No. 21-15905

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Maged Labib Karas,

Plaintiff-Appellant,

v.

California Department of Corrections and Rehabilitation, et al.,

Defendants-Appellees.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of California
No. 20-cv-1488, Judge John A. Mendez

REPLACEMENT OPENING BRIEF FOR PLAINTIFF-APPELLANT MAGED LABIB KARAS

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Introduction

Maged Labib Karas is serving a sentence of 36 years to life in California state prison. In 2009, he was convicted of driving under the influence of alcohol and causing great bodily injury to his brother, a passenger in the vehicle, who sustained a serious ankle fracture in the accident. Karas has so far served over 14 years for this offense. He will not be eligible for parole for over a decade because the California Department of Corrections and Rehabilitation (CDCR) has deprived him of good-time credits without due process of law.

California law automatically grants inmates good-time credits for time served in prison. These credits either shorten the inmate's sentence or advance the inmate's parole eligibility date. Inmates accrue credits at different rates depending on the way in which their convictions are categorized under state law.

At sentencing, the judge held that Karas was entitled to accrue credits at a rate of 50%. Accordingly, for years Karas believed that every day he spent in prison brought him two days closer to freedom. In 2016, however, Karas received a status summary from CDCR indicating that it had reclassified his convictions, revoked credits he had accrued, and reduced his credit-earning rate. After attempting to challenge his reclassification with CDCR, he filed this Section 1983 lawsuit alleging constitutional deficiencies in CDCR's procedures.

The district court rejected his claim on the ground that California inmates have no constitutionally protected liberty interest in good-time credits. That decision ignores the importance of good-time credits for inmates and that, under state law, inmates are legally entitled to accrue and retain them. This Court should find that a liberty interest exists and then conclude that Karas did not receive the procedures to which he is constitutionally entitled. That holding would bring him one step closer to getting constitutionally adequate review of CDCR's reclassification, which could make years of difference for when he is eligible for parole.

Statement of Jurisdiction

In his amended complaint, Karas sued four correctional officers employed by CDCR and the California Health Care Facility under 42 U.S.C. § 1983. The district court had jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3).

On May 3, 2021, the district court adopted the magistrate judge's Findings and Recommendations and dismissed the case for failure to state a claim under 28 U.S.C. § 1915A, disposing of all claims of all parties. On May 20, 2021, Karas filed a notice of appeal, which was timely under 28 U.S.C. § 2107(a) and Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure. This Court has jurisdiction under 28 U.S.C. § 1291.

Issues Presented

I. Whether California's good-time credits scheme creates a liberty interest that the Due Process Clause of the Fourteenth Amendment protects.

II. Whether the procedures provided by CDCR after depriving Karas of good-time credits and reducing his accrual rate are constitutionally sufficient.

Statutory Addendum

Pertinent statutory provisions appear in the addendum to this brief.

Statement of the Case

I. Legal background

A. California criminal sentencing

Two background concepts of California law are important for understanding the state's good-time credits scheme as it applies to this appeal. First, the rate at which credits accrue depends on whether the inmate was convicted of a violent felony. Second, the ultimate impact the credits have on the length of a sentence depends on whether the inmate is serving a determinate or indeterminate sentence.

1. The California Penal Code designates certain felonies as "violent." Cal. Penal Code § 667.5(c). The classification determines the rate at which an inmate accrues good-time credits. *Id.* § 2933.1(a). It also dictates the applicability of California's Three-Strikes Law, *id.* § 1170.12, and has other collateral consequences, *e.g.*, Cal. Const. art. I, § 32(a)(1). Nonviolent crimes

may be categorized as "serious," Cal. Penal Code § 1192.7(c), or have no designation.

2. A defendant can be sentenced to a determinate sentence, an indeterminate sentence, or a combination of the two. Determinate sentences have fixed maximum lengths, after which the sentence ends. *See* Cal. Penal Code § 1170. Indeterminate sentences have fixed minimum lengths, after which the defendant becomes eligible for parole. *See id.* §§ 1168(b), 3046(a). If parole is never granted, the inmate serves a life sentence. *See id.* § 3046(a). So, a sentence of 10 years is a determinate sentence, while a sentence of 10 years to life is an indeterminate sentence. When a defendant is sentenced to both a determinate and an indeterminate term, the determinate term is served first. *Id.* § 669(a).

B. California's good-time credits scheme

At the time of Karas's sentencing, Sections 2930 through 2936 of the California Penal Code governed the state's good-time credits scheme. Under Section 2933, "[f]or every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months." Cal. Penal Code § 2933(b). At that rate, good-time credits cut an inmate's sentence in half, so this is described as an accrual rate of 50%. Section 2933.1 limits that rate to 15% for persons convicted of violent felonies

as defined in Section 667.5(c). *Id.* § 2933.1(a). These same rates apply to time served in county jail before sentencing. *Id.* §§ 4019(f), 2933.1(c).[1]

Since Karas's sentencing, post-sentence good-time credit accrual rates have increased. In 2016, California voters passed Proposition 57, which sought to "enhance public safety" and "improve rehabilitation." Cal. Const. art. I, § 32. Proposition 57 instructed CDCR to create a new, expedited parole process for certain inmates convicted of nonviolent felonies. *Id.* § 32(a)(1), (b). In addition, it gave CDCR authority to promulgate regulations increasing good-time credit accrual rates. *See id.* § 32(a)(2), (b). CDCR has used that authority to raise the caps provided for in Section 2933 and Section 2933.1. *See* Cal. Code Regs. tit. 15, § 3043.2. Those serving an indeterminate sentence for a violent felony now accrue credits at a rate of 33.3%. *Id*. § 3043.2(b)(2)(B).[2]

The California Penal Code also limits the circumstances in which credits can be revoked once they are earned. Cal. Penal Code § 2932. For example, the statutory scheme limits the number of credits that "may be denied or lost" for any single act of misconduct. *Id.* Revocations cannot exceed 30 days

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[1] Although Sections 2933 and 2933.1 of the California Penal Code retain language from previous versions of the statutory scheme that applied to "worktime credit," the statutes now govern and apply to good-time credit, which is also sometimes referred to as "conduct credit." *See, e.g.*, *People v. Valenti*, 197 Cal. Rptr. 3d 317, 352 (Ct. App. 2016).

[2] Inmates accrue at greater rates if they serve as firefighters, but those provisions are not relevant here. *See* Cal. Code Regs. tit. 15, § 3043.2(b)(4)(B).

for a "serious disciplinary offense," 90 days for an offense that could be prosecuted as a misdemeanor, 180 days for an offense that could be prosecuted as a felony, or 360 days for specific offenses such as murder or assault with a deadly weapon. *Id.* § 2932(a)(1)-(4). Inmates are entitled by statute to procedural protections for these credit revocations, including written notice of the claimed violation, a hearing with witnesses, and the ability to appeal the decision through CDCR's review procedure. *Id.* § 2932(c), (a)(5).

II. Factual background

A. Criminal proceedings

On August 21, 2009, Karas was convicted of three counts relating to driving under the influence. *People v. Karas*, No. E049583, 2011 WL 901023, at *1 (Cal. Ct. App. Mar. 16, 2011). The California Superior Court also imposed several enhancements, including an enhancement for great bodily injury due to the ankle injury sustained by Karas's brother. *Id.* at *1-2. He was sentenced to an 11-year determinate term and an indeterminate term of 25 years to life under California's Three-Strikes Law, for a total indeterminate sentence of 36 years to life. *Id.* at *1.

At sentencing, when determining how many pre-sentence credits Karas had earned, the judge stated that what Karas had been convicted of was "not a violent strike crime." ER-19. Both parties agreed to this characterization. *Id.* The judge then awarded credits at the 50% rate that applied to nonviolent

felons, granting Karas 150 days of credit for 301 days served. ER-20. The court reduced these findings to writing in the minute order and Karas's 2009 Abstract of Judgment. *Id.*

Karas appealed his convictions and sentence on grounds not relevant here. ER-20–21. The California Court of Appeal largely affirmed the judgment, and no party raised the issue of the award of credits. *Id.*; *Karas*, 2011 WL 901023, at *1-4.

B. CDCR's decision to reclassify Karas

For some period of time after his sentencing, Karas earned credits at the 50% rate. Because of the sentencing judge's holding, Karas had no reason to think that he had been convicted of a violent felony or that CDCR might set aside the determination made at sentencing.

In August 2016, Karas received a Legal Status Summary (LSS) from CDCR announcing that it viewed him as having committed a violent felony. ER-21. The decision to reclassify him must have occurred at some point between his 2009 sentencing and August 2016. *See id.* This decision lowered his accrual rate to 15%. *See id.*; Cal. Penal Code § 2933.1(a). And because he had earned credits at a 50% rate between sentencing and reclassification, the reclassification deducted 70% of the post-sentence credits he had earned to that point. *See* ER-21.

For a sentence as long as Karas's, the consequences of a decision like this are massive. For example, over the course of an otherwise unaltered 36-year

sentence, earning credits at a 15% rate versus a 50% rate makes a difference of over 12 years in prison.

C. Administrative challenge

Karas submitted an administrative appeal challenging his reclassification and credit revocation. ER-21. Under CDCR regulations then in effect, inmate appeals generally received three levels of review. Cal. Code Regs. tit. 15, § 3084.1(b) (2016). If the appeal involved an issue that could not be resolved by a first-level reviewer, however, the appeal would receive review at the second and third levels only. *Id.* § 3084.7(a) (2016). On September 1, 2016, Karas learned that his appeal had bypassed the first level when a second-level reviewer summoned him for an impromptu interview. ER-22.

The second-level reviewer was unable to resolve Karas's appeal conclusively. ER-23. Karas provided copies of his Abstract of Judgment and the transcript and minute order from his sentencing. ER-21. The reviewer determined that CDCR needed "further clarification" from the sentencing court, including official versions of the documents that Karas tried to submit. ER-23. CDCR submitted a request to the court. ER-26–27.

Karas was supposed to have received a notice informing him about this second-level interview at least 24 hours before it occurred. Cal. Code Regs. tit. 15, § 3084.9(d)(2) (2016). He did not receive that document until September 12, 2016, 11 days after the interview took place. ER-23–24. As a result, he went into the second-level interview with no prior notice.

On October 18, 2016, Karas appealed the second-level decision to the third level. ER-24. Despite having received no documents or response from the sentencing court, CDCR staff denied the third-level appeal without explaining Mr. Karas's reclassification and credit-status revocation. ER-25.

III. This litigation

Karas attempted to challenge his reclassification and the reduction of his credit-accrual rate via state post-conviction procedures. *Karas v. Eldridge*, No. 19-cv-2016, 2020 WL 4456533, at *3 (C.D. Cal. June 4, 2020). He then filed a federal habeas petition in the U.S. District Court for the Central District of California. The magistrate judge recommended rejecting his claim because it fell "outside the 'core of habeas corpus,'" and "must be brought, if at all, in a civil rights complaint under § 1983." *Id*. at *4 (citation omitted). The district court adopted that recommendation and dismissed his complaint. *Karas v. Eldridge*, No. 19-cv-2016, 2020 WL 4455096, at *1 (C.D. Cal. Aug. 3, 2020).

Accordingly, Karas filed a complaint against CDCR and its Secretary under Section 1983. ECF 1 at 1. He later filed an amended complaint against four correctional officers alleging a violation of the Due Process Clause of the Fourteenth Amendment. ER-12, 14. The magistrate judge recommended that the amended complaint be dismissed for failure to state a claim under 28 U.S.C. § 1915A, noting that no decision from this Court establishes that California has created a liberty interest in good-time credits that the Due

Process Clause protects. ER-8, 10–11. After finding no liberty interest, the magistrate judge had no occasion to address whether Karas received constitutionally sufficient procedures. ER-10–11. Karas filed objections. ER-6. The district court adopted the recommendations of the magistrate judge in full. ER-7. Karas filed a timely notice of appeal, and this Court appointed counsel. ER-2–4; Doc. 19-1 (Feb. 22, 2023).

Summary of the Argument

CDCR violated Karas's rights under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution when it deprived him of good-time credits and reduced his credit-earning rate without informing him of the basis of its decision or providing him with a meaningful opportunity to submit critical evidence.

I. California law creates a liberty interest in good-time credits. Karas has a legitimate claim of entitlement to good-time credits because the regulatory scheme requires the nondiscretionary award of credits and limits the circumstances under which they can be revoked. Further, as the Supreme Court and this Court have repeatedly held, the right to good-time credits is substantive and weighty because it is inextricably linked to an inmate's release from prison. Indeed, good-time credits have no other function.

II. Karas did not receive the procedural protections that the Due Process Clause requires when CDCR revoked his good-time credits and reduced his credit-earning rate. As in *Wolff v. McDonnell*, 418 U.S. 539 (1974), he challenged an administrative determination depriving him of good-time

credits otherwise granted by statute. Thus, under *Wolff*, he was entitled to notice of CDCR's reasons for reclassifying him and a meaningful opportunity to present evidence. He sufficiently pleaded that, throughout the process, CDCR provided neither procedural protection.

Reviewability and Standard of Review

The magistrate judge recommended dismissing Karas's amended complaint with prejudice for failure to state a claim. ER-11. Karas filed objections, raising arguments that California law creates a liberty interest in good-time credits and that CDCR failed to provide him with constitutionally adequate procedures. ECF 16 at 11. The district court adopted the magistrate judge's findings and recommendations in full and dismissed Karas's amended complaint without leave to amend. ER-7.

This Court reviews a district court's dismissal for failure to state a claim under 28 U.S.C. § 1915A de novo. *Wilhelm v. Rotman*, 680 F.3d 1113, 1118 (9th Cir. 2012). A court should treat a motion to dismiss under Section 1915A akin to a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure and deny it if the complaint "contain[s] sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Wilhelm*, 680 F.3d at 1121 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

A pro se complaint must be construed liberally, "however inartfully pleaded," and it "must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citation omitted).

Argument

The Due Process Clause of the Fourteenth Amendment prohibits states from "depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. A procedural-due-process claim has two distinct elements: a deprivation of a constitutionally protected interest and a denial of adequate procedural protections. *E.g.*, *Johnson v. Ryan*, 55 F.4th 1167, 1179 (9th Cir. 2022). Karas has sufficiently pleaded that (I) he suffered the deprivation of a constitutionally protected state-created liberty interest in good-time credits and (II) CDCR failed to provide adequate procedures when it reclassified him.

I. California's good-time credits scheme creates a liberty interest that constitutional due process protects.

To invoke the protections of the Due Process Clause of the Fourteenth Amendment, a litigant must establish that a life, liberty, or property interest is at stake. Either the U.S. Constitution or state law can create a constitutionally protected liberty interest. *E.g.*, *Bd. of Pardons v. Allen*, 482 U.S. 369, 373 (1987). Inmates possess a state-created liberty interest when state law gives them a legitimate claim of entitlement to a weighty, substantive right. *Johnson v. Ryan*, 55 F.4th 1167, 1193 (9th Cir. 2022).

A. California law creates a legitimate claim of entitlement to good-time credits.

A state creates a legitimate claim of entitlement to a benefit by limiting officials' discretion to confer or revoke that benefit. *Wolff v. McDonnell*, 418

U.S. 539, 547-53, 557-58 (1974); *Miller v. Or. Bd. of Parole & Post-Prison Supervision*, 642 F.3d 711, 714-16 (9th Cir. 2011). Under those circumstances, a person has more than a "mere hope" of satisfying his interest in the benefit. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 11-12 (1979). Instead, he has a "justifiable expectation" that he will receive or retain it. *See Olim v. Wakinekona*, 461 U.S. 238, 244-45 (1983). The use of mandatory statutory or regulatory language, such as a provision specifying that a person "shall" receive some benefit if certain conditions are satisfied, creates the kind of state-law "expectancy" to which the Due Process Clause attaches. *Greenholtz*, 442 U.S. at 11-12; *Miller*, 642 F.3d at 714-16.

Wolff presents the foundational example of a state-created liberty interest in good-time credits. There, the Supreme Court held that Nebraska's good-time-credits scheme conferred a legitimate claim of entitlement on inmates. *Wolff*, 418 U.S. at 557. The statute stated that state officials "shall reduce" the amount of time until an inmate's parole date by a particular number of months for each year of incarceration, assuming "good behavior and faithful performance of duties." *Id.* at 546 n.6 (citation omitted). The text further provided that "[e]xcept in flagrant or serious cases, punishment for misconduct shall consist of deprivation of privileges" only. *Id.* at 545 n.5 (citation omitted). In other words, good-time credits accrued automatically and could not be forfeited unless the inmate engaged in "flagrant or serious" misbehavior. *Id.* (citation omitted). The Nebraska Department of Corrections then promulgated regulations expanding on the definition of flagrant or

serious misconduct. *Id.* at 549 & n.8. Because Nebraska's scheme used mandatory language like "shall" to require that inmates receive credits and constrained instances when officials could deduct credits, the state created a legitimate claim of entitlement to good-time credits. *Id.* at 546 n.6, 558 (citation omitted).

Wolff established the framework that this Court now uses to analyze state-created liberty interests in both good-time credits and parole. For example, this Court applied *Wolff* to find that California created a liberty interest in parole. *McQuillion v. Duncan*, 306 F.3d 895, 902 (9th Cir. 2002), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011); *see also, e.g.*, *Miller*, 642 F.3d at 714-16 (Oregon's parole scheme for inmates convicted of murder); *Toussaint v. McCarthy*, 801 F.2d 1080, 1095 (9th Cir. 1986) (California's old good-time credits scheme), *overruled on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).

California's good-time credits scheme gives rise to a legitimate claim of entitlement because the legal framework curtails official discretion and creates a presumption that inmates will earn and retain credit. Mandatory language governs how credits accrue. All regulatory provisions related to good-time accrual use the term "shall" to dictate the rate that applies to each circumstance. For example, Karas is currently subject to a regulation that states that credits "shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony" at a rate of 33.3%. Cal. Code Regs. tit. 15, § 3043.2(b)(2)(B). The same regulation states that for a nonviolent

felon, credits "shall be awarded" at a rate of 50%. *Id.* § 3043.2(b)(3), (4). There is no room for discretion under these regulations, like the provisions at issue in *Wolff* and in other cases where this Court has found a liberty interest in good-time credits. *See, e.g.*, *Toussaint*, 801 F.2d at 1095. The same is true of the statutory provisions that governed Karas's accrual rate at the time of his sentencing. Cal. Penal Code § 2933(b) ("For every six months of continuous incarceration, a prisoner *shall* be awarded credit reductions from his or her term of confinement of six months." (emphasis added)); *id.* § 2933.1(a) ("Notwithstanding any other law, any person who is convicted of a [violent felony] *shall* accrue no more than 15 percent of [good-time] credit." (emphasis added)).

Further, inmates can expect that they will retain the good-time credits they accrue. Mandatory language limits officials' discretion to rescind credits. Like the scheme in *Wolff*, good-time credits are protected from deduction by law. Cal. Penal Code § 2932. As explained above (at 5-6), officials must reach a formal finding of misconduct before removing accrued credits, and the scheme provides maximum credit removal caps. Like the provisions governing good-time credit accrual, this statute governing retention ensures that inmates possess more than a "mere hope" that they will receive and retain credits. *Greenholtz*, 442 U.S. at 11.

That CDCR's credit-accrual rates have increased over time, *see supra* 5, does not change this analysis. Since Karas's sentencing, the scheme has maintained the same basic structure: if an inmate is a violent felon, then

CDCR "shall" award credits at a particular, limited rate. *See supra* 4-5. Although CDCR has raised the applicable rates, it has not made the award of credits discretionary. At each point during his sentence, Karas had a legitimate claim of entitlement to retain the credits he had previously accrued and earn additional credits at the rate then in effect.

The statute's statement that good-time "[c]redit is a privilege, not a right" does not negate the creation of a liberty interest. Cal. Penal Code § 2933(c). The Supreme Court has "rejected the wooden distinction between 'rights' and 'privileges' that once seemed to govern the applicability of procedural due process rights" and the creation of liberty interests. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 571 (1972); *see Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). What matters is whether a state limits its own discretion to interfere. *See McQuillion*, 306 F.3d at 902-03. As explained above, through the use of mandatory statutory and regulatory language, California's good-time credits scheme does just that.

Nor does it matter to this appeal that this Court previously held that an earlier version of Section 2933, the statute that now governs accrual of good-time credits, did not give rise to a legitimate claim of entitlement. *Toussaint*, 801 F.2d at 1094-95; *see Edwards v. Swarthout*, 597 F. App'x 914, 915-16 (9th Cir. 2014). At the time this Court decided *Toussaint*, Section 2933(a) governed worktime credits, not good-time credits, and provided that an inmate "may" receive such worktime credits. 801 F.2d at 1094. CDCR enjoyed broad discretion with respect to work programs—no inmate was automatically

able to participate. *Id.* CDCR was not required to make work available at all. *Id.* at 1095. As explained above, today's scheme functions differently. Inmates earn good-time credits automatically, not by participating in programming that is only sometimes available. Cal. Code Regs. tit. 15, § 3043.2(b). The scheme no longer uses discretionary language like "may," but instead uses the mandatory language "shall" that can give rise to a liberty interest. *Id.*

The court below failed to engage with the nondiscretionary nature of California's good-time credits scheme, relying instead on the fact that this Court has never held that the scheme creates a liberty interest. ER-10–11. In the process, it suggested that *Sandin v. Conner*, 515 U.S. 472 (1995), might control the analysis. It does not. In *Sandin*, the Supreme Court criticized past decisions' exclusive focus on "mandatory language" in internal prison regulations. *Id.* at 480-83. It held that such regulations do not create a liberty interest unless they impose an "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Id.* at 484. But in *Sandin* the Court reaffirmed *Wolff* and "the due process principles" it "correctly established and applied." *Id.* at 483. Accordingly, this Court has not applied *Sandin* to cases that fall under *Wolff*, as this one does. *E.g.*, *McQuillion*, 306 F.3d at 902-03; *Chappell v. Mandeville*, 706 F.3d 1052, 1064 n.5 (9th Cir. 2013).

B. Good-time credits are a substantive right.

In addition to establishing a claim of legitimate entitlement, an inmate must also show a weighty "underlying substantive interest" to prove he has a constitutionally protected liberty interest. *Johnson*, 55 F.4th at 1193 (citation omitted). Good-time credits are weighty because they implicate the date of the inmate's ultimate release from prison. *See supra* 4-5, 7-8. That is an undeniably weighty interest in freedom from bodily restraint. *See Hayward v. Marshall*, 603 F.3d 546, 556-57 (9th Cir. 2010), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011). Indeed, whether a person is in prison or out in the world goes to the core of individual liberty.

That is why the Supreme Court and this Court have squarely held that good-time credits are the type of interest that the Due Process Clause protects. The Supreme Court described the right to good-time credits as one of "real substance" giving rise to a liberty interest. *Wolff*, 418 U.S. at 557. This Court has repeatedly reached the same conclusion. *Toussaint*, 801 F.2d at 1095 (California's old good-time credits scheme); *McFarland v. Cassady*, 779 F.2d 1426, 1428 (9th Cir. 1986) (Arizona good-time credits); *see also Hayward*, 603 F.3d at 556-57 (discussing good-time credits).

Because good-time credits implicate "the prisoner's right to walk out the prison gate and hear it clang behind him," they qualify as "a liberty interest of the most fundamental sort." *Hayward*, 603 F.3d at 556-57. This Court should reject the district court's contrary opinion.

II. Karas did not receive procedural due process when CDCR reclassified him as a violent felon and deprived him of good-time credits.

"Once it is determined that due process applies, the question remains what process is due." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). Because the district court found no liberty interest, it did not address whether CDCR afforded Karas adequate procedural protections. After finding that California law creates a liberty interest in good-time credits, this Court should hold that Karas pleaded sufficient facts to allege that CDCR did not provide sufficient process.

A. Karas was entitled to written notice and a meaningful opportunity to be heard.

This Court has held time and again that notice and a hearing are "the hallmarks of procedural due process." *Austin v. Univ. of Or.*, 925 F.3d 1133, 1139 (9th Cir. 2019) (quoting *Ludwig v. Astrue*, 681 F.3d 1047, 1053 (9th Cir. 2012)). These guarantees cannot be satisfied by hollow procedures that offer no real chance at relief. "The fundamental requisite of due process of law is the opportunity to be heard …. at a meaningful time and in a meaningful manner." *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970) (citation omitted).

Applying that general principle, the Supreme Court held in *Wolff v. McDonnell*, 418 U.S. 539 (1974), that an inmate is entitled to notice and a hearing in a prison disciplinary proceeding concerning a deprivation of good-time credits. *Id.* at 563. This Court has since applied *Wolff*'s procedural requirements to good-time credit deprivations under other statutory

schemes. *See McFarland v. Cassady*, 779 F.2d 1426, 1428 (9th Cir. 1986) (Arizona); *Mainard v. Fitzpatrick*, 8 F. App'x 614, 616 (9th Cir. 2001) (federal); *see also Gil v. Woodend*, 591 F. App'x 619, 620 (9th Cir. 2015) (suggesting that *Wolff*'s procedural requirements would apply to a California inmate's challenge of good-time revocation).

Because Karas challenges an administrative deprivation of good-time credits (*see supra* 8), those same two procedural requirements—notice and an opportunity to be heard—apply here.

First, Karas was entitled to receive notice so that he could "marshal the facts in his defense." *Wolff*, 418 U.S. at 564. *Wolff* is instructive as to the content of the notice. There, the prison had to provide the inmate with "a written statement" from correctional officials describing "the evidence relied upon and the reasons for the disciplinary action taken." *Id.* at 563. Analogously, CDCR should have provided Karas with a written explanation of its basis for reclassifying him contrary to the sentencing judge's holding. This Court has also made clear that if that notice does not arrive until after the hearing, it must at least arrive in time for the inmate to challenge the prison's determination through the administrative appeal process. *Bowles v. Tennant*, 613 F.2d 776, 778-79 (9th Cir. 1980); *Grattan v. Sigler*, 525 F.2d 329, 331 (9th Cir. 1975).

Second, Karas had the "right to present evidence [that] is basic to a fair hearing." *Wolff*, 418 U.S. at 566. Karas was entitled to an opportunity to challenge his reclassification and produce evidence in support to the extent

consistent with institutional safety and correctional goals. *Id.* Part of that guarantee is the promise that CDCR actually could and did consider Karas's evidence. *Buckingham v. Sec'y of U.S. Dep't of Agric.*, 603 F.3d 1073, 1084 (9th Cir. 2010); *see also Cham v. Att'y Gen. of U.S.*, 445 F.3d 683, 693 (3d Cir. 2006) ("[I]f a document is admitted into evidence with the caveat that it will be given 'no weight,' that is tantamount to an exclusion of evidence …. Due process demands that [a] … judge 'actually consider the evidence and argument that a party presents.'" (citations omitted)).

B. Karas has stated a claim for constitutionally deficient procedures.

CDCR flouted *Wolff*'s procedural guarantees. Karas's amended complaint alleges that CDCR provided neither satisfactory notice nor a constitutionally adequate opportunity to be heard. And even if this Court finds his pleading insufficiently detailed, it should not affirm the district court's dismissal with prejudice because Karas could further amend his complaint to state a claim. *See Orion Tire Corp. v. Goodyear Tire & Rubber Co.*, 268 F.3d 1133, 1137 (9th Cir. 2001).

1. CDCR did not inform Karas why it rejected the sentencing judge's classification of his convictions.

Karas sufficiently alleged that throughout the entire administrative process, CDCR never informed him of the basis on which it classified him as a violent felon contrary to the sentencing court's holding. He did not receive the notice guaranteed under the Due Process Clause either before the

interview or during the appeal period. *Wolff*, 418 U.S. at 564; *see Bowles*, 613 F.2d at 778-79; *Grattan*, 525 F.2d at 331.

Karas received no notice whatsoever prior to the interview. His allegations regarding the belated notice form evince that he was not informed previously about the proceeding. As described (at 8), the then-effective regulations required that he be informed of the interview before it happened, but CDCR did not provide him with that notice until 11 days after the interview took place. Accordingly, it is reasonable to infer that, before the interview, Karas was not informed why CDCR had chosen to depart from the sentencing judge's holding regarding the classification of his convictions. And even if that is not a plausible inference from the amended complaint, he could easily amend the complaint to make such an allegation.

Nor was Karas informed of the basis of CDCR's reclassification during the remainder of the appeal. The second-level decision, issued after the interview, did not provide Karas with a "verifiable explanation" as to his reclassification. ER-25. The decision noted the discrepancy between the sentencing court's holding and CDCR's view of his status, but did not reconcile the two, stating only that CDCR needed further clarification from the sentencing court. ER-22–23. The amended complaint therefore plausibly alleged that he was kept in the dark about why he was reclassified not just before the interview but throughout the administrative process.

2. CDCR did not meaningfully consider critical evidence.

Karas sufficiently alleged that CDCR did not consider the sentencing transcript he submitted and decided his appeal without allowing him to rely on an official version from the sentencing court. These constraints on his ability to submit key documents ran afoul of *Wolff*'s guarantee of a "fair hearing." 418 U.S. at 566.

CDCR's request for official documents from the sentencing court allows an inference that the second-level reviewer did not actually consider the documents submitted by Karas. *See* ER-27. Karas provided a sentencing transcript. ER-22. The second-level decision noted that CDCR reviewed the transcript, which it acknowledged to be the basis of Karas's challenge to his reclassification. ER-23. Nevertheless, it still felt the need to request an official copy of the transcript and to clarify "the intent of the courts regarding [Karas's] credit-earning status." *Id.* These allegations indicate that the second-level reviewer did not consider or place any weight on the transcript Karas provided, effectively denying him the opportunity to present that evidence at that level. *Buckingham*, 603 F.3d at 1084; *see also Cham*, 445 F.3d at 693. Again, even if that is not a plausible inference, he could specifically allege as much in a second amended complaint.

Further, CDCR did not consider the sentencing transcript at the third-level appeal. The reviewer issued a decision while CDCR was still waiting to receive the documents from the state court. *See* ER-25–27. As a result, the third-level decision shut down Karas's argument and denied his appeal

without the benefit of the court's clarification sought by the second-level reviewer. ER-25. CDCR has never cited any prison safety concern as a ground for refusing to wait for the court to respond and denying Karas's right to present that evidence. *See Wolff*, 418 U.S. at 566. In other words, not only did CDCR keep Karas in the dark by failing to provide adequate notice, but it also denied his appeal when it was itself in the dark. The protection against "arbitrary action of government" of this kind is the "touchstone of due process." *Id.* at 558.

Conclusion

This Court should reverse the district court's judgment and remand for further proceedings.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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9th Cir. Case Number(s) 21-15905

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Addendum

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Statutory Addendum

CALIFORNIA STATUTES

Cal. Penal Code § 2933(a)-(c) - Worktime credits on sentences; amount; forfeiture; restoration; review

(a) It is the intent of the Legislature that persons convicted of a crime and sentenced to the state prison under Section 1170 serve the entire sentence imposed by the court, except for reduction in the time served in custody of the Secretary of the Department of Corrections and Rehabilitation pursuant to this section and Section 2933.05.

(b) For every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months. A lesser amount of credit based on this ratio shall be awarded for any lesser period of continuous incarceration. Credit should be awarded pursuant to regulations adopted by the secretary. Prisoners who are denied the opportunity to earn credits pursuant to subdivision (a) of Section 2932 shall be awarded no credit reduction pursuant to this section. Under no circumstances shall any prisoner receive more than six months' credit reduction for any six-month period under this section.

(c) Credit is a privilege, not a right. Credit must be earned and may be forfeited pursuant to the provisions of Section 2932. Except as provided in subdivision (a) of Section 2932, every eligible prisoner shall have a reasonable opportunity to participate.

Cal. Penal Code § 2933.1(a) Violent felonies; worktime credit; application; maximum credit

(a) Notwithstanding any other law, any person who is convicted of a felony offense listed in subdivision (c) of Section 667.5 shall accrue no more than 15 percent of worktime credit, as defined in Section 2933.

CALIFORNIA REGULATIONS

Cal. Code Regs. tit. 15, § 3043.2(b) - Good Conduct Credit

Notwithstanding any other authority to award or limit credit, effective May 1, 2017, the award of Good Conduct Credit shall advance an inmate's release date if sentenced to a determinate term or advance an inmate's initial parole hearing date pursuant to subdivision (a)(2) of section 3041 of the Penal Code if sentenced to an indeterminate term with the possibility of parole pursuant to the following schedule.

> (1) No credit shall be awarded to an inmate sentenced to death or a term of life without the possibility of parole.
>
> (2) The following Good Conduct Credit rate shall be awarded to an inmate serving a determinate or indeterminate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code, unless the inmate qualifies under paragraph (4)(B) of this section or is statutorily eligible for greater credit pursuant to this article or the provisions of Article 2.5 (commencing with section 2930) of Chapter 7 of Title 1 of Part 3 of the Penal Code:
>
> > (A) One day of credit for every four days of incarceration (Credit rate of 20%), beginning May 1, 2017 through April 30, 2021; and then
> >
> > (B) One day of credit for every two days of incarceration (Credit rate of 33.3%), beginning May 1, 2021.
> >
> > (C) One day of credit for every day of incarceration (Credit rate of 50%) for Work Group F.
>
> (3) The following Good Conduct Credit rate shall be awarded to an inmate sentenced under the Three Strikes Law, under subdivision (c) of section 1170.12 of the Penal Code, or under subdivision (c) or (e) of

section 667 of the Penal Code, who is not serving a term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code unless the inmate is serving a determinate sentence and qualifies under paragraph (5)(B) of this section:

> (A) One day of credit for every two days of incarceration (Credit rate of 33.3%), beginning May 1, 2017 through April 30, 2021; and then
>
> (B) One day of credit for every day of incarceration (Credit rate of 50%), beginning May 1, 2021.

(4) One day of credit for every day of incarceration (Credit rate of 50%) shall be awarded to:

> (A) An inmate not otherwise identified in paragraphs (1)-(3) above.
>
> (B) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who has successfully completed the requisite physical fitness training and firefighting training to be assigned as a firefighter to a Department of Forestry and Fire Protection fire camp or as a firefighter at a Department of Corrections and Rehabilitation firehouse; or
>
> (C) An inmate serving a determinate term for a violent felony as defined in subdivision (c) of section 667.5 of the Penal Code who is housed at a Department of Forestry and Fire Protection fire camp in a role other than firefighter.