UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Adam Jimenez, Plaintiff, v. Department of Corrections, et al., Defendants.	Case No.: 15-cv-2493-BAS-AGS **REPORT AND RECOMMENDATION ON DEFENDANTS' MOTION TO DISMISS (ECF No. 24)**

Plaintiff sued prison officials for transferring him to an area with an increased Valley Fever risk, notwithstanding his greater susceptibility to the disease. Those officials now assert qualified immunity, which shields them from suit unless they violated a "clearly established" constitutional right. In the nine years since this prison transfer occurred, a split has developed among the district courts in our Circuit as to whether these facts might give rise to a constitutional claim, with many finding that it does not. "If judges thus disagree on a constitutional question, it is unfair to subject [officials] to money damages for picking the losing side of the controversy." *Wilson v. Layne*, 526 U.S. 603, 618 (1999).

One day higher-risk prisoners may have a clearly established right to be free from a heightened environmental chance of disease. But that day has not yet come. It certainly had not nine years ago. The officials thus have qualified immunity.

BACKGROUND

Plaintiff Adam Jimenez asserts that he has a high risk of contracting Valley Fever because he suffers from hepatitis C, breathing difficulties, kidney failure, and chest and back pain. (ECF No. 12, at 3.) In November 2008, Jimenez learned he was being transferred to Kern Valley State Prison, which is in an area where Valley Fever is more prevalent. (*Id*. at 3-4.) He protested on the ground that, given his existing ailments, "the Desert would [adversely] affect my health." (*Id*. at 3.) But prison officials nevertheless transferred him that same month. He eventually contracted Valley Fever, which was diagnosed in 2012. (*Id.* at 4-5.)

Jimenez sued various officials at his original facility, R.J. Donovan Prison, for violating his civil rights. Two of those defendants—E. Ravelo and Dr. Silva—move to dismiss based on qualified immunity and failure to state a claim.

DISCUSSION

A. Qualified Immunity

The qualified immunity doctrine immunizes government officials from civil liability so long as "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). To pierce the qualified-immunity shield, the court must find: (1) the facts alleged or shown "make out a violation of a constitutional right"; and (2) that right was "'clearly established' at the time of defendant's alleged misconduct." *Id.* (citations omitted). "[P]laintiff bears the burden of proof that the right allegedly violated was clearly established." *Tarabochia v. Adkins*, 766 F.3d 1115, 1125 (9th Cir. 2014) (citation and bracketing omitted). Courts may "exercise their sound discretion in deciding which of the two prongs of the qualified immunity analysis should be addressed first[.]" *Pearson*, 555 U.S. at 236.

It is unclear whether transferring an immunocompromised inmate to an area with a higher incidence of disease violates any constitutional right. Inmates certainly have a right to be free from *concentrated* exposure to serious diseases, as might occur if prison officials

knowingly forced someone into the same cell as an infected person. *See Hutto v. Finney*, 437 U.S. 678, 682 (1978) (holding that Eighth Amendment prohibited forcing prisoners in "punitive isolation" to share mattresses with inmates suffering "from infectious diseases such as hepatitis and venereal disease") (citation omitted); *cf. Helling v. McKinney*, 509 U.S. 25, 27, 33, 35 (1993) (holding that Eighth Amendment barred subjecting inmate to dangerous amounts of second-hand smoke by placing him in a cell with "another inmate who smoked five packs of cigarettes a day," and analogizing this to "exposure of inmates to a serious, communicable disease"). But it is less obvious that prisoners have a right to be free from more *generalized* disease exposure, such as by housing vulnerable inmates in a geographical area with a higher incidence of a particular illness.

Many federal courts have struggled to identify such a right in Valley Fever cases like this one. In fact, they have not even been able to agree on how broadly or narrowly to define the right purportedly violated. *See, e.g., Williams v. Biter*, No. 1:14-cv-02076-DAD-EPG (PC), 2017 WL 431353, at *10-12 (E.D. Cal. Jan. 31, 2017) (reviewing Valley Fever cases and arguing that most courts have defined the right at issue with an improper degree of specificity).

Even assuming such a right exists, prison officials still have qualified immunity if that right was not clearly established. While the "weight of authority is that an inmate cannot state a claim for violation of the Eighth Amendment on confinement in a location where Valley Fever is present," there is some disagreement about whether a prisoner who is particularly susceptible to Valley Fever might state such a claim. *Smith v. Schwarzenegger*, No. 1:14-cv-00060-LJO-SAB, 2015 WL 2414743, at *20-21 (E.D. Cal. May 20, 2015) (citation omitted) (collecting cases). In the nine years since Jimenez's transfer to a Valley Fever-endemic area, many courts have found no such clearly established right, *see id.*, including as recently as last month. *See Duran v. Lewis*, No. 1:16-cv-00468-AWI-SAB (PC), 2017 WL 2797743, at *1 (E.D. Cal. June 27, 2017) ("Plaintiff cannot state a claim upon which relief may be granted based solely on the mere

exposure to Valley Fever spores," even if "he was at a greater risk of contracting Valley Fever due to []his race.").

This Court will not hold prison officials acting in 2008 to a higher standard of constitutional clairvoyance than the many federal judges who—even today—do not discern a clearly established constitutional right in similar Valley Fever cases. After all, official actions only violate clearly established law "when, at the time of the challenged conduct, the contours of a right are sufficiently clear that every reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011) (citation and internal punctuation omitted). Caselaw need not have addressed the precise factual scenario before, "but existing precedent must have placed the statutory or constitutional question beyond debate." *Id.* (citations omitted). While the Valley Fever debate rages on, defendants have qualified immunity.

B. Failure to State a Claim

Even if he had a constitutional right to avoid placement in an area where Valley Fever is more common due to his greater vulnerability to the disease, Jimenez fails to state a claim that either defendant violated that right. He alleges that Ravelo was responsible for updating and reviewing his R.J. Donovan Prison casefile and that Dr. Silva was his primary care provider there, but never claims these defendants were responsible for or knew about his transfer to Kern Valley State Prison, where he contracted Valley Fever. (ECF No. 12, at 2-3.) The Supreme Court has held that "a prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health and safety[.]" *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Because there is simply no allegation that these defendants knew of or were involved in the prison transfer process—let alone that they knew the new prison posed a higher disease risk—Jimenez has failed to state a claim. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'") (citation omitted).

C. Dismissal as to All Defendants

The same reasoning applies equally to dismissing the case against the remaining codefendants. All of them would likewise have qualified immunity. And the first amended complaint fails to specify anyone who knew of or was responsible for Jimenez's transfer, except for possibly defendant Tonya Rothchild.[1]

D. Injunctive Relief

Finally, Jimenez seeks an injunction barring the defendants from engaging in "retaliatory actions" and requiring that "proper medication be administered" to him. (ECF No. 12, at 7.) Since the defendants all work at R.J. Donovan Prison—an institution Jimenez left nine years ago—his claim for injunctive relief is moot. *See Incumaa v. Ozmint*, 507 F.3d 281, 286-87 (4th Cir. 2007) (holding that "the transfer of an inmate from a unit or location where he is subject to the challenged policy, practice, or condition, to a different unit or location where he is no longer subject to the challenged policy, practice, or condition moots his claims for injunctive and declaratory relief"); *cf. Jones v. Williams*, 791 F.3d 1023, 1031 (9th Cir. 2015) (finding injunction claim moot once inmate was released from prison and citing *Incumaa* with approval).

E. Opportunity to Amend

A self-represented prisoner plaintiff is entitled to an "opportunity to amend the complaint to overcome [any] deficiency unless it clearly appears from the complaint that the deficiency cannot be overcome by amendment." *James v. Giles*, 221 F.3d 1074, 1077 (9th Cir. 2000) (citations omitted). In light of this Court's qualified immunity analysis, amendment would be futile as to his prison-transfer claims. But Jimenez also alleges that more recently he was "denied Valley [F]ever meds" by various doctors who are not named

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[1] Jimenez alleges that Rothchild was "responsible for setting policies to assign or prevent assignment of inmates to prisons and making ministerial decisions to assign each individual inmate to a specific prison." (ECF No. 12, at 2.) Yet he still fails to state a claim as to her because he never alleges that Rothchild had any reason to know that Jimenez's prison transfer placed him at greater risk of contracting Valley Fever.

defendants. (ECF No. 12, at 5.) While this allegation does not state a claim against any current defendant, and the denial of medication alone does not necessarily demonstrate unconstitutional "deliberate indifference," Jimenez should be allowed to amend his complaint one last time, as to this sole claim. But this amendment would create a venue problem, as the alleged denial of medical care occurred at his current prison in Los Angeles in the Central District of California. So, if Jimenez chooses to amend his complaint on this sole ground, the case should be transferred to that district.

CONCLUSION

Thus, this Court recommends that the motion to dismiss be **GRANTED** as to all claims and all defendants. The Court also recommends that Jimenez be given 30 days from the District Judge's ruling on this matter to file a second amended complaint on the sole issue of denied medical care. Jimenez should name any defendants involved in the alleged denial of medical care and set forth any facts that show those defendants acted with deliberate indifference to a serious medical need. If Jimenez does so, this Court then recommends the case be transferred to the Central District of California.

Upon being served with a copy of this report, the parties have 14 days to file any objections. Upon being served with any objections, the party receiving such objections has 14 days to file any response. *See* Fed. R. Civ. P. 72(b)(2).

Dated: July 14, 2017

Hon. Andrew G. Schopler
United States Magistrate Judge