In The
Supreme Court of the United States

RANDAL JEROME DALAVAI, Successor in Interest
to 'Decedent' Geetha Dalavai and
Son of Geetha Dalavai,

Petitioner,

v.

THE REGENTS; et al.,

Respondents.

APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Elena Kagan, Associate Justice of the United States Supreme Court and Circuit Justice for the Ninth Circuit:

Petitioner requests an extension of time to file his Petition for a Writ of Certiorari. Petitioner requests a extension of time of 47 days from November 14, 2024 (90 days of the decision of the Court of Appeals) to December 31, 2024 The decision of the Court of Appeals is attached

Jurisdiction of this Court to review the order and judgments being invoked pursuant to 28 U. S. C. § 1254(1).

The petition for certiorari raises a serious question as to whether a hospital's obligation under the Emergency Medical Treatment & Labor Act ("EMTALA") ends when the patient is admited to the hospital, as the Ninth Circuit held here, or even

if the hospital properly admitted the patient, it may not release a patient with an emergency medical condition without first determining that the patient has actually stabilized, as at least two other Circuits have held. Compare *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1168 (9th Cir. 2002) ("We hold that EMTALA's stabilization requirement ends when an individual is admitted for inpatient care.") with *Bryan v. Rectors & Visitors of Univ. of Va.*, 95 F.3d 349, 350 (4th Cir. 1996) ("[The plaintiff's] essential contention is that EMTALA imposed upon the hospital an obligation not only to admit [the patient] for treatment of her emergency condition, which concededly was done, but thereafter continuously to 'stabilize' her condition, no matter how long treatment was required to maintain that condition. Such a theory requires a reading of the critical stabilization requirement in subsection (b)(1) of EMTALA that we cannot accept."). Notably, the Sixth Circuit rejects the Ninth Circuit view, and does not consider inpatient admission a defense to EMTALA liability. See *Moses v. Providence Hosp. & Med. Ctrs., Inc.*, 561 F.3d 573, 583 (6th Cir. 2009) (holding that "a hospital may not release a patient with an emergency medical condition without first determining that the patient has actually stabilized, even if the hospital properly admitted the patient").

Courts like the Ninth Circuit have relied upon CMS regulations to hold that there is no duty under that EMTALA when an individual is admitted for inpatient care. See *Thomas v. Christ Hosp. & Med. Ctr.*, 328 F.3d 890, 893-96 (7th Cir. 2003) (referring to the CMS regulations for guidance in evaluating an EMTALA claim);

Torretti v. Main Line Hosps., Inc., 580 F.3d 168, 174 (3d Cir. 2009) (stating that "CMS has the congressional authority to promulgate rules and regulations interpreting and implementing Medicare-related statutes such as EMTALA, " and observing that "[g]enerally, we defer to a government agency's administrative interpretation of a statute unless it is contrary to clear congressional intent" (citations omitted)); *Thornhill v. Jackson Parish Hosp.*, 184 F.Supp.3d 392, 399 (W.D. La. 2016) ("The vast majority of courts that have considered a hospital's duty under EMTALA since CMS promulgated the regulations have given the regulations controlling weight, or have cited them in support . . . .").

The contrary decisions rely upon so-called *Chevron* deference. *Chevron USA v. National Resources Defense Council*, 467 U.S. 837 (1984). *Chevron* was overruled in *Loper Bright Enterprises v. Raimondo*, 603 U.S. __ , 144 S. Ct. 2244 (2024). Even before *Loper Bright*, the Sixth Circuit had held in *Moses* that the regulation could not trump the statute's clear and unambiguous provisions.

Petitioner seeks an extension of time to file an application for a Writ of Certiorari because he is pro se, the issues are complex and of first impression, and is required to print the application.

Respectfully submitted,

/s/Randal Jerome Dalavai
14332 Mountain Road
Poway, CA 92064
Email: randaljerome@gmail.com
Tel: (872) 232-0713

NOT FOR PUBLICATION

FILED

AUG 16 2024

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDAL JEROME DALAVAI, Successor in Interest to 'Decedent' Geetha Dalavai and Son of Geetha Dalavai, Plaintiff-Appellant, v. THE REGENTS; et al., Defendants-Appellees.	No. 23-55412 D.C. No. 3:22-cv-01992-CAB-WVG MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Cathy Ann Bencivengo, District Judge, Presiding

Submitted August 14, 2024**
Pasadena, California

Before: OWENS, BADE, and FORREST, Circuit Judges.

Randal Jerome Dalavai appeals from the district court's dismissal of his pro se suit, as successor in interest to his deceased mother, alleging violations of the Emergency Medical Treatment and Labor Act ("EMTALA"), 42 U.S.C. § 1395dd,

---

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and California law against the Regents of the University of California ("the Regents") and the Elizabeth Hospice ("the Hospice"). We have jurisdiction under 28 U.S.C. § 1291. As the parties are familiar with the facts, we do not recount them here. We affirm.

We review de novo a dismissal for lack of subject matter jurisdiction. *Jajati v. U.S. Customs & Border Patrol*, 102 F.4th 1011, 1016 (9th Cir. 2024). Further, we review de novo both the district court's dismissal for failure to state a claim, *Fort v. Washington*, 41 F.4th 1141, 1144 (9th Cir. 2022), and for expiration of the statutory limitations period, *Gregg v. Hawaii*, 870 F.3d 883, 886 (9th Cir. 2017). "In assessing a Rule 12(b)(6) motion to dismiss, the court must take all factual allegations as true and draw all reasonable inferences in favor of the nonmoving party." *Murguia v. Langdon*, 61 F.4th 1096, 1106 (9th Cir. 2023). We construe pro se complaints liberally. *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017).

1. The district court properly dismissed Dalavai's claims against the Regents for failure to state a claim. Our precedent is clear that EMTALA liability "normally ends when [an emergency room patient] is admitted for inpatient care." *Bryant v. Adventist Health Sys./W.*, 289 F.3d 1162, 1167 (9th Cir 2002); *see also* 42 C.F.R. § 489.24(a)(1)(ii) ("[I]f the hospital admits the individual as an inpatient for further treatment, the hospital's obligation . . . ends."). Because Dalavai's

mother was brought to the University of California San Diego ("UCSD") hospital as an inpatient, not an emergency room patient, EMTALA liability does not apply to the Regents. The district court thus properly held that Dalavai did not "allege facts sufficient to establish [that] UCSD . . . violated the EMTALA." Because we affirm the district court's dismissal of Dalavai's claims against the Regents for failure to state a claim, we need not assess his other argument that the district court improperly dismissed his EMTALA claim based on expiration of the statutory limitations period.

2. Because Dalavai did not contest the district court's dismissal of his claim against the Hospice for lack of subject matter jurisdiction in his counseled opening brief, he has forfeited any challenge to that decision. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("It is well established in this circuit that [t]he general rule is that appellants cannot raise a new issue for the first time in their reply briefs." (quoting *Eberle v. City of Anaheim*, 901 F.2d 814, 818 (9th Cir. 1990))). But, even assuming Dalavai had not forfeited such a challenge, the district court properly dismissed that claim because Dalavai, a California resident, alleged only state law violations against the Hospice, also a California resident. *See* 28 U.S.C. §§ 1331, 1332.

3. Dalavai's counseled opening brief also failed to contest the district court's refusal to exercise supplemental jurisdiction over his state law claims.

Dalavai therefore forfeited review of that decision. *See Martinez-Serrano*, 94 F.3d at 1259. But, even if he had raised it, the district court was within its discretion to decline to exercise supplemental jurisdiction over the state law claims after it had dismissed all federal claims. *See* 28 U.S.C. § 1367(c)(3).

AFFIRMED.

CERTIFICATE OF SERVICE

I certify that I have served a true copy of this application upon the following by mail:

Lotz Doggett & Rawers LLP
101 West Broadway
Suite 1110
San Diego, CA 92101

Cole Pedroza, LLP
2295 Huntington Dr
San Marino, CA 91108

Declared to be true under the penalties of perjury in the Southern District of California on October 23, 2024.

/s/Randal Jerome Dalavai