

NONPRECEDENTIAL DISPOSITION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 August 28, 2024*

Decided August 30, 2024

*Before*MICHAEL Y. SCUDDER, *Circuit Judge*THOMAS L. KIRSCH II, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 23-2219

AHMAD AJAJ,
*Plaintiff-Appellant,**v.*GARRETT FOZZARD, et al.,
*Defendants-Appellees.*Appeal from the United States District
Court for the Southern District of
Illinois.

No. 14-cv-01245-JPG

J. Phil Gilbert,
*Judge.***ORDER**

Ahmad Ajaj is serving a sentence for convictions related to the 1993 World Trade Center bombing. He filed this lawsuit, alleging that the United States, the Bureau of Prisons, and prison officials violated the Eighth Amendment and the Religious Freedom

* 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).

Restoration Act (“RFRA”), 42 U.S.C. § 2000bb, among other claims. Because the district court properly dismissed or granted summary judgment on each claim, we affirm.

Ajaj, who has been serving his term of imprisonment since 1994 in various federal facilities, filed this lawsuit in 2014. After years of litigation and several amended complaints, his lawsuit contained eight claims. On appeal, he challenges only the district court’s rejection of four of those claims, which all arose from his time at USP-Marion: (1) Officer Garrett Fozzard, a correctional officer, harassed and assaulted Ajaj in violation of his Eighth Amendment right to be free from cruel and unusual punishment, *see Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971) (Claim 1); (2) Warden Wendy Roal, Assistant Warden Jeff Baney, and Associate Warden John Parent knew of Fozzard’s animus but failed to protect Ajaj, in violation of the Eighth Amendment (Claim 2); (3) David Szoke (clinical director), Jeff Irvin (food services administrator), Mike Winklmeier (health services administrator), and Roal were deliberately indifferent to Ajaj’s serious medical needs in violation of the Eighth Amendment (Claim 5); and (4) Fozzard, Roal, Parent, Baney, Irvin, Winklmeier, Szoke, and several other prison staff members burdened Ajaj’s sincerely-held religious beliefs in violation of RFRA (Claim 8). (The district court dismissed the other claims, relating to the First and Fifth Amendments, and Ajaj does not challenge that outcome.)

The district court dismissed Claim 1 because it involved applying *Bivens* in a new context and special factors counseled against expanding *Bivens* to that context. The court entered summary judgment for the defendants on Claim 2, because—after an evidentiary hearing under *Pavey v. Conley*, 544 F.3d 739, 742 (7th Cir. 2008)—it determined that Ajaj had not properly exhausted his administrative remedies: He filed a written grievance about Fozzard’s conduct, but he did not mention Roal, Baney, or Parent. The court also entered summary judgment on Claim 5, finding that Ajaj brought this claim too late because more than two years had passed since he was transferred out of USP-Marion. And the court dismissed Claim 8, involving Ajaj’s allegations that prison officials had violated RFRA, because he had not adequately described which defendants committed which violations or supported his legal conclusions with any factual allegations.

Ajaj appeals. We review the district court’s dismissals and entry of summary judgment de novo, taking all facts in the light most favorable to Ajaj. *Sorrentino v. Godinez*, 777 F.3d 410, 412 (7th Cir. 2015); *Cesal v. Moats*, 851 F.3d 714, 717 (7th Cir. 2017).

I. Claim One: Excessive Force and New *Bivens* Context

Ajaj first contends that he is entitled to damages—a *Bivens* remedy—for his claim under the Eighth Amendment that Fozzard used excessive force against him. Ajaj alleges that Fozzard strip-searched him, put him in painful restraints, used racial slurs, and struck him with various objects including a lock and a shoe. He argues that these actions were comparable to the claim in *Bivens*, which also involved excessive force.

To prevail on a *Bivens* claim, Ajaj must show that Fozzard violated the Constitution while acting under color of federal law, and that the circumstances are analogous to those in previous cases allowing a *Bivens* remedy. *Bivens*, 403 U.S. at 389; *Egbert v. Boule*, 596 U.S. 482, 492 (2022). The Supreme Court has recognized *Bivens* remedies in only three situations: a due process claim under the Fifth Amendment involving gender discrimination in federal employment, *Davis v. Passman*, 442 U.S. 228 (1979); an Eighth Amendment claim for deliberate indifference to a serious medical need, *Carlson v. Green*, 446 U.S. 14 (1980); and a Fourth Amendment claim for an unreasonable search and seizure, *Bivens*, 403 U.S. at 389–90. The Court has since cautioned against expanding *Bivens* to new contexts. *See, e.g., Egbert*, 596 U.S. at 491–92. If a case presents a new *Bivens* context, courts must consider whether “special factors”—such as the separation of powers—counsel hesitation against implying a remedy. *Id.* at 492. If there is “any rational reason (even one) to think that Congress is better suited” to decide on a remedy, *Bivens* cannot apply. *Id.* at 496.

Ajaj’s claim does not fit within an existing *Bivens* context. Any of several meaningful differences can signal a new *Bivens* context. *Ziglar v. Abbasi*, 582 U.S. 120, 139 (2017). Though Ajaj’s claim arises under the Eighth Amendment, it is distinct from *Carlson*: *Carlson* implied a *Bivens* remedy for an Eighth Amendment claim of inadequate medical care, 446 U.S. at 16–18, but Ajaj’s claim is for excessive force. Even a “modest extension” of an existing context is frowned-upon, *Sargent v. Barfield*, 87 F.4th 358, 366 (7th Cir. 2023), so *Carlson* does not give Ajaj the opening he seeks. And, to the extent that Ajaj argues that his claim is the same type as in *Bivens*—because they both involve excessive force—this, too, fails, because Ajaj’s claim invokes the Eighth Amendment, but the claim in *Bivens* arose under the Fourth Amendment. *Bivens*, 403 U.S. at 389.

And special factors counsel against expanding *Bivens* here. The Bureau of Prisons has an Administrative Remedy Program, which provides an avenue for federal prisoners to file complaints about things like excessive force. 28 C.F.R. §§ 542.10–15. Because Congress has provided for this “alternative remedial structure,” a *Bivens* remedy cannot apply. *Egbert*, 596 U.S. at 493.

II. Claim Two: Failure to Protect and Exhaustion of Administrative Remedies

Ajaj also contends that entry of summary judgment on his claim that prison officials failed to protect him (Claim 2) was improper because he adequately grieved it. He says that he filed a grievance on the matter, it was accepted by the prison, and he was not instructed to file a new grievance naming Roal, Baney, and Parent specifically.

Under the Prison Litigation Reform Act, prisoners must exhaust all available administrative remedies before they can file a lawsuit about prison conditions. 42 U.S.C. § 1997e(a). A prisoner's grievance must "provide[] notice to the prison of the nature of the wrong for which redress is sought." *Schillinger v. Kiley*, 954 F.3d 990, 995 (7th Cir. 2020) (citation omitted).

Ajaj's grievances did not put the prison on notice of Roal, Baney, and Parent's alleged wrongdoing. The relevant grievance detailed Fozzard's assault but did not mention the other officials' failure to protect Ajaj. At the *Pavey* evidentiary hearing, Ajaj testified that he had filed hundreds of grievances by the time of the incident with Fozzard, and that he knew the administrative process. And Ajaj presented no evidence that his failure to exhaust was excusable (for example, that he was prevented from following the required processes). *See, e.g., Pavey*, 544 F.3d at 742. Ajaj has therefore failed to exhaust his administrative remedies, and summary judgment on this claim was proper.

III. Claim Five: Deliberate Indifference to Serious Medical Needs and Statute of Limitations

Ajaj also argues that his claim against prison officials for deliberate indifference to his serious medical needs was not time-barred because the consequences of their failure to adequately treat him lasted through 2014 when he filed this lawsuit. Ajaj alleges that, throughout his time at USP-Marion, Szoke (the clinical director) ignored his medical conditions and accused him of faking his symptoms. Ajaj contends that he complained to Szoke's supervisors about this denial of care to no avail. Ajaj was transferred to a different prison in May 2012. The district court applied the two-year statute of limitations for a personal injury tort in Illinois, 735 ILCS § 5/13-202, and concluded that Ajaj's October 2014 complaint was filed several months too late. But Ajaj contends that the limitations period should be extended because the defendants' deliberate indifference at USP-Marion caused additional medical issues, which were not diagnosed until 2013 and 2014.

Ajaj's claims against the officials at USP-Marion began tolling the last time they refused to treat his medical conditions. *See Heard v. Sheahan*, 253 F.3d 316, 318 (7th Cir. 2001). The defendants here could have committed the alleged actions only while Ajaj was housed at USP-Marion—between January 2010 and May 2012. Because Ajaj did not file his lawsuit until October 2014, the two-year limitations period had expired and summary judgment on this claim was also proper.

IV. Claim Eight: Violations of RFRA and Failure to State a Claim

Finally, Ajaj spends the bulk of his brief on appeal arguing that the district court should not have dismissed his RFRA claim (Claim 8). He contends that he met the required pleading standards and that the district court failed to view the facts in the light most favorable to him.

To state a claim under RFRA, Ajaj must allege that the government substantially burdened his sincere religious exercise. 42 U.S.C § 2000bb-1(a). A “substantial burden” arises “when the government puts substantial pressure on an adherent to modify his behavior and to violate his beliefs.” *West v. Radkte*, 48 F.4th 836, 845 (7th Cir. 2022) (cleaned up). To survive the pleading stage, Ajaj need not plead the legal elements of each claim, *Zimmerman v. Bornick*, 25 F.4th 491, 493 (7th Cir. 2022), but he must offer more than just “‘labels or conclusions’ or ‘a formulaic recitation of the elements of a cause of action.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Conclusory allegations that do not specify which defendants were responsible for which allegedly unlawful acts are insufficient. *Twombly*, 550 U.S. at 555.

The district court correctly concluded that none of Ajaj's allegations state a claim under RFRA. Ajaj had the opportunity to file several amended complaints, and for purposes of filing the operative, fourth-amended complaint, he had the assistance of counsel. Accordingly, his complaint is not entitled to the leniency afforded to pro se litigants. *Riley v. Elkhart Cmty. Schs.*, 829 F.3d 886, 890 (7th Cir. 2016). To the extent that Ajaj's pro se brief on appeal provides more details of his claim, we examine the complaint illuminated by his brief. *See Chavez v. Ill. State Police*, 251 F.3d 612, 648 (7th Cir. 2001).

In the complaint, Ajaj first generally asserted that ten different prison officials were involved in burdening his practice of Islam by refusing to allow him to participate in various religious events, “depriving him access to religious property” and “religious study materials,” denying him an appropriate diet, and failing to modify his medication

schedule while he was fasting for Ramadan. To be sure, Ajaj should remain free to practice his religion while incarcerated. But the problem here lies in his pleading: These allegations are vague and conclusory; Ajaj does not, in his complaint or on appeal, allege any facts specifying what each defendant did, *see Cincinnati Life Ins. Co. v. Beyrer*, 722 F.3d 939, 947 (7th Cir. 2013), or how they personally participated in any of these actions, *see Iqbal*, 556 U.S. at 670.

Next, Ajaj asserted that Fozzard engaged in anti-Muslim harassment and that Szoke engaged in anti-Muslim animus. But these “labels and conclusions” are not supported by any factual allegations, so they are not entitled to an assumption of truth. *Id.* at 678.

Finally, Ajaj alleged that Neumann and Rivas “wrote incident reports against [him] for participating in religious practices,” and that Warden Roal took his Qur’an and prohibited “Arabic-Islamic classes” at the prison. But these bare assertions, unsupported by any specific facts, are insufficient to state a plausible claim. *See McCauley v. City of Chicago*, 671 F.3d 611, 616 (7th Cir. 2011) (explaining that plaintiff must “provide some specific facts to support the legal claims asserted in the complaint” (internal quotation marks omitted)).

AFFIRMED