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**WALKER V. GOMEZ,
370 F.3d 969 (9th Cir. 2004)**

FACTS

Jamel Walker is a black California inmate serving a life sentence in California's Calipatria State Prison (Calipatria).¹ The prison has four separate housing facilities: A, B, C, and D.² Walker was housed in Facility A.³ Since 1994, Walker has worked as a law library clerk in the Facility A law library at Calipatria.⁴ The prison has a reputation for violence and racial tension, and after periods of violence, the prison warden has often locked down the prison, prohibiting prisoners from leaving their cells and exercising.⁵ During a "lockdown," only those prisoners deemed to be on the critical-workers list⁶ may leave their cells to continue their job assignments.⁷

In 1995, three incidents occurred that involved inmate violence against Calipatria staff.⁸ Following each one of these episodes of violence, the warden locked down the prison, and prison officials allowed only critical inmate workers to return to their job assignments.⁹ Walker initiated this suit, claiming that he was denied equal protection under 42 U.S.C. § 1983¹⁰ because following the three 1995 prison lockdowns, he was not allowed to return to his work assignment because blacks had been kept off of the critical-workers lists.¹¹ He sought declaratory and injunctive relief and monetary damages, acting pro se.¹² The defendants moved for summary judgment, arguing that Walker had failed to demonstrate that they had acted with discriminatory intent.¹³ The United States District Court for the Southern District of California granted the motion for summary judgment.¹⁴ Walker appealed, and after an initial briefing, the Ninth Circuit Court of Appeals ordered that pro bono counsel be appointed and that supplemental briefing be filed before review of the district court's granting of summary judgment.¹⁵ On appeal before the Ninth Circuit, the defendants also argued

¹ Walker v. Gomez, 370 F.3d 969, 970-71 (9th Cir. 2004).

² *Id.* at 971.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* ("a category of workers approved to continue attending their job assignments despite the lockdown").

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 971-72.

¹⁰ 42 U.S.C. § 1983 (2005)(creating a cause of action for a person whose rights are violated by anyone acting under color of state authority).

¹¹ Walker v. Gomez, 370 F.3d 969, 970 (9th Cir. 2004).

¹² *Id.* at 972.

¹³ *Id.* at 973.

¹⁴ *Id.* at 972.

¹⁵ *Id.*

that they were entitled to qualified immunity from suit.¹⁶

HOLDING

The Ninth Circuit Court of Appeals, in a three-judge panel, held 2-1, with a separate concurrence of a judge in the majority, that Walker was not required to prove discriminatory intent.¹⁷ They held that Calipatria's lockdown policy was facially suspect because the state defendants openly used only race to exclude black inmates from critical workers lists.¹⁸ The Court also held that while defendants were entitled to qualified immunity from Walker's claims for monetary damages, this did not preclude issuance of an injunction against future violations of Walker's rights.¹⁹

ANALYSIS

The Ninth Circuit first addressed whether the defendants were entitled to summary judgment because Walker failed to demonstrate that defendants had acted with discriminatory intent.²⁰ The Court stated that racial discrimination in prisons and jails is constitutional where necessary to maintain prison security and discipline, and that when it is done in response to a "state of emergency" within the prison, it does not violate the prisoners' equal protection rights against racial discrimination in the assignment of jobs.²¹ Walker countered that even in such a state of emergency, unconstitutional discrimination occurred in the prison's use of race in determining placement on the critical-workers lists for returning to work during lockdown periods.²² Ultimately, the Court concluded, relying on *Johnson v. California*,²³ that where defendants openly admit to considering race in its policies, the plaintiff need not show discriminatory intent for his claim to survive summary judgment.²⁴ The Court decided *Johnson* after the district court had already granted defendants' motion for summary judgment,

¹⁶ *Id.* at 974.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.* at 978.

²⁰ *Id.* at 973.

²¹ *Id.* at 973 (citing *Cruz v. Beto*, 405 U.S. 319, 321 (1972)).

²² *Id.*

²³ *Johnson v. California*, 321 F.3d 791 (9th Cir. 2003)(finding a policy considering race as a factor in assigning cell mates not clearly unconstitutional). In *Johnson*, the plaintiff prisoner alleged that the California Department of Corrections' policy, which considers race as a factor in assigning new inmates' cellmates for sixty days violated equal protection. *Id.* at 796. Summary judgment was granted in favor of the prison by the trial court, and affirmed by the Ninth Circuit, which found that the policy was not clearly unconstitutional, and that the regulation was valid because it was reasonably related to legitimate penological interests. *Id.* at 795, 807.

²⁴ *Walker v. Gomez*, 370 F.3d 969, 973 (9th Cir. 2004).

thus allowing Walker to prevail on this point of contention even though he had not specifically demonstrated discriminatory intent.²⁵

The Court then turned to the question of the defendant prison's qualified immunity, employing the two-step test enunciated by the Supreme Court of the United States in *Saucier v. Katz*.²⁶ The first prong asks whether the facts of the case showed that Calipatria's conduct violated a constitutional right.²⁷ The second prong of this test then considers whether, if a constitutional right is in fact violated, the right at issue had been clearly established so as to put the official on notice of its existence.²⁸ For this prong to be met, it must be "clear to a reasonable officer that his conduct was unlawful in the situation he confronted."²⁹ Moreover, satisfying this second prong demands a high level of specificity.³⁰

The Court evaluated the first prong of *Saucier* using a standard of reasonableness that considers "whether the actions of prison officials are 'reasonably related to legitimate penological interests.'"³¹ In other words, under *Turner v. Safley*,³² there must be a "valid rational connection" . . . between defendants' actions 'and the legitimate governmental interest put

²⁵ *Id.*

²⁶ *Saucier v. Katz*, 533 U.S. 194 (2001)(detailing a test for qualified immunity). In that case, Katz alleged that Saucier, a military police officer, used excessive force to arrest him for protesting at an event where then-Vice President Gore was speaking. *Id.* at 198-99. Saucier's motion for summary judgment based on qualified immunity was denied by the trial court and affirmed by the appeals court, finding that a qualified immunity analysis was duplicative with an excessive force analysis. *Id.* at 200. The United States Supreme court reversed and found the officer entitled to qualified immunity, holding that the qualified immunity inquiry was not the same as the constitutional inquiry, and delineated a two-prong test for determining whether qualified immunity exists. *Id.* First, a court must consider whether any constitutional right would have been violated on the facts alleged. *Id.* at 201. If this prong is met, then the court must consider whether the right was clearly established, ultimately concluding that "if the law did not put the officer on notice that his conduct would be clearly unlawful, summary judgment based on qualified immunity is appropriate." *Id.* at 202.

²⁷ *Walker v. Gomez*, 370 F.3d 969, 974 (9th Cir. 2004)(quoting *Saucier*, 533 U.S. at 201).

²⁸ *Id.* (citing *Saucier*, 533 U.S. at 201).

²⁹ *Id.* at 978 (quoting *Saucier*, 533 U.S. at 202).

³⁰ *Id.*

³¹ *Id.* at 974. (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

³² *Turner v. Safley*, 482 U.S. 78 (1987)(outlining factors for determining when a regulation is reasonable) *Turner* involved the constitutionality of prison regulations limiting two regulations: the first, limiting correspondence between inmates at various prisons, and the second, limiting inmate marriages to persons outside of the prison. *Id.* at 81. The District Court found that both regulations were unconstitutional, applying a strict scrutiny standard. *Id.* at 83. It found that the marriage regulation inhibited the prisoners' fundamental right to marry. *Id.* It further found that the correspondence regulation was unnecessarily broad and had been applied in an arbitrary and capricious manner when less restrictive means were available. *Id.* The Eighth Circuit Court of Appeals affirmed, concluding that the lower court had correctly applied the strict scrutiny standard. *Id.* The Supreme Court of the United States reversed in part, holding that the correspondence regulation was valid while the marriage restriction was not. *Id.* at 81. In so doing, the Court outlined four factors necessary for determining whether a regulation at issue was reasonable, concluding that (1) it must be reasonably related to legitimate security interests, (2) there are not alternative means, (3) it logically advancing the goals of security and safety in the prison, and (4) there are an absence of reasonable alternatives. *Id.* at 89-91.

forward to justify' them."³³ Such a connection may not be so remote as to render the policy arbitrary or irrational, while the purpose of the policy must remain legitimate and neutral.³⁴ If the court finds a rational connection, it then may look to whether (1) there are alternatives by which an inmate can exercise his rights, (2) what impact any accommodation of this right may have on prison resources, and (3) whether obvious alternatives exist to those actions chosen by Calipatria.³⁵ The Court found that the promotion of safety within the prison after these attacks on Calipatria staff was a legitimate governmental interest because it facilitated order and investigation following violent incidents; however, it did not find that there was enough evidence to illustrate a valid rational connection between this interest and the prison's race-based exclusion of black workers.³⁶ Because the prison administration presented no evidence demonstrating the rationality of excluding blacks from critical-workers lists in promotion of this goal of safety, the first prong of *Turner v. Safley*, requiring that the actions of the prison officials be "reasonably related to legitimate penological interests," could not be met, and the Court did not need to proceed further to consider the remaining three questions.³⁷

As a result, the Court found a violation of a constitutional right, which necessitated considering the second prong of the *Saucier* test.³⁸ This prong requires consideration of whether the right was clearly established.³⁹ The Court held that finding a clearly established right requires a high level of specificity, such that a showing that "the broad principle underlying a right is well-established" is insufficient in and of itself, and the right at issue must "be clear to a reasonable officer that his conduct was unlawful in the situation he confronted."⁴⁰ The Court did not find on the facts alleged that "race-based differentiation is unconstitutional in the context of a prison-wide lockdown instituted in response to gang- or race-based violence."⁴¹ As a consequence, Walker cannot pursue damages, but the Court held that the defendants could nonetheless be enjoined from future violations of Walker's rights.⁴² Ultimately, the Court affirmed the trial court's finding of qualified

³³ *Id.* at 89.

³⁴ *Id.* at 89-90.

³⁵ *Walker v. Gomez*, 370 F.3d 969, 975 (9th Cir. 2004)(quoting *Turner*, 482 U.S. at 90-91).

³⁶ *Id.* at 975-77.

³⁷ *Id.* at 977.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 978 (quoting *Saucier*, 533 U.S. at 202).

⁴¹ *Id.* at 978.

⁴² *Id.* (citing *Nelson v. Heiss*, 271 F.3d 891, 897 (2001)).

immunity, though it reversed and remanded for further consideration in light of the impact of its recent decision in *Johnson*.⁴³

CONCURRING OPINION

Judge Fernandez concurred in Judge Kozinski's majority opinion, but he did not join Part 2, which addressed the issue qualified immunity.⁴⁴ In his concurrence, Judge Fernandez preferred to leave the qualified immunity questions for resolution by the trial court.⁴⁵

DISSENTING OPINION

Judge Rymer dissented, concluding that under *Turner*, the critical-workers lists were constructed in accord with constitutional requirements.⁴⁶ He argued that although the lists were race-based, they were a rational, temporary response by the otherwise racially integrated prison as a result of the series of violent race-based attacks.⁴⁷ Judge Rymer emphasized that Calipatria's history of racial unrest supported a race-based policy which kept Walker off the critical-worker list.⁴⁸ He argued that policy was reasonably related to the legitimate interest of safety and security.⁴⁹

Judge Rymer also argued that because race- and gang-based violence would pose a continuing risk to inmate and staff member safety and because Walker made no showing that any changes to the critical-workers policy would *not* have a harmful impact, maintaining the status quo was not unreasonable on this point.⁵⁰ Further, Judge Rymer considered whether reasonable alternatives exist to Calipatria's chosen method.⁵¹ Judge Rymer dismissed Walker's proposed screening process, to distinguish black gang members from other gang members, concluding that Walker had made no showing of the effectiveness or efficiency of such a plan.⁵² Furthermore, he held that the prison's current policy was not unreasonably related to the valid

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.* at 978-79. Judge Rymer writes that, following *Turner*, a court must consider first, whether there is a valid connection between the prison policy and a legitimate governmental interest; whether the inmate has an alternative means of exercising the right under question; the impact that assertion of that right in question will have on prison resources; and finally, whether there are ready alternatives to that policy that the prison has chosen, showing the reasonableness of the chosen regulation. *Id.* at 979, n.1 (Rhymer, J., dissenting)(citing *Turner*, 482 U.S. at 89-90).

⁴⁷ *Id.* at 979.

⁴⁸ *Id.* at 980.

⁴⁹ *Id.* at 979.

⁵⁰ *Id.* at 981-82.

⁵¹ *Id.* at 981.

⁵² *Id.* at 981-82.

governmental interests at stake.⁵³ Thus, Judge Rymer concluded that because Calipatria's current policy was temporary and reasonably related to the legitimate prison interest in maintaining prison safety, he would not reverse the trial court's grant of summary judgment and would affirm its findings.⁵⁴

CONCLUSION

It is clear that Judge Kozinski's majority opinion only succeeded in reversing the grant of defendant's motion for summary judgment, without establishing a clear majority on the question of qualified immunity. On remand, Walker will not have to show discriminatory intent in his allegations against Calipatria's critical-workers policy. Because of Judge Fernandez's reluctance to join in Judge Kozinski's discussion on qualified immunity,⁵⁵ the larger question, as to whether this right was violated, or whether he even held such a right, remains to be decided on remand. Judge Fernandez urged that the Court not "pluck qualified immunity issues from the district court battlefield" and this argument carries significant weight in a case such as this, because the trial court may indeed be better situated to evaluate the facts of Walker's case under the four factor *Turner* test.⁵⁶ Moreover, significant questions remain regarding the extent of Walker's alleged right to return to work early amidst a lockdown in the aftermath of repeated episodes of intense gang- and race-based violence within the Calipatria prison.

The point of contention between the majority and the dissent lays largely in the issue of whether there was a valid, rational connection between the regulation in place and a legitimate governmental interest. Judge Kozinski emphasized that although the promotion of safety was a legitimate goal during prison lockdowns following racial violence, the connection between this goal and the policy of maintaining critical-workers lists based on race was too tenuous to be constitutionally valid.⁵⁷ On the other hand, Judge Rymer found a direct connection, emphasizing that because the violent episodes which spurred the lockdowns involved blacks attacking prison staff, it was not irrational to lock down all blacks until discipline was restored, since common areas such as the library could be used to spread messages, threats, and even weapons among the inmates.⁵⁸ It is clear that this difference of opinion stems, in part, from the different perspectives taken as

⁵³ *Id.*

⁵⁴ *Id.* at 982.

⁵⁵ *Id.* at 978.

⁵⁶ *Id.*

⁵⁷ *Id.* at 977.

⁵⁸ *Id.* at 980-81.

to the cause of the violence which spurned this case. Judge Rymer relies heavily on the fact that the lockdowns were ordered as a response to violence in the prison in *both* 1994 and 1995, emphasizing that such procedures were used to restore order and discipline in the prison.⁵⁹ On the other hand, Judge Kozinski considers only those incidents in 1995.⁶⁰ This is significant because consideration of the 1994 violent episodes strengthens Judge Rymer's argument that a valid and rational connection between the policy and prison safety exists, as it shows that the lockdown and gradual release of critical-workers was a practice temporarily in place to restore security effectively following irregular periods of violence in the prison.⁶¹

Ultimately, both the majority and the dissent agree that qualified immunity for the prison and its administrators exist, yet they do so relying on different precedent, as Judge Kozinski grants qualified immunity only because he finds that Walker has not shown that the right he asserts here has been clearly established, such that these race-based policies could be found unconstitutional, affirming the finding for the prison merely on the second prong of the *Saucier* test alone.⁶² On the other hand, Judge Rymer argues that both of the *Saucier* prongs can be met, analyzing all four factors from the *Turner* test.⁶³ They ultimately disagree over whether the connection between the stated purpose of the policy and the prison policy itself is reasonable—a question which can be highly fact-specific, or may not be, as Judge Kozinski dismisses the connection yet finds qualified immunity on other grounds regardless.

What does this mean for courts choosing to follow this analysis in the future? Judge Kozinski's method is not controlling, as that portion of his opinion commanded no majority, thus it remains to be seen whether the two prongs of the *Saucier* test will remain an either/or analysis, where only one prong will be required for qualified immunity to exist. Perhaps Judge Fernandez's middle ground, leaving application of such fact-specific inquiries for the trial court, will prevail, as it is clear that no single application of the tests for finding rational connections between government policies and legitimate objectives, as enunciated in this case will go forward to guide standard application in similar cases in the future.

Summary and Analysis Provided By:
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⁵⁹ *Id.* at 979-80.

⁶⁰ *Id.* at 971. Judge Kozinski makes clear that he only addresses the 1995 incidents because Walker only challenges the lockdown procedures following those events. *Id.* at n. 1.

⁶¹ *Id.* at 982.

⁶² *Id.* at 978, 982.

⁶³ *Id.* at 980-82.

