to survive a  
18 motion to dismiss. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955,  
19 1964-65 (2007). However, the liberal construction doctrine "applies  
20 only to a plaintiff's factual allegations." *Neitzke v. Williams*,  
21 490 U.S. 319, 330 n.9 (1989). The Court need not accept as true  
22 unreasonable inferences or conclusory legal allegations cast in the  
23 form of factual allegations. See *Ileto v. Glock Inc.*, 349 F.3d 1191,  
24 1200 (9th Cir. 2003).

25  
26 \_\_\_\_\_  
27 <sup>2</sup> Because Plaintiffs have failed to name individual officials of  
28 the State Board of Parole Hearings as defendants to this action, it is unnecessary to address Defendant's contentions that Board officials are quasi-judicial officials entitled to immunity for their actions and that Board officials are entitled to qualified immunity from damages.

1 **III. Discussion**

2 **A. Eleventh Amendment Immunity**

3 Defendant argues that it is entitled to Eleventh Amendment  
4 immunity from damages for suit brought against State Board of Parole  
5 Hearings officers acting in their official capacity. Plaintiffs  
6 contend that they are not barred from bringing suit against the State  
7 Board of Parole Hearings for prospective injunctive and declaratory  
8 relief.

9 **1. Defendant State Board of Parole Hearings Is Immune**  
10 **from Suit Under the Eleventh Amendment**

11 The Eleventh Amendment bars federal actions against a state  
12 brought by its own citizens, whether the relief sought is legal or  
13 equitable. See U.S. Const. amend. XI; *Edelman v. Jordan*, 415 U.S.  
14 651, 662-63 (1974). The California Board of Parole Hearings is a  
15 state agency which is entitled to immunity under the Eleventh  
16 Amendment. See *Pennhurst State School & Hosp. v. Halderman*, 465 U.S.  
17 89, 106 (1984). Accordingly, Plaintiffs' claims for both monetary  
18 damages and prospective injunctive and declaratory relief against the  
19 State Board of Parole Hearings are barred by the Eleventh Amendment  
20 and must be dismissed.

21 **2. State Board of Parole Hearings Officers are Immune**  
22 **from Monetary Damages under the Eleventh Amendment but**  
23 **May Be Sued for Injunctive and Declaratory Relief**

24 State officials acting in their official capacity may not be  
25 sued for retroactive money damages. See *Edelman v. Jordan*, 415 U.S.  
26 651, 666-667 (1974). The United States Supreme Court has held that  
27 "[c]ompensatory or deterrence interests are insufficient to overcome  
28 the dictates of the Eleventh Amendment." *Papasan v. Allain*, 478 U.S.

1 265, 277-278 (1986). Therefore, to the extent that Plaintiffs are  
2 seeking any monetary damages against the officers of the State Board  
3 of Parole Hearings acting in their official capacity, this relief is  
4 barred by the Eleventh Amendment.

5 However, Plaintiffs are not barred by the Eleventh Amendment in  
6 bringing a claim for declaratory and injunctive relief against state  
7 officials. See *Ex Parte Young*, 209 U.S. 123, 166 (1908). The *Ex Parte*  
8 *Young* exception to Eleventh Amendment immunity applies where a  
9 violation of the Constitution or federal law is alleged. See *Idaho v.*  
10 *Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281 (1997) ("An  
11 allegation of an on-going violation of federal law...is ordinarily  
12 sufficient to invoke the *Young* fiction."). Further, the inquiry into  
13 whether suit lies under *Ex Parte Young* does not include an analysis  
14 of the merits of the federal claim. See *Verizon Maryland Inc. v.*  
15 *Public Service Comm'n of Maryland*, 535 U.S. 635, 646 (2002) (federal  
16 suit against state officials under *Young* not barred by uncertainty  
17 whether federal law supports the plaintiff's claims and whether  
18 federal or state law applies). Accordingly, if Plaintiffs can allege  
19 a violation of the Constitution or of federal law, they may bring  
20 suit against the officers of the State Board of Parole Hearings for  
21 prospective injunctive and declaratory relief.<sup>3</sup>

22 **B. Plaintiffs Have Failed to State a Claim upon Which Relief**  
23 **Can Be Granted**

24 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege

---

25  
26 <sup>3</sup> Because Plaintiffs have failed to name any individual officials  
27 of the Board of Parole Hearings as defendants, they are not entitled to  
28 bring a claim for prospective injunctive relief. However, if Plaintiffs  
were to amend the complaint to name specific officials as defendants,  
they would be entitled to bring a claim pursuant to *Ex Parte Young*.

1 two elements: (1) that a right secured by the Constitution or laws of  
2 the United States was violated, and (2) that the alleged violation  
3 was committed by a person acting under the color of state law. *West*  
4 *v. Atkins*, 487 U.S. 42, 48 (1988). Plaintiffs contend that the  
5 California Board of Parole Hearings' use of a "preponderance of the  
6 evidence" standard of proof in parole determinations, rather than a  
7 more favorable "clear and convincing evidence" standard, violates  
8 Plaintiffs' federal due process rights.

9 Defendant argues that Plaintiffs' complaint fails to plead  
10 sufficiently specific facts to state a claim under Rule 8 of the  
11 Federal Rules of Civil Procedure. A plaintiff must set forth his  
12 claims in short and plain terms, and each factual allegation must be  
13 "simple, concise and direct." Fed. R. Civ. P. 8(e)(1). Here,  
14 Defendant contends that Plaintiffs' complaint is conclusory and  
15 devoid of specific factual allegations which would give notice to  
16 Defendant of the basis of Plaintiffs' claim.

17 While detailed factual allegations are not required to survive  
18 a motion to dismiss, particularly in *pro se* prisoner litigation,  
19 nevertheless the court need not accept as true conclusory  
20 allegations or legal characterizations, such as the allegations made  
21 in this action. *Ileto*, 349 F.3d at 1200. Here, from the sparsity of  
22 facts alleged in Plaintiffs' complaint, the Court is unable to  
23 determine whether Plaintiffs have stated a viable constitutional or  
24 federal law claim against the officials of the State Board of Parole  
25 Hearings. Plaintiffs have failed to allege any facts that show: (1)  
26 which specific State Board of Parole Hearings officials have  
27 supposedly violated Plaintiffs' constitutional rights; (2) what  
28 particular standard of evidence is currently employed by the State

1 Board of Parole Hearings; (3) whether Plaintiffs themselves have had  
2 a parole hearing and been denied parole; (4) if so, what particular  
3 standard of evidence was used at that parole hearing; (5)  
4 alternatively, whether they are eligible for parole in the future and  
5 if so, on what date; and (6) how employing a "clear and convincing  
6 evidence" standard of proof instead of the alleged use of a  
7 "preponderance of the evidence" standard would specifically remedy  
8 Plaintiffs' claim of violation of their federal due process rights.  
9 In sum, Plaintiffs have not plead sufficient facts necessary to  
10 survive a motion to dismiss.

11

#### 12 **IV. Conclusion**

13 For the reasons provided above, **IT IS ORDERED** that the complaint  
14 be **DISMISSED** without prejudice and with leave to amend. If Plaintiffs  
15 still wish to pursue this action, they may file a first amended  
16 complaint within **twenty-one (21) days** of the date of this Order,  
17 remedying the deficiencies identified above. The amended complaint  
18 must set forth all of the facts which support Plaintiffs' claim and  
19 may not refer to the other complaint. The first amended complaint  
20 should be captioned "FIRST AMENDED COMPLAINT," and should bear this  
21 case name and case number EDCV 08-00402-CBM (MLG). The first amended  
22 complaint must clearly identify the specific facts on which  
23 Plaintiffs' claim is based. It should include the date, time, place  
24 and circumstances under which the claim arose, the full details of  
25 what each defendant did or failed to do, and the damage or injury  
26 suffered by Plaintiffs as a result. It must comply with the  
27 requirements of Federal Rule of Civil Procedure 8(a). Plaintiffs are  
28 cautioned that they are responsible for presenting factually accurate

1 information to the Court. A knowing misrepresentation to the Court  
2 is punishable by sanction, including dismissal. Failure to timely  
3 file the First Amended Complaint will result in the dismissal of the  
4 entire action with prejudice.

5

6 Dated: October 31, 2008

7

8



---

Marc L. Goldman  
United States Magistrate Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28