No. 24-5999

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Daine Anton Crawley

Plaintiff-Appellee,

v.

Charles Daniels et al.,

Defendants-Appellants.

On Appeal from a Final Judgment of the
United States District Court for the District of Nevada
Civil Action No. 3:22-cv-00530-CSD, Judge Craig S. Denney

ANSWERING BRIEF FOR PLAINTIFF-APPELLEE DAINE ANTON CRAWLEY

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Table of Contents

Table of Authorities

Cases **Page(s)**

Statutes and Regulations

Other Authorities

Statement Regarding Oral Argument

We urge the Court to decide this appeal without oral argument to expedite a decision in this case. The district court granted summary judgment to Plaintiff-Appellee Daine Crawley on liability as to the due-process claims now before this Court. In doing so, it determined that Defendants are not entitled to qualified immunity on those claims. As we explain below, a straightforward application of clearly established due-process principles requires affirmance. Deciding this case without oral argument would allow the due-process claims to go to trial on remedy without any unnecessary delay.

Introduction

Daine Crawley was incarcerated at Warm Springs Correctional Center when he was first accused of smuggling drugs through the prison mail system and later, in a separate disciplinary proceeding, accused of the unauthorized use of mail. In each proceeding, Crawley asked to view the evidence against him. Each time, prison officials denied his request. And in the second disciplinary proceeding, prison officials refused even to tell him what the evidence against him was. Nevertheless, a disciplinary committee twice found him guilty and imposed significant sanctions, including the loss of good-time credits. Crawley lodged internal grievances, which prison officials denied.

Crawley filed a pro se Section 1983 suit. The district court held that Defendants violated Crawley's due-process rights both by failing to provide him with the evidence he requested and by failing to support the guilty finding in the second proceeding with "some evidence" as the law demands. The court also rejected Defendants' claim to qualified immunity.

This Court should affirm. Defendants have forfeited the right to argue that Crawley lacked a protected liberty interest, and, at any rate, he has a liberty interest in the good-time credits he had accrued. The district court correctly held that Defendants deprived Crawley of the process he was due by denying his requests for the evidence used against him and by finding him guilty without having "some evidence" to support that

finding. And because Defendants personally participated in the deprivation, they may be held liable.

Statement of Jurisdiction

The district court had subject-matter jurisdiction under 28 U.S.C. § 1331. A district court's denial of qualified immunity is appealable under the collateral order doctrine to the extent that it involves a purely legal question. *See Johnson v. Jones*, 515 U.S. 304, 311 (1995). In this interlocutory posture, this Court lacks jurisdiction over factual disputes. *See id.* at 313.

Issues Presented

I. Whether Defendants violated Crawley's Fourteenth Amendment right to procedural due process when they (A) denied him access to the evidence used against him in his prison disciplinary hearings and (B) issued a guilty finding in the second disciplinary proceeding that was not supported by "some evidence."

II. Whether each Defendant carried out or participated in affirmative acts that violated Crawley's procedural due-process rights, rendering each of them individually liable.

III. Whether Defendants are entitled to qualified immunity.

Statement of the Case

I. Factual background

In 2021, Daine Crawley, an inmate at Warm Spring Correctional Center (WSCC), was charged, first, with transporting drugs through the prison mail system and, later, with the unauthorized use of mail. 3-ER-275; 3-ER-284. Both times, Nevada Department of Corrections (NDOC) officials found him guilty. 3-ER-279; 3-ER-287. Throughout the disciplinary process, Crawley repeatedly asked to see the evidence against him, but Defendants denied every request.

A. First disciplinary proceeding (OIC 501633)

Notice of Charges. On October 13, 2021, Correctional Officer Robert Suwe issued Crawley a Notice of Charges accusing Crawley of the possession and sale of intoxicants. 3-ER-275. The Notice listed the evidence against Crawley as "In Camera & Evidence Booked." *Id.*

The Notice stated that Suwe had received an envelope addressed to Crawley. 3-ER-275. Part of the envelope "appeared saturated" and was misshapen. *Id.* Suwe also could not read part of the return address so inferred that it was fictional. *Id.* Suwe therefore deemed the envelope "suspicious." *Id.* The Notice asserted that "a Synthetic Cannabinoids test ampule was used [on the envelope] which produced a positive result." *Id.* Suwe later reviewed Crawley's phone conversations, which, Suwe said, referred to bringing narcotics into WSCC. *Id.* Finally, the Notice

provided: "Due to sensitive information, please reference the 028 [report] for further details." *Id.*

Preliminary hearing. Three days after the issuance of the Notice, Correctional Officer Travis Fratis held a preliminary hearing. 3-ER-276. Crawley pleaded not guilty and disputed the test results. *Id.* He requested further testing be performed on the envelope and explained that he "would be willing to pay for another test to be done." *Id.*

Crawley also asked to see photos of the evidence, which Fratis said he was "unable to produce." 3-ER-276. Thus, the hearing was continued for about three weeks. *Id.* The record does not reveal what evidence, if any, was shown to Crawley during this three-week continuance. At the reconvened hearing, Crawley explained that he knew the sender and that the return address was accurate. *Id.* Fratis confirmed that the street address is "legitimate." *Id.*

Fratis referred the matter for a disciplinary hearing. 3-ER-276.

Disciplinary hearing. On November 10, 2021, a week after the preliminary hearing, Lieutenant Richard Ashcraft held a disciplinary hearing. 3-ER-278; 2-ER-252 (Ex. B).

Crawley explained in the hearing that he wanted a new test done on the mail and asked for "all of the sensitive information to be provided" to him. 2-ER-252 (Ex. B at 5:39-5:48). Ashcraft declined, stating that providing that information was "above [his] level." *Id.* at 5:48-5:52.

After entering a not-guilty plea, Crawley again requested that a new drug test be performed on the envelope and also asked for "whatever information they were saying they had or received from whatever source—the sensitive information." 2-ER-252 (Ex. B at 10:37-10:41, 12:05-12:15). Ashcraft responded that only the associate warden or warden could disclose that information or order a new test. *Id.* at 12:21-12:59.

Relying on Suwe's report and the positive test result, Ashcraft found Crawley guilty. 3-ER-279; 2-ER-252 (Ex. B at 14:04-14:25). He recommended a Class B sanction of the loss of 30 days of good-time credits. 3-ER-281; 2-ER-252 (Ex. B at 14:25-14:45). Ashcraft also revoked 60 days of phone and canteen privileges and imposed possible restitution, which would be paid only if the prison agreed to do follow-up testing. 3-ER-281; 2-ER-252 (Ex B at 14:48-15:28).

The appeals process. Crawley filed two separate grievances. His first grievance asked for a lab test to be done on the envelope and to see the mail evidence. 4-ER-601-02; 3-ER-363.[1] Warden Kirk Widmar responded, stating that Crawley had already received photos of the mail but would get to see those photographs again. 4-ER-600; 3-ER-362. The hearing results, however, were upheld. 4-ER-600; 3-ER-362.

[1] Crawley initially filed a similar grievance prior to the disciplinary hearing. 4-ER-604-06. That grievance was returned to him after the disciplinary hearing, 4-ER-603, so he later refiled.

Crawley filed a second-level grievance, reiterating that he had not received any physical copies of the mail or the positive test result. 4-ER-596-99. Warden William Gittere denied the appeal, explaining that (1) Crawley had already received a copy of the mail evidence; (2) other evidence, including both received and outgoing mail, the ampule test, and phone conversations, supported the guilty finding; and (3) another test was unnecessary. 4-ER-595; 3-ER-361.

While his first grievance was pending, Crawley filed a separate grievance, appealing the results of his hearing. 4-ER-576-78; 3-ER-373.[2] Again, he asked that a new test be performed and to see the evidence against him. 4-ER-576-78; 3-ER-373. Widmar responded, stating that Crawley had received the mail and that the withheld evidence "was deemed confidential per AR 707.1.10 and per policy you are not entitled to." 4-ER-574; 3-ER-372. Crawley filed a second-level grievance, reiterating his request. 4-ER-570-73; 3-ER-371. Deputy Director Brian Williams responded, repeating Widmar's response. 4-ER-569; 3-ER-369-70.

B. Second disciplinary proceeding (OIC 502792)

Notice of Charges. On November 16, 2021, Senior Correctional Officer Kody Hollaway issued Crawley a second Notice of Charges based on an alleged incident from November 10. 4-ER-624; 3-ER-284. The

[2] Crawley previously filed a version of this grievance, 4-ER-583; 3-ER-377, but that earlier grievance was returned, 4-ER-582; 3-ER-374.

Notice charged Crawley with unauthorized use of equipment or mail and stated that the evidence was "In Camera" and located in the "WSCC Evidence Vault." 4-ER-624; 3-ER-284.

The Notice stated that "the investigative process, staff reports, and screened inmate correspondence" indicated that Crawley had "conspired to introduce contraband … through the inmate legal mail system." 4-ER-624; 3-ER-284. "[C]ompleted incident dissemination" was contained in "the staff report and in camera evidence," and "[d]ue to the sensitive nature in this case, only disciplinary supervisors should access incident reports." 4-ER-624; 3-ER-284. It also indicated that substance testing had been done, but, as discussed (at 10), this was incorrect. The Notice provided no additional information about the allegations or evidence. 4-ER-624; 3-ER-284.

Preliminary hearing. That same day, Correctional Officer Robert Robison held a preliminary hearing. 4-ER-625; 3-ER-285. Crawley pleaded not guilty. 4-ER-625; 3-ER-285. Robison stated that Crawley "was shown any authorized/available evidence during the hearing," although it is unclear what evidence, if any, that entailed. 4-ER-625; 3-ER-285. Robison acknowledged that "no 'pictures' were presented to Crawley." 4-ER-448.

Crawley asked to see additional evidence and to have testing done on the mail, which Crawley again offered to pay for. 4-ER-625; 3-ER-285.

Robison referred the matter to a disciplinary hearing, relying on the "Officers report and substance testing done." 4-ER-625; 3-ER-285.

Disciplinary hearing. On December 15, 2021, Ashcraft held a disciplinary hearing. 4-ER-626; 3-ER-286; 2-ER-252 (Ex. F). The other members of the disciplinary committee were Suwe and Caseworker Buchanan. 2-ER-252 (Ex. F at 1:45-1:49).

Ashcraft stated that he had reviewed the "*in-camera*" information discussed in the Notice of Charges but was "not at liberty to disseminate it to [Crawley] here at this hearing" because "as you know, we are not a court of law here." 2-ER-252 (Ex. F at 3:02-3:17). Ashcraft also explained that this second charge was different from the earlier one: The current charge, he said, involved screened inmate correspondence, while the previous charge involved incoming mail. *Id.* at 5:59-6:22. Crawley asked whether the current charge involved "outgoing legal correspondence," *id.* at 6:22-6:24, but Ashcraft declined to explain, responding: "I did not say that. [The Notice] says screened inmate correspondence. That's all it says. It doesn't say legal, it doesn't say yours, it says screened inmate correspondence." *Id.* at 6:24-6:35.

Crawley then tried to defend himself but lacked sufficient information about the allegations or evidence. He described his only two pieces of outgoing mail the week of the alleged incident and explained that he had no phone calls that week. 2-ER-252 (Ex. F at 6:35-6:58). Ashcraft reiterated that the charges were about inmate correspondence but not

necessarily *Crawley's* correspondence. *Id.* at 6:58-7:09. Crawley asked whether "it could be somebody else's correspondence," and Ashcraft said "it could be." *Id.* at 7:11-7:15.

Crawley then asked if he could see the evidence, and Ashcraft responded "nope." 2-ER-252 (Ex. F at 7:21-7:22). Ashcraft said that NDOC policy prevented disclosures that would jeopardize the safety and security of the institution and, here, the evidence was *in camera*. *Id.* at 7:32-8:01. Crawley asserted that his due-process rights were being violated because Ashcraft was "basing something off of something I haven't seen—you haven't seen—nobody's seen." *Id.* at 8:05-8:19. After Crawley again tried to describe his outgoing correspondence, Ashcraft asked him "what ... that ha[s] to do with this writeup." *Id.* at 8:21-9:00. Crawley stated his belief that the charge was based on his outgoing legal mail, *id.* at 9:01-9:08, but Ashcraft replied that was just Crawley's "assum[ption]." *Id.* at 10:05-10:10. Ashcraft also clarified that no substance testing had been done, and Ashcraft was "not using [Robison's] evidence to determine the outcome of this hearing." *Id.* at 10:50-11:09; 13:24-13:40.

In response, Crawley asked Ashcraft what evidence he was using. 2-ER-252 (Ex. F at 13:40-13:42). Ashcraft replied that he was "using the evidence that [he] was able to extract from the Officer's report and the *in-camera* information that was available to [him]," but that he was "not

going to sit here and tell you and give you *in-camera* information." *Id.* at 13:43-13:50; 14:04-14:08.

Crawley pleaded not guilty. 2-ER-252 (Ex. F at 16:43-16:48). He expressed frustration that Ashcraft was "trying to find [him] guilty off of nothing—we have nothing in front of us." *Id.* at 19:41-19:47. Ashcraft reiterated that he was not required to turn over the evidence, and he again declined to explain what the evidence was, saying only that it was "screened inmate correspondence, period." *Id.* at 19:55-20:10, 20:22-20:41, 20:48-20:52.

Ashcraft found Crawley guilty. 2-ER-252 (Ex. F at 21:06-21:10); 3-ER-287-88. In the hearing, Ashcraft said that he based his guilty finding "on the evidence provided to [him]." 2-ER-252 (Ex. F at 21:06-21:10). Ashcraft's written report stated that he relied on Hollaway's report, "the evidence provided in the [offense] report, in-camera evidence and the inmate plea of not guilty to this charge." 3-ER-287. He imposed a Class A sanction, recommending the loss of 60 days of good-time credits. *Id.*; 2-ER-252 (Ex. F at 21:41-21:48). Ashcraft also revoked 90 days of phone and canteen privileges and ordered "[r]estitution if needed." 3-ER-287; 2-ER-252 (Ex. F at 21:48-22:00).

The appeals process. Crawley filed a first-level grievance. 4-ER-618-20. He explained that he "was never shown any evidence whatsoever" and asked to see the log of rejected mail items. 4-ER-619-20. Widmar denied the request, stating that the hearing complied with the required

procedures and that the finding of guilt was based on "some evidence." 4-ER-616; 3-ER-379. Crawley filed a second-level grievance, reiterating that there was "no evidence" against him. 4-ER-612-15. Gittere denied the grievance, explaining that "the attachments provided, the disciplinary hearings, the Securus phone monitoring system, and the investigator reports" showed that "some evidence was used for the disciplinary committee to find [Crawley] guilty." 4-ER-611; 3-ER-380.

II. Procedural background

Crawley filed a Section 1983 lawsuit against Defendants-Appellants Richard Ashcraft, Kody Hollaway, Robert Robison, Robert Suwe, and Brian Williams and Defendants Charles Daniels and Kyle Olsen. 5-ER-680-88. He alleged that Defendants violated his Fourteenth Amendment due-process rights by refusing to provide photos or written descriptions of the evidence against him, using an unreliable drug test, and denying his requests to have a secondary test of the mail conducted at his own expense. 5-ER-682-87. Crawley sought damages and injunctive relief, including expungement of the disciplinary infractions, the award of appropriate good-time credits, and "any equitable … relief the Court deems appropriate." 5-ER-688.

Crawley moved for summary judgment as to liability. 4-ER-391-97. The district court granted in part and denied in part Crawley's motion. 1-ER-32-35. The court granted partial summary judgment to Crawley,

holding that Suwe, Ashcraft, and Williams violated Crawley's due-process rights by refusing to give him access to the purportedly "sensitive information" used against him in the first disciplinary proceeding. 1-ER-33.[3] It also granted Crawley summary judgment against Hollaway, Robison, Ashcraft, and Suwe because Crawley was not allowed to review the evidence from the second disciplinary proceeding and because the guilty finding in that proceeding was not supported by "some evidence." 1-ER-33-34. The district court denied Crawley's motion for summary judgment as to all his other claims and granted summary judgment to certain Defendants on various claims. 1-ER-32-35.

Defendants then did three things. First, they filed their own motion for summary judgment. 2-ER-93-110. This motion sought summary judgment only with respect to Crawley's claims related to the ampule test and access to the photographic and mail evidence as to the first disciplinary proceeding. 2-ER-94. Second, Defendants filed a motion for reconsideration of the order granting Crawley partial summary judgment. 2-ER-68-78. Third, they filed a notice of appeal, appealing the district court's initial summary-judgment order. 5-ER-689-90.

The court addressed Defendants' motion for summary judgment, 2-ER-43-55, explaining that it retained jurisdiction over that motion

[3] It also held that Crawley's due-process rights were violated when he was not given the positive test result in support of that charge, 1-ER-33, but, as discussed (at 14), it later reconsidered that ruling.

because it addressed the claims for which summary judgment had been denied and were not the subject of Defendants' appeal, 2-ER-46. The court then granted summary judgment to Defendants on Crawley's claims that (1) the guilty finding in the first disciplinary proceeding was not supported by "some evidence"; and that (2) Crawley was not provided with copies of the mail or test results in the first disciplinary proceeding. 2-ER-51-54.[4]

The district court then denied Defendants' motion for reconsideration, explaining that it was clearly established that Defendants could not deny Crawley access to the evidence without a legitimate penological reason, and Defendants failed to cite any legitimate penological reason for withholding the evidence. 2-ER-41-42.

Thus, before this Court are the district court's holdings that Crawley due-process rights were violated because (1) he was denied access to the purportedly sensitive information in the first disciplinary proceeding; (2) he was denied access to any of the evidence against him in the second disciplinary proceeding; and (3) the guilty finding for the second proceeding was not supported by "some evidence."

[4] These grants of summary judgment are not currently before this Court but remain appealable after entry of a final judgment. *See Emp. Staffing Servs., Inc. v. Aubry*, 20 F.3d 1038, 1042 (9th Cir. 1994).

Summary of Argument

I. Defendants violated Crawley's due-process rights. A procedural due-process violation occurs when a person is (1) deprived of a liberty interest and (2) not afforded the process he is due.

Defendants have forfeited the right to argue that Crawley lacks a cognizable liberty interest because they did not raise the issue in the district court. At any rate, he was deprived of a liberty interest when Defendants revoked 90 days of good-time credits that he had earned. These credits implicate a liberty interest because they reduce the time to be served on his maximum sentence.

Defendants also failed to afford Crawley the process he was due. Before, during, and after each disciplinary proceeding, Crawley asked to see the evidence against him, but Defendants refused to provide it. Crawley thus could not defend himself. Prisoners have a right to view *all* the evidence against them, not just evidence prison officials deem exculpatory, and Defendants cannot eviscerate this right just by labeling the evidence confidential. In his second disciplinary proceeding, Defendants separately violated Crawley's due-process right because their guilty finding was not supported by "some evidence."

II. Because each Defendant participated in the due-process violation, each is legally responsible. Suwe and Hollaway failed to provide Crawley with notice of the evidence against him. Crawley then requested that Robison provide him with the evidence, but Robison failed to do so.

Finally, Williams had the authority to provide Crawley with the evidence against him but instead denied Crawley's grievance.

III. Defendants are not entitled to qualified immunity on Crawley's due-process damages claims. Preexisting caselaw clearly established his rights to view all requested evidence and for disciplinary findings to be supported by "some evidence."

Standard of Review

The district court's grant of summary judgment and denial of qualified immunity are reviewed de novo. *Rieman v. Vazquez*, 96 F.4th 1085, 1090 (9th Cir. 2024).

Argument

I. Crawley's procedural due-process rights were violated.

A procedural due-process violation occurs when a state official acting under color of law (1) deprives a person of a constitutionally protected liberty interest (2) without affording that person the process he was due. *Melnik v. Dzurenda*, 14 F.4th 981, 985 (9th Cir. 2021). Because both elements are satisfied here, the district court correctly granted Crawley partial summary judgment.

A. Crawley has a liberty interest in the good-time credits he earned.

1. For the first time on appeal, Defendants argue that Crawley "failed to establish that he was deprived of a liberty interest." Opening Br. 31.

This Court typically does "not consider arguments that are raised for the first time on appeal." *Smith v. Marsh*, 194 F.3d 1045, 1052 (9th Cir. 1999). In the due-process context, a government official maintaining on appeal that his adversary lacks a liberty interest forfeits that issue if he didn't raise it in the district court. *See Costanich v. Dep't of Soc. & Health Servs.*, 627 F.3d 1101, 1110, 1116 n.15 (9th Cir. 2010); *Saavedra v. Scribner*, 482 F. App'x 268, 271 (9th Cir. 2012). And a forfeited issue can be considered only when the district court made a plain error that affects substantial rights or a failure to exercise review would "seriously affect the fairness, integrity or public reputation of judicial proceedings." *United States v. Olano*, 507 U.S. 725, 735-36 (1993).

Defendants forfeited the argument. Not once in their district-court briefs did Defendants argue that Crawley lacked a cognizable liberty interest. *See* 3-ER-262-71; *see also* 2-ER-101-09; 2-ER-80-82; 2-ER-71-76; 2-ER-57-60. Although Defendants' district court brief stated the legal standard for due-process claims, which requires a plaintiff to show a liberty interest, 3-ER-262, mere reference to an issue, without any "argument on this score nor … any theory about" the issue cannot preserve a claim. *United States v. Gonzalez-Flores*, 418 F.3d 1093, 1100 n.4 (9th Cir. 2005). Their argument was therefore "not raised sufficiently for the trial court to rule on it." *Armstrong v. Brown*, 768 F.3d 975, 981 (9th Cir. 2014) (quoting *Ruiz v. Affinity Logistics Corp.*, 667 F.3d 1318,

1322 (9th Cir. 2012)), and this Court may proceed directly to the question whether Crawley received the process he was due.

2. In any case, Crawley has a liberty interest in the proper application of earned good-time credits to reduce his maximum sentence. Crawley had earned good-time credits, he was deprived of those credits, and he retains a liberty interest in the credits that he lost.

Defendants first argue that Crawley failed to establish that he actually lost any good-time credits because the disciplinary committee only *recommended* that Crawley lose these credits. Opening Br. 33-34. True, referrals for the loss of statutory good-time credits must be approved by both the prison's warden and NDOC's director or his designee. *See* Opening Br. 34; NDOC Admin. Reg. 707.1(6)(F), (K). But the record shows that they approved these penalties. In responding to Crawley's second-level grievance challenging the first disciplinary proceeding, Warden Widmar wrote that Crawley "w[as] sanctioned to 30 days stat[utory credit loss] referral," and that this sanction was "appropriate" and "valid." 4-ER-574. Deputy Director Williams signed off on this response. 4-ER-569. And, in responding to the grievance stemming from the second disciplinary proceeding, Warden Widmar stated that the "recommended sanction of the Disciplinary Hearing Committee"—including the loss of 60 days of good-time credits—"will stand." 4-ER-616. And, as to both proceedings, Crawley offered his own

sworn statement that the disciplinary process "result[ed] in … loss of good time [credits]." 4-ER-392-93.[5]

Defendants' next argument—that Crawley's good-time credits do not implicate a cognizable liberty interest—fares no better. *See* Opening Br. 35. States create liberty interests when their actions "inevitably affect the duration" of an inmate's sentence. *Sandin v. Conner*, 515 U.S. 472, 487 (1995); *see Ramirez v. Galaza*, 334 F.3d 850, 861 (9th Cir. 2003). Thus, statutes can create a liberty interest in "a shortened prison sentence through the accumulation of credits for good behavior." *Wolff v. McDonnell*, 418 U.S. 539, 557 (1974).

Under Nevada's good-time statute, credits "necessarily affect the length of [a prisoner's] sentence and thus they give rise to a liberty interest." *Mitchell v. Breitenbach*, 2025 WL 1210971, at *3 (D. Nev. Apr. 25, 2025). That's because the statutory language is mandatory: An offender generally "*must* be allowed … a deduction of 20 days from his or her sentence for each month the offender serves." Nev. Rev. Stat. § 209.4465(1) (emphasis added). And any "credits earned pursuant to this section … *[m]ust* be deducted from the maximum term or the maximum aggregate term imposed by the sentence." *Id.* § 209.4465(7)(a) (emphasis added). An offender forfeits credits only when he "commits a serious

[5] This statement, made in Crawley's motion for summary judgment and attested to under penalty of perjury, is properly treated as evidence at summary judgment. *King v. County of Los Angeles*, 885 F.3d 548, 553 (9th Cir. 2018).

violation of the regulations" or is guilty of another specified offense. *Id.* § 209.451(1)-(3).

Nevada's good-time statute is materially the same as the Nebraska good-time statute that the Supreme Court held in *Wolff* created a liberty interest. The statute there provided that "[t]he chief executive officers of a facility shall reduce … the term of a committed offender" for good behavior, 418 U.S. at 546 n.6 (quoting Neb. Rev. Stat. § 82-1,107), and specified that credits could be forfeited only for serious misbehavior, *id.* at 546-47. Because Nebraska's statute created a "statutory right to good time" that could only be taken away for misconduct, the Court determined that the "prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment 'liberty.'" *Id.* at 557. Nevada's system mirrors Nebraska's. *See* Nev. Rev. Stat. § 209.4465(1), (7)(a); *Reynolds v. Wolff*, 916 F. Supp. 1018, 1023 (D. Nev. 1996).

Following *Wolff*, this Court has recognized liberty interests in good-time credits created through statutes similar to Nevada's. For example, prisoners have a liberty interest in credits earned under a Washington statute providing that "[e]very prisoner who has a favorable record of conduct … shall … be allowed time credit reductions." *Bergen v. Spaulding*, 881 F.2d 719, 721 (9th Cir. 1989) (quoting Wash. Rev. Code § 9.95.070). Arizona's good-time credit statute likewise creates a liberty interest through its use of mandatory language. *McFarland v. Cassady*,

779 F.2d 1426, 1428 (9th Cir. 1986) (citing Ariz. Rev. Stat. Ann. § 41-1604.06). Nevada's statute—like Washington's and Arizona's—"contains the mandatory language necessary to create a constitutionally protected liberty interest in maximum-sentence deductions." *Galanti v. Nev. Dep't of Corr.*, 65 F.4th 1152, 1157 (9th Cir. 2023); *see also Igbinovia v. Dzurenda*, 2024 WL 1345210, at *3 (D. Nev. Mar. 29, 2024).

Defendants argue that Crawley does not have a "liberty interest in good-time credits used to calculate parole eligibility." Opening Br. 35. But this case is not about Crawley's parole eligibility. Good-time credits reduce both an inmate's minimum sentence (which demarcates parole eligibility) and an inmate's maximum sentence, Nev. Rev. Stat. § 209.4465(7)-(8), which is the liberty interest that Crawley seeks to protect. Whether an inmate has a liberty interest in credits affecting his *minimum* sentence "is irrelevant to" his liberty interest in credits to be deducted from his *maximum* sentence. *Galanti*, 65 F.4th at 1157. Thus, Defendants' reliance on *Vonseydewitz v. State*, 2022 WL 16579952, at *2 (Nev. Ct. App. Oct. 31, 2022), and *Chaziza v. Stammerjohn*, 858 F. App'x 228, 230 (9th Cir. 2021), *see* Opening Br. 35, both of which concern parole eligibility, is misguided. These cases have nothing to do with good-time credits to be deducted from Crawley's maximum sentence.

Defendants also rely on *Bergt v. Williams*, 2011 WL 2748619 (Nev. July 13, 2011), to argue that Nevada's good-time statute does not give rise to a liberty interest because it "vest[s] discretion in prison officials."

Opening Br. 35. But *Bergt* interpreted a different statute concerning vocational training credits, and it recognized that mandatory good-time-credit statutes can create protected liberty interests. 2011 WL 2748619, at *1-2.

B. By denying him access to the evidence against him, Defendants deprived Crawley of the process he was due.

Prisoners facing disciplinary proceedings have a right of access to the evidence used against them. *Melnik v. Dzurenda*, 14 F.4th 981, 985 (9th Cir. 2021). This right of access stems from the due-process right to defend oneself in a prison disciplinary proceeding. *Id.* To ensure a fair hearing, an incarcerated person "facing disciplinary proceedings should be allowed to … present documentary evidence in his defense when permitting him to do so will not be unduly hazardous." *Wolff v. McDonnell*, 418 U.S. 539, 566 (1974). For this right "to mean anything," a prisoner needs access to all evidence against him. *Melnik*, 14 F.4th at 985-86. An incarcerated person "could neither build a defense nor develop arguments and evidence to contest the allegations at the disciplinary hearing" if he lacked "access to the evidence that will be presented against him." *Id.* at 985.

Defendants invoke *Hewitt v. Helms*, 459 U.S. 460 (1983), to argue that a lower due-process standard applies. Opening Br. 36-37. But *Hewitt*'s test has been abrogated in the prison context. *Sandin v. Conner*, 515 U.S.

472, 482-84 (1995); *see Myron v. Terhune*, 476 F.3d 716, 718-19 (9th Cir. 2007). *Wolff* and *Melnik* therefore set forth the proper standards for evaluating this case.

Defendants do not contest that prisoners have a right to view certain evidence. *See* Opening Br. 38-39 (discussing *Melnik*). And they likewise agree that Crawley was, in fact, denied access to the evidence that he requested. Opening Br. 42-43. That evidence includes the unspecified, purportedly "confidential" information in the first disciplinary proceeding and all of the evidence in the second disciplinary proceeding. *See supra* at 14. Instead, Defendants offer two reasons why they think they could deny him access to this evidence. Neither holds water.

First, Defendants argue that Crawley is entitled to view only evidence that they view as exculpatory. Opening Br. 39. That's incorrect. The right to access evidence extends to all evidence used in the proceeding, not just evidence that prison officials maintain is exculpatory. That's *Melnik*'s holding: A prisoner "ha[s] a constitutional right to access the [materials] used as evidence against him in the prison disciplinary hearing." 14 F.4th at 985.

A prisoner cannot defend himself without "access to the evidence that will be presented against him." *Melnik*, 14 F.4th at 985. Without "notice of the evidence against him," a prisoner cannot "meaningfully respond and his hearing could not constitute an informed one." *Johnson v. Ryan*, 55 F.4th 1167, 1200 (9th Cir. 2022). Defendants rely on unpublished or

out-of-circuit cases suggesting that this right extends only to exculpatory evidence, *see* Opening Br. 41, but those cases conflict with *Melnik*.

The scope of this right makes sense. *Wolff* recognizes the importance of multiple procedural protections, including both the right to notice and the right to present evidence. 418 U.S. at 564-66. *Wolff*'s protections allow a prisoner "to marshal the facts and prepare a defense." *Id.* at 564. A prisoner cannot marshal the facts or defend himself if the evidence against him "is shown to the factfinder but concealed from the accused." *Grillo v. Coughlin*, 31 F.3d 53, 56 (2d Cir. 1994).

This case provides an excellent illustration. In the second disciplinary proceeding, Ashcraft refused to say what type of correspondence was at issue, which meant that Crawley did not know what he was defending against. 2-ER-252 (Ex. F at 6:58-7:22, 7:32-8:01). So, when Crawley tried to defend himself by describing all of his recent correspondence, Ashcraft suggested that Crawley's statements had little to do with the charges, *id.* at 8:21-9:00, and were based only on Crawley's "assum[ption]" about what the evidence was, *id.* at 10:05-10:10.

Defendants point to cases holding that a criminal defendant does not have a right to pre-trial notice of the prosecution's evidence. Opening Br. 39-41. That precedent does not move the needle. In the criminal context, defendants have "the opportunity to hear the [evidence] in open court," and due process is violated when a criminal defendant "literally had no opportunity to even see" the evidence against him. *Gray v. Netherland*,

518 U.S. 152, 168 (1996) (citing *Gardner v. Florida*, 430 U.S. 349, 353 (1977)). That's what happened here. At no point before, during, or after his hearing was Crawley afforded the opportunity to even see the evidence against him.

Second, Defendants cannot circumvent Crawley's due-process rights simply by labeling the evidence "*in camera*" or "confidential." *See* Opening Br. 42-45. A prison does not have to give a prisoner evidence when that "would be 'unduly hazardous to institutional safety or correctional goals.'" *Melnik*, 14 F.4th at 986-87 (quoting *Wolff*, 418 U.S. at 566). But "[t]he penological reason must be legitimate" and "not merely pretense or pretext." *Id.* at 987. And "[t]he burden of proving adequate justification … rests with the prison officials," not the prisoner. *Bostic v. Carlson*, 884 F.2d 1267, 1273 (9th Cir. 1989); *see Ponte v. Real*, 471 U.S. 491, 499 (1985). Here, Defendants have not met their burden.

To begin with, prison officials must state their reason for withholding requested evidence. *Melnik*, 14 F.4th at 987. "Without such an explanation, a prison official's decision to deny access would effectively be made unreviewable by courts." *Id.*; *see Lennear v. Wilson*, 937 F.3d 257, 270 (4th Cir. 2019); *Smith v. Mass. Dep't of Corr.*, 936 F.2d 1390, 1399 (1st Cir. 1991).

Defendants offer separate reasons with respect to each proceeding. In the first hearing, Ashcraft indicated that he lacked the authority to reveal the "sensitive" and "*in-camera*" information. 2-ER-252 (Ex. B at

5:43-5:52, 12:21-12:34); *see* Opening Br. 42-43. Both Widmar and Williams then cited the legal proposition that they need not grant a request for evidence if doing so "would [be] unduly hazardous to institutional safety or correctional goals" and explained that the withheld evidence "was deemed confidential per AR 707.1.10 and per policy you are not entitled to." 4-ER-574; 3-ER-372; 4-ER-569; 3-ER-369; *see* Opening Br. 43. Then, in the second hearing, Ashcraft pointed to the same administrative regulation that requires him to disclose evidence unless doing so would "jeopardize safety and security of the institution." 2-ER-252 (Ex. F at 7:32-8:05); *see* Opening Br. 43*; see also* NDOC Admin. Reg. 707.01(10)(R).[6] These explanations do not pass muster.

The "mere label 'confidential' attached by prison officials without logical foundation cannot be used to prohibit a prisoner from accessing evidence to be used in a disciplinary hearing." *Melnik*, 14 F.4th at 987 (quoting *Piggie v. Cotton*, 344 F.3d 674, 679 (7th Cir. 2003)). Instead, prison officials must actually show that their asserted reason is legitimate. *See id.* Certain justifications, like confidentiality and institutional security, are legitimate in some circumstances. *See id.* at

[6] Widmar and Gittere, neither of whom are defendants in this suit, both affirmed Ashcraft's decision to withhold the evidence, but neither provided any other justification for denying the evidence. 4-ER-616; 3-ER-379-80; 4-ER-611. Neither before this Court or in the district court have Defendants relied on any other justification. *See* Opening Br. 42-43; 3-ER-265-71.

988; *Bartholomew v. Watson*, 665 F.2d 915 (9th Cir. 1982). But a prison has not provided a "legitimate penological reason" simply by "labeling a document 'confidential' without real confidentiality concerns," *Melnik*, 14 F.4th at 987, or by claiming that allowing witness testimony is "unduly hazardous to institutional safety" "without proof of any actual threat," *Bartholomew*, 665 F.2d at 915.[7]

Requiring prison officials to explain their justification makes sense. "The touchstone of due process is protection of the individual against arbitrary action of government." *Wolff*, 418 U.S. at 558. Without an explanation and evidence to evaluate a prison's justification, "the court[s] would be unable to exercise even limited review." *Hayes v. Walker*, 555 F.2d 625, 630 (7th Cir. 1977); *see Woods v. Marks*, 742 F.2d 770, 773 (3d Cir. 1984) (declining to "defer to the arbitrary denial of an inmate's

[7] *See McFarland v. Cassady*, 779 F.2d 1426, 1428 (9th Cir. 1986) (finding illegitimate a prison's justification that calling witnesses was unduly hazardous when the record did not "reveal why … [the prisoner's] hearing fell into the 'unduly hazardous' category"); *Bostic v. Brackney*, 976 F.2d 736, 1992 WL 227201, at *3 (9th Cir. 1992) (table) (rejecting prison official's rationale when it was not supported by evidence); *Jacquet v. Warden Fort Dix FCI*, 707 F. App'x 124, 128 (3d Cir. 2017) (requiring government to present "evidence ... detailing its rationale for preventing [a prisoner] from obtaining hair-testing evidence"); *see also, e.g.*, *Smith v. Mass. Dep't of Corr.*, 936 F.2d 1390, 1400 (1st Cir. 1991); *Young v. Kann*, 926 F.2d 1396, 1400-02 (3d Cir. 1991); *Piggie v. Cotton*, 344 F.3d 674, 679 (7th Cir. 2003); *Hudson v. Knight*, 751 F. App'x 897, 899 (7th Cir. 2018); *Graham v. Baughman*, 772 F.2d 441, 445 (8th Cir. 1985); *Howard v. U.S. Bureau of Prisons*, 487 F.3d 808, 814 (9th Cir. 2007); *Cannistraci v. Van Der Veur*, 106 F.3d 413, 1997 WL 31549, at *1 (10th Cir. 1997) (table).

limited right to call witnesses"); *Campbell v. Brown*, 2013 WL 1333760, at *9 (D. Nev. Feb, 4, 2013) ("The court cannot simply presume that [the prison] made a personalized determination[.]")

Defendants have offered no evidence or explanation why the requested documents are confidential or why disclosing them would threaten institutional security. For the first proceeding, Defendants have cited caselaw and a regulation allowing them to withhold confidential information, 4-ER-574; 3-ER-372; 4-ER-569; 3-ER-369, but they have offered no argument that the withheld "confidential information" falls into this category. *See Serrano v. Francis*, 345 F.3d 1071, 1079-80 (9th Cir. 2003); *Mitchell v. Dupnik*, 75 F.3d 517, 525 (9th Cir. 1995). Defendants could have provided this evidence or an explanation to the district court, either in their briefing or *in camera*. They did not.

The reasoning for the second proceeding is even sparser. Ashcraft has refused even to say what type of evidence was at issue. 2-ER-252 (Ex. F at 20:22-20:41). "[W]ithout notice of the evidence against him, [Crawley] could not meaningfully respond and his hearing could not constitute an informed one." *Johnson*, 55 F.4th at 1200. Both in the hearing and in court Ashcraft suggested that revealing the information would jeopardize institutional security, 2-ER-252 (Ex. F at 7:32-8:01); Opening Br. 43, but Defendants have never explained why the evidence fits into that category. If such "broad unsupported findings" could justify a denial, a

prisoner's right to request evidence "could be arbitrarily denied in any case and thereby be rendered meaningless." *Hayes*, 555 F.2d at 630.

Defendants' remaining argument is that prison officials are given substantial discretion in evaluating penological objectives. *See* Opening Br. 44 (quoting *Ashker v. Newsom*, 81 F.4th 863 (9th Cir. 2023), and *O'Lone v. Shabazz*, 482 U.S. 342 (1987)). But substantial discretion does not mean unfettered discretion, and the cases on which Defendants rely prove this point. In *Ashker*, the prison provided inmates with summaries of the confidential information. 81 F.4th at 880. Crucially, the court independently verified that "the summaries [were] largely accurate" and recognized that "if officials had intentionally misrepresented confidential information," that "would raise due process concerns." *Id.* at 881-82. And in *O'Lone*, the Supreme Court noted that although the "evaluation of penological objectives is committed to the considered judgment of prison administrators," 482 U.S. at 349, their discretion to make this judgment is not unfettered. Instead, courts undertake their own analysis to ensure that a prison's regulation "ha[s] a logical connection to legitimate governmental interests invoked to justify it." *Id.* at 350-51.

In sum, the district court properly found that Defendants had failed to articulate a legitimate interest justifying its denial of Crawley's request for the evidence. As the court explained in denying their motion for reconsideration, Defendants' arguments "ignore[] the fact that Defendants were obligated to establish a genuine dispute of material fact

to defeat Plaintiff's motion for summary judgment by citing to particular evidence." 2-ER-42. "That Defendants did not properly support their opposition by citing a legitimate penological reason for withholding the evidence from Plaintiff is a problem of Defendants' own making, not the court's error." *Id.*

Finally, even assuming (counterfactually) that Defendants had advanced a legitimate penological reason for denying Crawley access to the evidence, they still violated his due-process rights. "[B]efore categorically denying access" to requested evidence, Defendants needed to "consider whether alternative avenues are available to provide the inmate with pertinent information included in that evidence." *Lennear*, 937 F.3d at 271-72. For example, even if there were security concerns, prison officials might be able to provide a prisoner with a summary of the evidence. *Id.* at 272. Defendants failed to do even that.

C. Defendants violated Crawley's due-process right because the second disciplinary finding was not supported by "some evidence."

The district court also correctly concluded that the guilty finding in Crawley's second disciplinary proceeding lacked support by "some evidence." 1-ER-28-29.

"[R]evocation of good time does not comport with 'the minimum requirement of procedural due process,' unless the findings of the prison disciplinary board are supported by some evidence in the record."

Superintendent v. Hill, 472 U.S. 445, 454 (1985) (quoting *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974)). "Requiring a modicum of evidence to support a decision to revoke good time credits will help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens." *Id.* at 455.

When a decisionmaker "d[oes] not point to a specific finding or to a factual basis in the record to justify [his] conclusion," the decision is not supported by "some evidence," and a prisoner's due process right has been violated. *McQuillion v. Duncan*, 306 F.3d 895, 909 (9th Cir. 2001); *see also Cato v. Rushen*, 824 F.2d 703, 705 (9th Cir. 1987); *Burnsworth v. Gunderson*, 179 F.3d 771, 775 (9th Cir. 1999). This requirement goes hand in hand with *Wolff*. "*Wolff* requires a disciplinary board to explain the evidence relied upon." *Hill*, 472 U.S. at 455. But evidence can be explained only if it actually exists. *Id.* So, filling in that gap, *Hill* requires that there be "some evidentiary basis for [the] decision." *Id.*

Here, no record evidence justifies the disciplinary committee's guilty finding. Ashcraft listed that the "[e]vidence relied upon" was Hollaway's report and Crawley's not-guilty plea. 3-ER-287. His statement further provided that his finding was "[b]ased on the evidence provided in the [offense] report, in-camera evidence and the inmate plea of not guilty." *Id.* The not-guilty plea alone cannot provide "some evidence" of guilt, so the only question is whether Hollaway's report or the *in-camera* evidence constitute "some evidence." They do not.

To start, Hollaway's report puts forth no evidence. *See* 3-ER-284. Instead, it says: "Please refer [to] the staff report and in camera evidence." *Id.* It is unclear what, if any, staff report exists, as one was never made part of the record.

Nor can Defendants rely on the purported *in-camera* evidence. If this evidence exists, it was never submitted to the district court. *See* 1-ER-28-29. Nor does Defendants' brief explain anything about this evidence. *See* Opening Br. 45-47. And, at the hearing, when Crawley asked what evidence Ashcraft was using, Ashcraft refused to explain. *See* 2-ER-252 (Ex. F at 13:40-14:08). Instead, Ashcraft asserted that he was "using the evidence that [he] was able to extract from the Officer's report and the in-camera information that was available to [him]," but that he was "not going to sit here and tell" Crawley what that *in-camera* information was. *Id.* at 13:43-13:50; 14:04-14:08. Ashcraft maintained the *in-camera* information involved "screened inmate correspondence," but offered no information about its content or even whether it was Crawley's correspondence or another inmate's. *Id.* at 20:22-20:41.

These conclusory assertions about the evidence do not satisfy the applicable legal standard. Evidence supporting good-time revocation must be "in the record." *Hill*, 472 U.S. at 454; *accord McQuillion*, 306 F.3d at 909. Yet, at every stage, Defendants have declined to make any evidence part of the record. Thus, as the district court recognized, 1-ER-28-29, Defendants cannot show any dispute of fact as to whether some

evidence supported the disciplinary committee's finding. *See* Fed. R. Civ. P. 56(c)(1)(B).

Defendants emphasize that the "some evidence" standard is "minimally stringent." Opening Br. 45. Maybe so, but, on this record, this Court need not interrogate that standard. Defendants have never put forward *any* evidence to support their guilty finding.

II. Each Defendant carried out or participated in affirmative acts that deprived Crawley of due process and thus are liable under Section 1983.

Defendants are liable under Section 1983 because they carried out or participated in an affirmative act that caused a constitutional violation. *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007). This inquiry is "individualized and focus[es] on the duties and responsibilities" of each official whose acts caused the constitutional deprivation. *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988). Defendants dispute personal involvement only as to Suwe (as to the first disciplinary proceeding but not the second), Hollaway, Robison, and Williams.[8]

[8] The district court found that Suwe, Ashcraft, and Williams were liable as to the first disciplinary proceeding and Hollaway, Robison, Ashcraft, and Suwe were liable as to second. 1-ER-27; 1-ER-29. Defendants do not dispute the personal involvement of the members of the disciplinary committee, including Ashcraft for both proceedings and Suwe for the second proceeding.

Defendants argue that they are liable only if they "personally deprived Crawley of a liberty interest." Opening Br. 24-25. That's the wrong standard. Rather, "[w]here a person is entitled to certain process, the failure to provide it can deprive the individual of a procedural due process right." *Murguia v. Langdon*, 61 F.4th 1096, 1107 (9th Cir. 2023); *see also Armstrong v. Reynolds*, 22 F.4th 1058, 1070-71 (9th Cir. 2022). Put differently, officials are liable when they participate in the deprivation of process—even if the deprivation of the liberty interest was completed by a different official or happened separately from the deprivation of process.

Defendants violated Crawley's right to procedural due process when they failed to provide Crawley with the opportunity to view the evidence against him in his prison disciplinary hearings.

Suwe and Hollaway. Suwe and Hollaway each drafted the Notice of Charges that initiated the disciplinary proceedings. 3-ER-275; 3-ER-284. Each thereby deprived Crawley of the right to be informed of the evidence against him. *Melnik v. Dzurenda*, 14 F.4th 981, 985-86 (9th Cir. 2021). They failed to provide him with even a summary of the withheld evidence. Instead, the Notice drafted by Suwe referred to "sensitive information" and said to "reference the 028 [report] for further details," without describing the contents of the 028 report. 3-ER-275. And the Notice drafted by Hollaway referred to "[i]n [c]amera" and "sensitive" materials but provided no context or further description. 3-ER-284. By issuing

deficient notices, both Suwe and Hollaway personally participated in the due-process violation and are therefore liable. *See* 1-ER-27; 1-ER-29.

Robison. Robison conducted the second preliminary hearing at which Crawley asked to see the evidence against him. 3-ER-285. As explained (at 22-30), once Crawley requested this evidence, Robison was legally required to provide it. But a month later, when Crawley had his formal disciplinary hearing, Robison still had not given Crawley the evidence he had requested. *See* 2-ER-252 (Ex. F at 5:37-5:41).

Williams. Williams's denial of Crawley's appeal deprived Crawley of his due-process right to the evidence he requested. As part of the first disciplinary proceeding, Crawley ultimately filed a second-level grievance to Williams, reiterating his request for a new lab test and for copies of the evidence against him. 4-ER-570-73; 3-ER-371. Williams denied that appeal. 4-ER-569; 3-ER-369-70. Williams was empowered through NDOC regulations to correct any errors in disciplinary hearings that he identified. *See* NDOC Admin. Reg. 707.1(3), 707.1(12)(C), 740.05(2).[9]

Williams was therefore an administrative official with authority to remedy the deprivation of Crawley's right, rendering him liable under Section 1983 when he failed to do so. *See Colwell v. Bannister*, 763 F.3d 1060, 1065, 1070-71 (9th Cir. 2014) (holding that a doctor's denial of an

[9]https://doc.nv.gov/About/Administrative_Regulations/Administrative_Regulations__700_Series/.

inmate's second-level grievance based on an administrative policy was sufficient participation to impose Section 1983 liability); *Snow v. McDaniel*, 681 F.3d 978, 989 (9th Cir. 2012) (holding a prison warden's and associate warden's failures to act were sufficient participation when they were aware, through the grievance process, that the prisoner needed surgery), *overruled on other grounds by Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014); *see also OSU Student All. v. Ray*, 699 F.3d 1053, 1077 (9th Cir. 2012) (official "who ultimately denied" plaintiff's petition challenging a policy "bore responsibility for administration of [that] policy"). Though Defendants are correct that officers who deny administrative appeals sometimes may escape Section 1983 liability, *see* Opening Br. 27-29, that occurs only when the officers lack authority to remedy the constitutional violation. Because Williams had the decision-making authority to remedy Crawley's due-process deprivation, he can be held liable.

Defendants offer two rejoinders. First, they suggest that Crawley is demanding a specific grievance procedure. Opening Br. 27-29. That's not right. Nevada can set up its grievance system in any number of ways, but Nevada officials cannot use that system to violate Crawley's rights. Second, Defendants suggest a slippery slope: that holding Williams liable would mean that every adjudicator is responsible for a constitutional violation. Opening Br. 28. But as just explained, whether a person who denies an administrative appeal can be liable depends on the nature of

the grievance system and that person's role in it. As shown, William's authority to provide Crawley with the evidence, coupled with his refusal to do so, renders him individually liable.

III. Defendants are not entitled to qualified immunity because Crawley's due-process rights were clearly established.

The district court correctly held that Defendants are not entitled to qualified immunity on Crawley's damages claims. 1-ER-31-32. Before explaining why that holding was correct, we note that qualified immunity applies only to damages claims. *Hydrick v. Hunter*, 669 F.3d 937, 939-40 (9th Cir. 2012). Crawley has requested injunctive relief for Defendants' ongoing violations of federal law: for the disciplinary infractions to be expunged from his record and appropriate good-time credits to be awarded. 5-ER-688. He also seeks "any equitable … relief the Court deems appropriate," *id.*, which includes requiring Defendants to provide him an adequate due-process hearing. The district court is authorized to award all of this injunctive relief. *See* Fed. R. Civ. P. 54(c).

Turning to Crawley's claim for damages, to overcome qualified immunity, Crawley must show (1) a violation of a constitutional or statutory right that (2) was "clearly established at the time of the alleged violation." *Sandoval v. Las Vegas Metro. Police Dep't*, 756 F.3d 1154, 1160 (9th Cir. 2014). As previously explained (at 16-33), Defendants violated Crawley's due-process rights. To determine whether a right was clearly

established, this Court must ask if "it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." *Walker v. Gomez*, 370 F.3d 969, 978 (9th Cir. 2004); *see Serrano v. Francis*, 345 F.3d 1071, 1077 (9th Cir. 2003).

Defendants' qualified-immunity argument just rehashes their arguments on the merits. *See* Opening Br. 47-49. But *Melnik v. Dzurenda*, 14 F.4th 981, 985 (9th Cir. 2021), made clear to Defendants that they could not lawfully deny Crawley access to the evidence that he requested. Similarly, *Superintendent v. Hill*, 472 U.S. 445, 454-55 (1985), clearly established that a prison cannot revoke good-time credits unless "some evidence" supports its reason for doing so. And, finally, it was clearly established at the time of Defendants' due-process violations that personal participation is the standard to hold each of them liable. *See supra* at 33-37.

Conclusion

This Court should affirm the district court's grant of partial summary judgment to Crawley and remand for a trial on damages. After trial, the district court may award any appropriate injunctive relief. *See* Fed. R. Civ. P. 54(c).

Respectfully submitted,

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FOR THE NINTH CIRCUIT

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