

United States District Court  
For the Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

AASIM NIA,

No. C 12-4858 SI (pr)

Plaintiff,

**ORDER OF SERVICE**

v.

A. HEDGPETH,

Defendant.

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**INTRODUCTION**

Aasim Nia, an inmate at Salinas Valley State Prison, filed this *pro se* civil rights action under 42 U.S.C. § 1983. His complaint is now before the court for review under 28 U.S.C. § 1915A.

**DISCUSSION**

A federal court must engage in a preliminary screening of any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *See id.* at § 1915A(b). *Pro se* pleadings must be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated and (2) that the

1 violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487  
2 U.S. 42, 48 (1988).

3 In this action, Aasim Nia sues Salinas Valley State Prison warden A. Hedgpeth for racial  
4 discrimination in violation of his right to equal protection. The complaint alleges that warden  
5 Hedgpeth has unwritten policies at Salinas Valley to (a) house non-affiliated African American  
6 inmates with African American inmates who are affiliated, i.e., involved in gangs or disruptive  
7 groups, and (b) house African Americans on any yard regardless of their affiliation. Thus, for  
8 example, "a Crip will never be housed with another inmate beside a Crip, or a non-affiliated  
9 African American inmate." Docket # 1, p. 4. Similar policies are not applied to other racial  
10 groups. *See id.* As a result of the unwritten policy for housing African American inmates, Nia  
11 was subjected to lockdowns based only on his cell partner's affiliation. One such lockdown  
12 lasted from about March 28, 2011 until about July 11, 2011. *Id.* at 5.

13 Liberally construed, the allegations of the complaint allege a claim for a violation of Nia's  
14 right to equal protection of the laws in that the complaint alleges that housing policies for  
15 African American inmates are different from the policies for non-African American inmates.  
16 *See Johnson v. California*, 543 U.S. 499, 508-10 (2005) ( prison classification based on race is  
17 immediately suspect and is subject to the same strict scrutiny as a racial classification outside  
18 prison); *see also Richardson v. Runnels*, 594 F.3d 666, 671 (9th Cir. 2010) (applying *Johnson*  
19 to racial lockdowns in response to prison disturbances).

20  
21 **CONCLUSION**

22 1. The complaint, liberally construed, states a cognizable § 1983 claim against A.  
23 Hedgpeth for a violation of plaintiff's Fourteenth Amendment right to equal protection.

24 2. The clerk shall issue a summons and the United States Marshal shall serve, without  
25 prepayment of fees, the summons, a copy of the complaint and a copy of all the documents in  
26 the case file upon warden A. Hedgpeth at Salinas Valley State Prison.

27 3. In order to expedite the resolution of this case, the following briefing schedule for  
28 dispositive motions is set:

1           a.       No later than **April 19, 2013**, defendant must file and serve a motion for  
2 summary judgment or other dispositive motion. If defendant is of the opinion that this case  
3 cannot be resolved by summary judgment, defendant must so inform the court prior to the date  
4 the motion is due. If defendant files a motion for summary judgment, defendant must provide  
5 to plaintiff a new *Rand* notice regarding summary judgment procedures at the time he files such  
6 a motion. *See Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012). If defendant file a motion to  
7 dismiss for non-exhaustion of administrative remedies, defendant must provide to plaintiff a  
8 notice regarding motions to dismiss for non-exhaustion procedures at the time he files such a  
9 motion. *See Stratton v. Buck*, 697 F.3d 1004, 1008 (9th Cir. 2012).

10           b.       Plaintiff's opposition to the summary judgment or other dispositive motion  
11 must be filed with the court and served upon defendants no later than **May 17, 2013**. Plaintiff  
12 must bear in mind the notice and warning regarding summary judgment provided later in this  
13 order as he prepares his opposition to any motion for summary judgment. Plaintiff also must  
14 bear in mind the notice and warning regarding motions to dismiss for non-exhaustion provided  
15 later in this order as he prepares his opposition to any motion to dismiss.

16           c.       If defendant wishes to file a reply brief, the reply brief must be filed and  
17 served no later than **June 3, 2013**.

18           4.       Plaintiff is provided the following notices and warnings about the procedures for  
19 motions for summary judgment and motions to dismiss for non-exhaustion of administrative  
20 remedies:

21           The defendants may make a motion for summary judgment by which they seek to have  
22 your case dismissed. A motion for summary judgment under Rule 56 of the Federal  
23 Rules of Civil Procedure will, if granted, end your case. . . . Rule 56 tells you what you  
24 must do in order to oppose a motion for summary judgment. Generally, summary  
25 judgment must be granted when there is no genuine issue of material fact -- that is, if  
26 there is no real dispute about any fact that would affect the result of your case, the party  
27 who asked for summary judgment is entitled to judgment as a matter of law, which will  
28 end your case. When a party you are suing makes a motion for summary judgment that  
is properly supported by declarations (or other sworn testimony), you cannot simply rely  
on what your complaint says. Instead, you must set out specific facts in declarations,  
depositions, answers to interrogatories, or authenticated documents, as provided in Rule  
56(e), that contradict the facts shown in the defendants' declarations and documents and  
show that there is a genuine issue of material fact for trial. If you do not submit your own  
evidence in opposition, summary judgment, if appropriate, may be entered against you.  
If summary judgment is granted, your case will be dismissed and there will be no trial.

