

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 16, 2018

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIO NOYOLA,

Plaintiff,

v.

JOHN ROGERS; JEFFREY A. UTTECHT;
STEVEN HAMMOND; DAN PACHOLKE; DICK
MORGAN; JOHN REIDY; and A DELEON-
DURAN,

Defendants.

No. 4:16-CV-5041-EFS

**ORDER GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

Before the Court, without oral argument, is the above-captioned Defendants' Motion for Summary Judgment, ECF No. 94. Defendants ask the Court to grant summary judgment in their favor, arguing that (1) Mr. Noyola's claims are moot, (2) he has failed to state a viable claim, and (3) they are entitled to qualified immunity. Because Mr. Noyola has failed to demonstrate that the alleged conduct violated a clearly established constitutional right, the Court finds Defendants are entitled to qualified immunity and grants their motion for summary judgment.

I. Background

Inmates in the custody of the Washington State Department of Corrections (DOC) receive medical care pursuant to the DOC Offender

1 Health Plan (OHP). See ECF No. 98-1, Exs. 1-3. The OHP "provides
2 medically necessary health and mental health care" to offenders
3 incarcerated in DOC facilities. ECF No. 98-1 at 5.¹ The OHP also contains
4 policies advising medical providers when treatments are considered
5 "medically necessary" - i.e., under what circumstances a prisoner
6 qualifies for a particular medical intervention under the relevant OHP
7 policy.

8 From April 2014 to January 2016, the OHP's eye-related policy
9 provided:

10 A scheduled optometry visit for routine testing of
11 visual acuity (VA) is not authorized. Before
12 referral to an optometrist, screen best corrected
13 VA in the medical clinic with the patient's current
14 glasses using a standard Snellen
15 chart Routine optometry referral may be
16 made if two or more years [have] passed since the
17 last evaluation AND the offender complains of
18 difficulty with distance vision AND VA screening
19 in the medical clinic shows corrected vision to be
20 20/60 or worse in the better eye.

21 ECF Nos. 95 at 5, 98-1 at 157. From January 2016 forward, the
22 policy was identical, except that the minimum period between optometry
23 evaluations was extended from two to three years. ECF Nos. 95 at 5, 98-
24 1 at 151-52.

25 Plaintiff Mario Noyola is a DOC inmate; until recently, he was
26 housed at Coyote Ridge Correctional Center in Connell, Washington. See
ECF No. 99-1 at 31, 33. In January 2015, Mr. Noyola requested to receive
an updated glasses prescription and was placed on a waiting list for a

¹ Where a page number is cited, that number refers to the page assigned by the Court's ECF system, which is not necessarily the page number printed on the document itself.

1 Snellen eye exam.² ECF No. 113-2 at 2. On March 28, 2015, Mr. Noyola did
2 not appear for his scheduled appointment with Defendant A. Deleon-Duran,
3 CNA, and it was rescheduled. ECF No. 99-1 at 2.

4 Mr. Noyola did appear for the re-scheduled appointment on April
5 18, 2015, where he complained of constant headaches and asserted that
6 objects were "not as clear as [they] once were." ECF No. 99-1 at 4. A
7 Snellen exam revealed that his corrected vision was 20/20 when using
8 both eyes, and his request for new glasses was denied. *Id.* Mr. Noyola
9 filed a grievance, alleging new eyeglasses were a medical necessity and
10 that he was in a substantial amount of pain. ECF No. 96-1 at 2. This
11 grievance was denied at Levels 1 and 2 of the DOC review process. *Id.*
12 at 2-7. At Level 3, the DOC official noted that while there was no
13 evidence Mr. Noyola was denied medically necessary care, he may "need
14 to be screened for close vision to determine if [he] fit the criteria
15 for reading glasses" and thus his grievance was partially supported.
16 *Id.* at 7. He was encouraged to work collaboratively with his healthcare
17 providers to attain the best medically necessary care for his health
18 conditions. *Id.*

19 Mr. Noyola had additional appointments with other medical
20 providers, including Defendant John Rogers, ARNP, on August 7, 2015,
21 September 1, 2015, and October 5, 2015, during which he complained of
22 blurry vision and continuing headaches. On September 1, 2015, he
23 reported that his headaches were worsening, and on October 5, 2015, he
24
25

26 ² A Snellen exam is a routine screening procedure during which a patient reads
from a chart of letters from a measured distance.

1 stated they remained the same. See ECF No. 99-1 at 6, 8, 11, 14. Each
2 provider referred Mr. Noyola for an optometry appointment. *Id.*

3 On January 15, 2016, Mr. Noyola was seen by Defendant optometrist
4 John Reidy. See ECF No. 99-1 at 14, 16. Defendant Reidy conducted a
5 visual acuity screening exam, which revealed Mr. Noyola's corrected
6 vision was 20/40 when using each eye and both eyes. *Id.* Because Mr.
7 Noyola's vision was better than 20/60 in at least one eye, Defendant
8 Reidy concluded that he did not meet DOC criteria for an eye exam and
9 ended the appointment. *Id.*

10 Mr. Noyola filed this lawsuit in April 2016, alleging Defendants
11 were deliberately indifferent to his serious medical needs, thus
12 violating the Eighth Amendment to the Constitution. ECF No. 1-1 at 30.
13 He further alleged he suffered from myopic astigmatism in both eyes and
14 that the DOC's refusal to provide him an updated glasses prescription
15 gave him blurry vision, interfered with his ability to read and watch
16 television, and caused "severe chronic headaches and substantial eye
17 strain." ECF No. 1-1 at 5-6.

18 After filing suit, Mr. Noyola continued to request an updated
19 glasses prescription. On September 27, 2016, Mr. Noyola was seen by J.
20 Nelson and complained of blurry vision and chronic headaches. ECF No.
21 99-1 at 18. On November 15, 2016, Mr. Noyola failed to appear at an
22 appointment that was scheduled to address his headaches and "visual
23 disturbances." ECF No. 99-1 at 20. On December 1, 2016, he was again
24 seen by Defendant Rogers, ARNP. *Id.* He complained of headaches and
25 impaired visual acuity, but - like before - he "had no sudden or acute
26 vision loss." ECF No. 99-1 at 22. In response to his dissatisfaction

1 with his medical care, Mr. Noyola filed another grievance, which was
2 again denied at Levels 1 and 2, and found to be partially supported at
3 level 3. ECF No. 96-1 at 9-13. Mr. Noyola was again encouraged to work
4 with his medical providers to address his concerns and informed that he
5 remained free to meet with an optometrist outside of DOC at his own
6 expense. *Id.*

7 On January 1, 2017, Mr. Noyola had an appointment with V. Pence,
8 NAC, during which he complained of blurry vision, problems with depth
9 perception, and headaches. ECF No. 99-1 at 25. A Snellen exam revealed
10 his vision to be 20/50 when using each eye and both eyes. *Id.* Again, he
11 did not qualify for new glasses under the applicable OHP policy, and he
12 did not receive a new prescription.

13 On April 7, 2017, Mr. Noyola was seen by J. Rice, MD, to address
14 further complaints of headaches. ECF No. 99-1 at 27. He was prescribed
15 ibuprofen. *Id.* On April 19, 2017, Mr. Noyola was again seen by Defendant
16 Reidy for an optometry exam, where he tested at 20/80 when using each
17 eye and both eyes and was diagnosed with myopia and astigmatism. ECF
18 No. 99-1 at 27, 29. Having met the OHP guidelines for new glasses,
19 Defendant Reidy referred him for new prescription glasses at the DOC's
20 cost. *Id.* Mr. Noyola received the new glasses on June 8, 2017, which
21 have reportedly relieved his symptoms. ECF No. 99-1 at 35.

22 **II. Summary Judgment Standard**

23 Summary judgment is appropriate when, viewing the evidence in the
24 light most favorable to the nonmoving party, there is no genuine dispute
25 as to any material fact. *United States v. JP Morgan Chase Bank Account*
26 *No. Ending 8215*, 835 F.3d 1159, 1162 (9th Cir. 2016). The district

1 court's function at summary judgment is "not to weigh evidence and
2 determine the truth of the matter but to determine whether there is a
3 genuine issue for trial." *Anderson v. Liberty Lobby*, 477 U.S. 242, 249
4 (1986). A court shall grant summary judgment if the movant shows that
5 there is no genuine dispute as to any material fact and the movant is
6 entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

7 **III. Analysis**

8 Defendants move this Court for an order of summary judgment. They
9 contend that (1) Mr. Noyola's request for injunctive relief is moot;
10 (2) Mr. Noyola has failed to state a viable claim under the Eighth
11 Amendment; and (3) Defendants are entitled to qualified immunity from
12 Plaintiff's claim for damages. ECF No. 94 at 2, 8, 18. Because Mr.
13 Noyola's claim for injunctive relief is moot, Defendants in their
14 official capacities are not "persons" under § 1983, and qualified
15 immunity protects Defendants from his claims for money damages,
16 Defendants' motion for summary judgment is granted.

17 **A. Mootness**

18 Federal courts are without power to decide questions that cannot
19 affect the rights of litigants in the case before them. *North Carolina*
20 *v. Rice*, 404 U.S. 244, 246 (1971). Before a federal court may exercise
21 jurisdiction over a case, it must resolve the question of mootness. *Id.*
22 Generally, a case becomes moot where "it is impossible for a court to
23 grant any effectual relief whatever to the prevailing party." *Chafin v.*
24 *Chafin*, 565 U.S. 165, 172 (2013). However, if a case is "capable of
25 repetition but evading review," a court may exercise jurisdiction over
26

1 a case, even if that particular plaintiff's injury has been resolved.
2 See *Roe v. Wade*, 410 U.S. 113, 125 (1973).

3 In addition to his claim for money damages, Mr. Noyola seeks
4 injunctive relief "requiring the Defendants to immediately arrange for
5 the DOC optometrist to conduct a full eye exam, treat Plaintiff's eye
6 condition and provide a new [prescription]." ECF No. 37 at ¶ 119.
7 Defendants argue that this claim is moot, and this Court agrees.

8 Mr. Noyola was transferred to a new prison facility and received
9 new glasses in June of 2018. ECF No. 99-1 at 35. He does not dispute
10 that these new glasses resolved his symptoms but argues "there is a
11 reasonable expectation that the violation will reoccur since Plaintiff
12 will be in Defendants' custody for additional years and their policies
13 have yet to change for providing vision care." ECF No. 113 at 21. This
14 argument is unpersuasive. Mr. Noyola is not so far separated from
15 federal courts that a future claim would evade review. See *Dilley v.*
16 *Gunn*, 64 F.3d 1365 (holding capable of repetition yet evading review
17 exception did not apply to inmate's claim that he was denied access to
18 prison law library).³ Mr. Noyola's claim for injunctive relief is moot,
19 and Defendants' motion is granted in this regard.⁴

20
21 ³ The Court also notes that Mr. Noyola has not made an adequate showing that
22 he is likely to suffer the same alleged wrong in the future. See *City of Los*
23 *Angeles v. Lyons*, 461 U.S. 95, 111 (1983) ("Absent a sufficient likelihood
24 that he will again be wronged in a similar way, [a plaintiff] is no more
25 entitled to an injunction than any other citizen").

26 ⁴ Mr. Noyola also claims that the OPH vision policy itself violates his
constitutional rights. See ECF No. 37 at 5-7. However, Mr. Noyola is unable
to bring a suit against DOC because it is a state agency and not a "person"
amenable to suit under § 1983. See *Wolfe v. Strankman*, 392 F.3d 358 (9th
Cir. 2004) (explaining state agencies are protected from suit under § 1983).
Accordingly, there is no case or controversy from which he has standing to
challenge the policy itself. *But cf. Monell v. Dep't of Soc. Servs. of City*
of New York, 436 U.S. 658, 690 (1978) (permitting suit against policies or
customs of municipalities that are responsible for violations of

1 **B. Official v. individual capacity**

2 The parties dispute whether Mr. Noyola brings claims against
3 Defendants in their official or individual capacities. The Court notes
4 that Mr. Noyola's Second Amended Complaint appears to name Defendants
5 only in their official capacities. See ECF No. 37, ¶ 5-11. Nonetheless,
6 Mr. Noyola is a pro se plaintiff, and thus his complaint, "however
7 inartfully pleaded, must be held to less stringent standards than formal
8 pleadings drafted by lawyers." *Erickson v. Pardus* 551 U.S. 89, 94
9 (2007). Accordingly, the Court construes Mr. Noyola's complaint
10 liberally to name all Defendants in both their official and individual
11 capacities. *Id.*; see also Fed. R. Civ. P. 8(e) ("Pleadings must be
12 construed so as to do justice.").

13 **C. "Persons" eligible for suit under 42 U.S.C. § 1983**

14 Under 42 U.S.C. § 1983, a plaintiff may file suit against a
15 "person" who, under color of law, deprives the plaintiff of a federal
16 statutory or constitutional right. However, a state government is not
17 a "person" under § 1983 and thus cannot be sued under the statute. See
18 *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 64 (1989);
19 *Ngiraingas v. Sanchez*, 495 U.S. 182 (1990). Similarly, state officials
20 who are "sued for damages in their official capacity are not 'persons'
21 for purposes of the suit because they assume the identity of the
22 government that employs them." *Hafer v. Melo*, 502 U.S. 21, 26 (1991).

23
24 constitutional rights). Nor does Mr. Noyola have any standing to challenge
25 the structure or actions of the DOC Care Review Committee because the CRC
26 "never reviewed Plaintiff's vision complaints." ECF No. 113 at 21. Thus, he
did not suffer any injury as a result of CRC action. See *Lujan v. Defs. of
Wildlife*, 504 U.S. 555, 560-61 (1992) (explaining that standing requires (1)
injury in fact, (2) a causal connection between the alleged conduct and
injury, and (3) redressability.).

1 By contrast, officers sued in their personal capacity come to
2 court as individuals and are thus "persons" amenable to suit for the
3 purposes of § 1983. *Id.* Accordingly, the Court grants Defendants' motion
4 for summary judgment as to Mr. Noyola's claims against Defendants in
5 their official capacities.

6 **D. Eighth Amendment "deliberate indifference" standard**

7 To state an Eighth Amendment violation based on prison medical
8 treatment under 42 U.S.C. § 1983, an inmate must show "deliberate
9 indifference to serious medical needs." *Estelle v. Gamble*, 429 U.S. 97,
10 104 (1976). To satisfy this two-part test, a plaintiff must first show
11 a "serious medical need" by demonstrating that a failure to treat the
12 injury or condition "could result in further significant injury" or
13 cause the "unnecessary and wanton infliction of pain." *Jett v. Penner*,
14 439 F.3d 1091, 1096 (9th Cir. 2006) (internal citations omitted).

15 Second, a plaintiff must show that the defendant's response to the
16 need was deliberately indifferent, meaning that an official "knows of
17 and disregards an excessive risk to inmate health and safety." *Toguchi*
18 *v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004) (quoting *Gibson v. Cty.*
19 *of Washoe*, 290 F.3d 1175, 1187 (9th Cir. 2002)) (internal quotation
20 marks omitted). Deliberate indifference "may appear when prison
21 officials deny, delay or intentionally interfere with medical treatment,
22 or it may be shown by the way in which prison physicians provide medical
23 care." *Colwell*, 763 F.3d at 1066 (quoting *Hutchinson v. United States*,
24 838 F.2d 390, 394 (9th Cir. 1988)). Either way, the plaintiff must show
25 that the defendants "chose this course in conscious disregard of an
26 excessive risk to plaintiff's health." *Jackson v. McIntosh*, 90 F.3d 330,

1 332 (9th Cir. 1996) (citing *Farmer v. Brennan*, 114 S. Ct. 1970, 1978-
2 79 (1994)). Thus, "the official must both be aware of facts from which
3 the inference could be drawn that a substantial risk of serious harm
4 exists, and he must also draw the inference." *Farmer*, 511 U.S. at 837.

5 **E. Qualified Immunity**

6 Defendants raise a defense of qualified immunity to Mr. Noyola's
7 claim for damages. See ECF No. 94 at 18. The qualified immunity doctrine
8 shields government officials performing discretionary functions from
9 civil liability if their actions were objectively reasonable in light
10 of clearly established law at the time they acted. See *Brosseau v.*
11 *Haugen*, 543 U.S. 194, 198 (2004). The qualified immunity doctrine "gives
12 ample room for mistaken judgments by protecting all but the plainly
13 incompetent or those who knowingly violate the law." *Hunter v. Bryant*,
14 502 U.S. 224, 229 (1991) (internal quotations omitted).

15 In *Saucier v. Katz*, the Supreme Court laid out a two-pronged
16 inquiry for courts to use in determining whether a public official's
17 actions were protected by qualified immunity: first, taken in the light
18 most favorable to the party asserting the injury, did the officer's
19 alleged conduct violate a constitutional right? And second, was that
20 right clearly established at the time of the alleged injury? 533 U.S.
21 194, 201 (2001). To avoid unnecessary litigation of constitutional
22 issues, courts may "exercise their sound discretion . . . in light of
23 the circumstances" when deciding which of the two prongs to address
24 first. See *Pearson v. Callahan*, 555 U.S. 223, 236-42 (2009).

25 In this case, the Court first turns to the "clearly established"
26 prong of the *Saucier* analysis. To satisfy this prong, a plaintiff must

1 show "the contours of a right are sufficiently clear that every
2 reasonable official would have understood that what he is doing violates
3 that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (internal
4 quotations omitted); *Sweaney v. Ada County, Idaho*, 119 F.3d 1385, 1388
5 ("The plaintiff bears the initial burden of proving the right was
6 clearly established."). A plaintiff "must offer more than general
7 conclusory allegations that the defendants violated a constitutional
8 right." *Id.* at 1389 (internal quotations omitted). In other words,
9 "existing precedent must have placed the statutory or constitutional
10 question beyond debate." *Reichle v. Howards*, 566 U.S. 658, 664 (2012);
11 *Hamby v. Hammond*, 821 F.3d 1085, 1092 (9th Cir. 2016).

12 Mr. Noyola cites a number of cases that he argues clearly establish
13 deliberate indifference to a prisoner's loss of vision as a
14 constitutional violation. See ECF No. 113 at 12 (citing *Colwell v.*
15 *Bannister*, 763 F.3d 1060 (9th Cir. 2014) and *Koehl v. Dalsheim*, 85 F.3d
16 86 (2nd Cir. 1996)). For instance, Mr. Noyola cites *Colwell v. Banister*
17 for the proposition that the "loss of vision, though not life
18 threatening, can be a serious medical need." ECF No. 113 at 12; 763 F.3d
19 1060 (9th Cir. 2014).⁵ However, upon an examination of existing case
20 law, the Court finds that neither *Colwell* nor any other case within the
21 Ninth Circuit clearly establishes "beyond debate" that Mr. Noyola's
22 rights were violated.⁶

23
24 ⁵ The Court assumes for the sake of argument that controlling circuit authority
25 – here, the Ninth Circuit – could be a "dispositive source of clearly
26 established law." See *Carroll v. Carman*, 135 S. Ct. 348, 350 (2014) (assuming
arguendo, but not holding, that controlling circuit authority could "clearly
establish" a right).

⁶ See *Reichle*, 566 U.S. at 664; *Hamby*, 821 F.3d at 1093. ("Crucially, for
purposes of determining qualified immunity," a trial court is to engage in

1 In *Colwell*, the Court of Appeals for the Ninth Circuit held that
2 prison officials were deliberately indifferent to a serious medical
3 condition when they declined to correct an inmate's severe cataract,
4 which was causing complete blindness in one eye. *Id.* In that case, at
5 least three medical providers recommended that the inmate's cataract be
6 treated, but treatment was denied due to an administrative policy that
7 an inmate's vision would not be corrected if he could see well out of
8 one of his eyes. *Id.* at 1064. Notably, the prisoner's right eye was
9 blind "for more than a decade." *Id.* at 1067. It affected "his perception
10 and render[ed] him unable to see if he turn[ed] to the left." *Id.* His
11 monocular blindness caused him physical injury: "he ran his hand through
12 a sewing machine on two occasions while working in the prison mattress
13 factory; he ran into a concrete block, splitting open his forehead; he
14 regularly hit[] his head on the upper bunk of his cell; and he bump[ed]
15 into other inmates who [were] not good-natured about such encounters,
16 triggering fights on two occasions." *Id.* at 1067-68. Accordingly, the
17 court held that complete loss of vision in one eye as the result of a
18 cataract is a serious medical need. The court also stated that "the
19 blanket, categorical denial of medically indicated surgery solely on
20 the basis of an administrative policy that 'one eye is good enough for
21 prison inmates' is the paradigm of deliberate indifference." *Id.* at
22 1063.

23 *Colwell* may have clearly established that a *complete* monocular
24 blindness and subsequent deprivation of medically-necessary surgery is
25

26 "an examination of existing case law" and determine whether alleged conduct
is "indisputably unconstitutional.").

1 a constitutional violation. However, *Colwell* did not clearly establish
2 – such that every reasonable official would have understood – that any
3 loss of vision and subsequent deprivation of an optometry examination
4 or an updated glasses prescription was a constitutional violation. See
5 *al-Kidd*, 563 U.S. at 741; see also *Estelle*, 429 U.S. at 107 (“A medical
6 decision not to order an X-ray, or like measures, does not represent
7 cruel and unusual punishment.”).

8 Here, Mr. Noyola’s partial loss of vision, while certainly
9 inconvenient and uncomfortable, was undeniably less severe than that of
10 the *Colwell* plaintiff. The record does not indicate Mr. Noyola suffered
11 any accidents while awaiting an optical examination, nor did he lose
12 vision entirely on one side. In fact, the objective medical evidence
13 indicates Mr. Noyola’s corrected vision, though gradually worsening,
14 was at least reasonably acute for the two years leading up to the time
15 that the Department of Corrections granted him an optometry exam and
16 prescribed him new glasses. See, e.g., ECF No. 99-1, Exs. 2, (4/18/2015:
17 20/20 in both eyes), 6 (10/5/2015: 20/40 in both eyes), (1/14/2016:
18 20/40 in both eyes); (1/7/2017: 20/50 in both eyes), (4/19/17: 20/80 in
19 both eyes, new glasses ordered). Accordingly, although *Colwell* does
20 stand for the proposition that extreme, treatable eye problems can give
21 rise to a serious medical need, *Colwell* did not clearly establish
22 “beyond debate” that Defendants were violating Mr. Noyola’s
23 constitutional rights by declining to administer treatment for more
24 moderate eye problems. See *Hamby*, 821 F.3d at 1092. The Court’s further

1 examination of Ninth Circuit case law failed to reveal a case that would
2 have met the "clearly established" standard.⁷

3 Mr. Noyola also directs the Court's attention to a case from the
4 Second Circuit, where he argues that a "less severe" loss of vision was
5 held to be a serious medical need. See ECF No. 113 at 12; *Koehl v.*
6 *Dalsheim*, 85 F.3d 86, 88 (2nd Cir. 1996). Mr. Noyola has not explained
7 how a case arising from the Southern District of New York and heard
8 before the Court of Appeals for the Second Circuit could possibly
9 clearly establish, "beyond debate," a rule of law that governed prison
10 officials in Washington State. Absent such an explanation, the Court is
11 unpersuaded by this argument.

12 Nonetheless, even if such a scenario were possible, the *Koehl*
13 plaintiff's loss of vision was hardly "less severe" than Mr. Noyola's.
14 In that case, after guard confiscated his eyeglasses, Mr. Koehl's "left
15 eye . . . shifted fully into the corner of the socket and [was] almost
16 sightless." *Koehl*, 85 F.3d at 87. Defendants' alleged conduct did not
17 cause such a significant injury, nor did Mr. Noyola's loss of vision
18 rise to an equivalent level of severity. Accordingly, even if somehow
19 controlling, *Koehl* would still not clearly establish beyond debate that
20 Defendants' conduct violated the Constitution. See *Hamby*, 821 F.3d at
21 1092.⁸

23 ⁷ See, e.g., *Williams v. Burns*, 172 F.3d 61 (9th Cir. 1999) ("Because [the
24 plaintiff] failed to offer any evidence his eyes became worse due to the
25 delay in receiving glasses, his deliberate indifference claim fails."); *Aytch*
v. Sablica, 498 F. App'x 703, 705 (9th Cir. 2012) (plaintiff failed to raise
a triable issue of fact for deliberate indifference when his vision problems
were "corrected when he received eyeglasses.").

26 ⁸ The Court's review of other Circuits' case law further discredits Mr.
Noyola's argument that the alleged constitutional violation was clearly
established. See *McKaye v. Toombs*, 930 F.2d 919 (Table) (6th Cir. 1991)

1 **IV. Conclusion**

2 Having found that Mr. Noyola has failed to demonstrate how the
3 alleged constitutional violation was clearly established, the Court
4 declines to address the second prong of the *Saucier* analysis – that is,
5 whether the Defendants’ alleged conduct actually violated Mr. Noyola’s
6 constitutional rights. In other words, the Court grants Defendants’
7 motion for summary judgment on qualified immunity grounds, without
8 addressing whether Mr. Noyola has demonstrated (1) a serious medical
9 need or (2) deliberate indifference on behalf of the Defendants. See
10 *Estelle*, 429 U.S. at 104.⁹ In doing so, the Court follows the direction
11 of the Supreme Court to avoid resolving “difficult and novel questions
12 of constitutional interpretation that will have no effect on the case.”¹⁰

13 Accordingly, **IT IS HEREBY ORDERED:**

- 14 **1. Defendants’ Motion for Summary Judgment, ECF No. 94, is**
15 **GRANTED.**

16
17 ([T]he failure to provide plaintiff with glasses did not demonstrate he was
18 deprived medical care”); *Goodman v. Runion*, 676 Fed. Appx. 156 (4th
19 Cir. 2017) (holding optometrists did not violate Eighth Amendment where they,
20 in compliance with prison policy, declined to give plaintiff contact lenses
21 when he alleged prescription glasses gave him chronic headaches).

22 ⁹ That said, after reviewing the record, Court notes that Mr. Noyola would
23 likely struggle to demonstrate a constitutional violation. See *Peralta v.*
24 *Dillard*, 744 F.3d 1076, 1086 (9th Cir. 2014) (en banc) (“The Eighth Amendment
25 requires neither that prisons be comfortable nor that they provide every
26 amenity that one might find desirable.” (internal quotations omitted)); *id.*
at 1082 (“What is reasonable depends on the circumstances, which normally
constrain what actions a state official can take [The plaintiff]
rests his claim on having to wait for dental care, but prisons are a
particularly difficult place to provide such care.”); see also *Estelle*, 429
U.S. at 107 (“A medical decision not to order an X-ray, or like measures,
does not represent cruel and unusual punishment.”).

¹⁰ See generally *Callahan*, 555 U.S. at 239–243 (discussing the benefits of
permitting lower courts to bypass the first step in the *Saucier* analysis in
cases where constitutional right is not clearly established); see also *al-*
Kidd, 563 U.S. at 735 (“Courts should think carefully before expending scarce
judicial resources to resolve difficult and novel questions of constitutional
interpretation that will have no effect on the case.”).

