

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

L. GUERRERO, in his individual capacity, and in his capacity as representative of the classes described fully below,
Plaintiff-Appellant,

v.

DARYL F. GATES; HONEY A. LEWIS; WARD G. McCONNELL; JOHN T. NEVILLE; JAMES PEARSON; PHILIP SUGAR; FLORA TROSTLER; G. DANIEL WOODARD; DON W. VINCENT, II, all as current or former members of the Los Angeles City Attorney's Office; ROGER ADEZ, #25934; ARMANDO AMEZCUA, #31399; SALVADOR APODACA; HERIBERTO ARANGURE, #31707; EVANURY AROCHO-WITMAN, #27267; ROBERT ARROYO, #25851; FRANK ARUJO, #27101; JUDITH LYNN BARHAM, #22952; ANTONIO S. BAUTISTA, #32919; MAURICIO BAUTISTA; RON BERDIN, #31958; JOHN BERTINO, #27839; EDWARD BREHM, #30982; STEVEN W. BROWN, #25366; MICHAEL BUCHANAN, #32055; TODD BURNS, #31549; UNKNOWN BURROLA; KENNETH BUSCARINO, #20949;

No. 02-56017
D.C. No.
CV-00-07165-GAF
OPINION

PAUL BYRNES, Sgt., #24578;
OSBALDO CAMACHO, #33903;
CAMPBELL, #25216; RANDY
CANISTER, #26107; KEVIN CARNEY,
#10983; JAMES D. CARROLL,
#34456; MARTIN CHALUPA, #21890;
DANNY N. CHAU, #30087; MANUEL
CHAVEZ, #30544; THOMAS
CHINAPPI; JOSHUA N. CLOSSON,
#32252; DAVID COCHRANE, #26545;
ETHAN COHAN, #30614; JOHN M.
COLLARD, #27376; CHRISTOPHER
COPPOCK, #31801; ARMANDO
CORONADO, #14710; BOBBY B.
CREES, #32061; JOHN CURIEL,
#17992; ROBERT DONALDSON,
#20848; MICHAEL DONNELLY,
#31974; RAQUEL DUARTE, #30349;
NINO DURDEN, #31106; BRIAN
ELDRIDGE, #32071; DONALD J.
ELDRIDGE, #31353; JAMES A.
ERWIN, III, #33017; WILLIAM
FERGUSON, #33323; JOHN ROBERT
FLOWERS, #25547; BRAD FOSS;
HERMAN FRANZ FRETTLORH,
#31420; DAVID M. FRIEDRICH,
#30946; JOHN FUTRELL, #17253;
FRANK GALINDO, #30764; JOE
GARCIA, #32362; RICHARD GINELLI;
TERESA GOLT, #26562; SHAWN
GOMEZ, #30855; JEFFREY L.
GRAHAM, #27201; GREENFIELD,
Detective; PAUL D. HARPER,

#30320; RICHARD HARPER, #14170;
HARPER, #14710; HARPER, #13228;
HARPER, #30770; HARPER, #16795;
HARPER, #24195; HARPER, #10868;
ROSS Y. HAY, #30771; MARGARITA
HERMOSILLO, #25178; SUSAN E.
HEROLD, #24732; HERRERA,
Detective; BRIAN K. HEWITT,
#27602; DANIEL HILLS, #17826;
GEORGE HOOPES, Sgt., #26967;
CONNIE HOWELL, #23994; CESAR
HUEZZO, #33787; ALFRED
HITCHINGS, #25970; ALEX
IZQUIERDO, #26873; ROBB JOHNSON,
#25362; RONALD KITZMILLER,
#31907; ARTURO KOENIG, #30289;
KLOTZ; ANDREW LASSAK, #30835;
BRIAN LIDDY, #27515; LIDDY,
#27315; DANIEL LUJAN, JR.,
#26973; FRANK LYGA, #25051;
DAVID MACK; CHARLES MARKEL,
#21866; JOHN PATRICK MARQUEZ,
#2667 #26670; MARIO MARQUEZ,
#32875; SAMUEL T. MARTIN,
#26058; LAWRENCE MARTINEZ,
#27319; THOMAS MARTINEZ,
#31746; PATRICK McCARTY,
#30182; SHANDS McCOY, #25578;
WILLIAM S. McGEE, #21277;
SCOTT F. McNEIL, #31438;
UNKNOWN MEJIA; RUBEN MENDOZA,
Ofcr. #31360;

RICHARD MERAZ, #12052;
CAMERINO MESINA, #30907; JOHN
MUMMA, #26492; JAMES MUNIZ,
#30963; DAVID NAVARRO, Sgt.,
#23155; DAVID NEGRETE, #26682;
HOWARD NG, #30405; THOMAS
O'GRADY, #30328; STEVEN
O'NEAL, #33740; ERNEST ORONA,
#25243; EDWARD ORTIZ, Sgt.,
#23230; DENNIS O'SULLIVAN,
#27237; OWENS, Officer, #27878
(no such number); KULIN PATEL,
#27150; ARTHUR PELT, #15790;
ARMANDO PEREZ, #25581; RAFAEL
A. PEREZ, #26905; JOHN PETERS,
Sgt., #25750; ROBERT PIONOWSKI,
#15722; JILL POE, #27438; DIANE
PONCE, #26413; ROBERT PULLEY,
#17805; UNKNOWN QUIRK, #33352;
MANUEL REDRUELLO, #25667;
PETER REPOVICH, #23078; DONNA
REYES, #34432; MARK RICHARDSON,
#26995; MICHAEL RICHARDSON,
Sgt., #26159; ARTURO RICO,
#27811; MARIO RIOS, #32123;
JEFFREY ROBB, #33804; TERRANCE
ROCHON, #26696; ARTHUR
RODRIGUEZ, #26255; ROSSELLO;
EDWARD RUIZ, #27158;

JASMINE SAADE, #22635; NICK SALICOS, Captain; JOHNNY SANCHEZ, #26513; RUPERTO SANCHEZ, #13953; DUSTIN SCLATER, #31933; MATTHEW SIBAYAN, #30196; ADDIS SIMPSON, 330011; CHRISTOPHER SOLDI, #26003; DAVID SOLIS, #32315; DOYLE STEPP, #31143; JEFFREY STEWART, #25593; STEPHANIE SUTHERLAND, #30571; JON TAYLOR, #30974; ANDREW TEAGUE, #21972; UNKNOWN TOMEO, #33087; HUMBERTO TOVAR, #30492; MELISSA TOWN, #30305; MICHAEL TYUS, #23886; ROBERT VALDEZ, #27352; ROGER VANOVERSTRACHTEN, #30860; OMAR VELOZ, #30740; DAVID VINTON, #31085; VOELTZ, #33292; MICHAEL WANG, #30805; TERRY WESSEL, #14680; MARK ANDREW WILBUR, #30636; MELISSA ZAK, #30305; ZAMORA, #27267; MIKE ZYCH, #23892 all as current or former members of the LAPD; CHRISTIAN ABDELKERIM, #33542; WILLIE L. WILLIAMS; BERNARD C. PARKS; RICHARD ALARCON; RICHARD ALATORRE; HAL BERNSON; MARVIN BRAUDE; LAURA CHICK; JOHN FERRARO; MICHAEL FEUER;

RUTH GALANTER; MIKE HERNANDEZ;
NATE HOLDEN; MARK RIDLEY-
THOMAS; JOEL WACHS; ERNANI
BERNARDI; JOAN FLORES; GLORIA
MOLINA; JOY PICUS; ARTHUR
SNYDER; MICHAEL WOO; ZEV
YAROLSLAVSKY, all as present or
former Los Angeles City Council
members; HERBERT F. BOECKMANN,
II; GERALD CHALEFF; ROCHELLE DE
LA ROCHA; RAYMOND C. FISHER;
JAMES G. FISK; STEPHEN GAVIN;
MAXWELL E. GREENBERG; DEAN
HANSELL; DEIRDRE HUGHES HILL;
WARREN JACKSON; MELANIE LOMAX;
ART MATTOX; EDITH PEREZ;
ENRIQUE HERNANDEZ; BARBARA
SCHLEI; ROBERT TALCOTT; REVA
TOOLEY; ROBERT I. WEIL; STANLEY
SCHEINBAUM; MICHAEL YAMAKI;
STEPHEN YSLAS; MARY BURWELL
COOPER; ELLEN M. FAWLS; JEFFREY
GALLAGHER; JAMES KENNETH HAHN;
KATHERINE J. HAMILTON; RICHARD
HELGESON; THOMAS HOKINSON;
STUART D. HOTCHKISS; HELEN
ANNETTE KELLER,

Defendants-Appellees.

RICHARD RIORDAN,

Appellee.

Appeal from the United States District Court
for the Central District of California
Gary A. Feess, District Judge, Presiding

Argued and Submitted
October 8, 2003—Pasadena, California

Filed January 29, 2004

Before: Melvin Brunetti, Thomas G. Nelson, and
Barry G. Silverman, Circuit Judges.

Opinion by Judge Thomas G. Nelson

COUNSEL

Stephen Yagman, Yagman & Yagman & Reichmann & Bloomfield, Venice, California, for the plaintiff-appellant.

Janet G. Bogigian, Deputy City Attorney, Los Angeles, California, for the defendants-appellees.

OPINION

T.G. NELSON, Circuit Judge:

Louie Guerrero pleaded guilty to two separate charges of possession of narcotics. He now attempts to bring claims under 42 U.S.C. § 1983 that are barred by *Heck v. Humphrey*.¹ The claims stem from Guerrero's allegations of wrongful arrest, malicious prosecution, and a general conspiracy of "bad behavior" among Los Angeles officials in connection with his arrests, prosecutions, and incarceration. Based on the same incidents, he also attempts to bring time-barred excessive force claims under § 1983 and claims for which he lacks standing under the Racketeer Influenced and Corrupt Organizations Act ("RICO").² We affirm the district court's dismissal of this case.

I. FACTUAL AND PROCEDURAL BACKGROUND

Guerrero's claims arise from two separate encounters with members of the Los Angeles Police Department ("LAPD").

¹512 U.S. 477 (1994).

²18 U.S.C. § 1961-68 (2003).

On November 29, 1995, Officer Zamora and another unidentified officer of the LAPD stopped and searched Guerrero. Guerrero alleges that the officers planted narcotics on him during the course of the search. Charged with possession of the narcotics, Guerrero pleaded guilty, and the court placed him on probation.

Two years later, on November 14, 1997, Officer Martinez and two unidentified LAPD officers stopped and searched Guerrero a second time. According to Guerrero, the officers “grabbed him, punched him, choked him, and kicked him” and again “caused false narcotics charges to be made against” him. Guerrero pleaded guilty to these second narcotics charges and was incarcerated until August 1999.

Nearly three years after his second encounter, Guerrero filed this lawsuit on June 30, 2000. Alleging violations of 42 U.S.C. § 1983 and RICO, his complaint named approximately 231 defendants, including former LAPD police chiefs, numerous police officers, several city attorneys, the mayor of Los Angeles, and a former district attorney. Although Guerrero’s complaint asserts somewhat amorphous claims, his allegations can be characterized as claims of excessive force, wrongful arrest, and malicious prosecution. He also avers that a conspiracy of “bad behavior” existed among the defendants. Prior to June 2000, Guerrero had never contested his arrests, convictions, or sentences.

The district court initially denied a Rule 12(b)(6) motion to dismiss³ brought by one of the 231 defendants, Bernard Parks. Shortly thereafter, the case was transferred to a new judge along with other similarly situated cases, all part of the LAPD Rampart scandal. Defendants, including Parks, filed further Rule 12(b)(6) motions to dismiss. The court granted these motions in a series of decisions, properly treating Parks’ sec-

³FED. R. CIV. P. 12(b)(6).

ond Rule 12(b)(6) motion as a request for reconsideration.⁴ Guerrero timely appealed.

II. STANDARD OF REVIEW

We review *de novo* dismissals under Rule 12(b)(6), Federal Rules of Civil Procedure.⁵ Dismissal is appropriate only when the plaintiff can prove no set of facts in support of his claims that would entitle him to relief.⁶ All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party.⁷ Review is generally limited to the contents of the complaint, but if support exists in the record, a dismissal may be affirmed on any proper ground.⁸

III. DISCUSSION

A. Heck v. Humphrey Bars Majority of Guerrero's § 1983 Claims

[1] Under *Heck v. Humphrey*:⁹

⁴We note that the district court did not abuse its discretion in departing from the law of the case. *Rebel Oil Co. v. Atlantic Richfield Co.*, 146 F.3d 1088, 1093 (9th Cir. 1998) (applying abuse of discretion standard to the court's decision whether to apply the law of the case doctrine). The court has the discretion not to apply the law of the case doctrine under certain circumstances, including situations where "a manifest injustice would otherwise result." *Thomas v. Bible*, 983 F.2d 152, 155 (9th Cir. 1993). Allowing dismissal for the remaining 230 defendants but not for Parks would have resulted in manifest injustice, as would treating Guerrero's case differently from similarly situated Rampart cases.

⁵See *Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1035 (9th Cir. 2002).

⁶See *No. 84 Employer-Teamster Joint Council v. Am. West Holding Corp.*, 320 F.3d 920, 931 (9th Cir. 2003).

⁷See *Cervantes v. United States*, 330 F.3d 1186, 1187 (9th Cir. 2003).

⁸See *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001); *Papa v. United States*, 281 F.3d 1004, 1009 (9th Cir. 2002).

⁹512 U.S. 477 (1994).

When a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated.¹⁰

The Court specifically stated:

We hold that, in order to recover damages for *allegedly unconstitutional conviction or imprisonment . . .*, a § 1983 plaintiff must prove the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus.¹¹

The Court also emphasized that “termination of the prior criminal conviction in favor of the accused” is a necessary element for success of a § 1983 malicious prosecution claim.¹²

[2] Except for Guerrero's excessive force allegations, discussed below, *Heck* bars Guerrero's § 1983 claims. Guerrero's success on the majority of his § 1983 claims would necessarily imply the invalidity of his two convictions for possession of narcotics. Wrongful arrest, malicious prosecution, and a conspiracy among Los Angeles officials to bring false charges against Guerrero could not have occurred unless Guerrero were innocent of the crimes for which he was convicted. Guerrero's prior convictions have never been overturned by the appropriate means, and we therefore hold that,

¹⁰*Id.* at 487; *see also Smithart v. Towery*, 79 F.3d 951, 952 (9th Cir. 1996).

¹¹*Id.* at 486-87 (emphasis added).

¹²*Id.* at 484.

with the exception of his excessive force claims, Guerrero's § 1983 claims are barred by *Heck*.

[3] The fact that Guerrero is no longer in custody and thus may not be able to overturn his prior convictions by means of habeas corpus does not preclude *Heck*'s bar. There are arguable exceptions to *Heck*'s bar for plaintiffs no longer in custody, suggested by dissenting members of the Supreme Court in *Spencer v. Kemna*¹³ and embodied in our recent decision of *Nonnette v. Small*.¹⁴ However, those exceptions are limited and do not apply here. Guerrero had the opportunity to seek habeas relief and completely failed to do so. We decline to extend relief from *Heck* to plaintiffs like Guerrero who, through their own delay, have failed to timely overturn their prior convictions.

[4] The *Spencer* dissent suggests that a plaintiff's inability to pursue habeas relief after release from incarceration should craft an exception to *Heck*'s bar.¹⁵ However, in *Cunningham v. Gates*,¹⁶ we held that *Heck* barred the petitioner's § 1983 claims despite the fact that habeas relief was time-barred and thus "was impossible as a matter of law."¹⁷ We "decline[d] to hold that Cunningham's failure timely to pursue habeas remedies [took] his § 1983 claim out of *Heck*'s purview."¹⁸

We distinguished Cunningham's situation from that of the plaintiff in *Nonnette* by emphasizing the importance of timely pursuit of appropriate relief from prior convictions.¹⁹ *Nonnette* was founded on the unfairness of barring a plaintiff's poten-

¹³523 U.S. 1 (1998).

¹⁴316 F.3d 872 (9th Cir. 2002).

¹⁵*Spencer*, 523 U.S. at 18-21.

¹⁶312 F.3d 1148 (9th Cir. 2002).

¹⁷*Id.* at 1154 n.3.

¹⁸*Id.*

¹⁹*Nonnette*, 316 F.3d at 877 n.6.

tially legitimate constitutional claims where the individual immediately pursued relief after the incident giving rise to those claims and was prevented from seeking habeas relief due only to the shortness of his prison sentence.²⁰ Following exhaustion of his administrative remedies, Narvis Nonnette brought § 1983 claims while incarcerated, alleging miscalculation of his prison sentence and improper revocation of good-time credits and imposition of disciplinary proceedings.²¹ The district court dismissed his claims as barred by *Heck*. Shortly after the court's dismissal, Nonnette was released on parole and therefore could not overturn his disciplinary conviction by means of habeas corpus.²² We reversed the district court's dismissal, stating:

The fact that Nonnette has been released from the incarceration that his civil suit, if successful, would impugn, and that a habeas petition would be moot for that reason, differentiates this case from our recent decision in *Cunningham v. Gates*. In *Cunningham*, the plaintiff brought a civil suit that would have impugned the conviction for which he was still incarcerated; habeas corpus was unavailable only because he had let the time for such a petition expire. Under those circumstances, we declined to take the case out of the rule of *Heck*.²³

We emphasized, however, that *Nonnette's* relief from *Heck* “affects only former prisoners challenging loss of good-time credits, revocation of parole or similar matters,” not challenges to an underlying conviction such as those brought by Guerrero.²⁴

²⁰*See id.* at 874-77.

²¹*Id.* at 874.

²²*Id.* at 874-75.

²³*Id.* at 877 n.6.

²⁴*Id.* at 878 n.7.

[5] Nonnette immediately sought administrative relief, and when that failed, he promptly sought relief from this court.²⁵ Under such circumstances, we held that *Heck* did not bar his § 1983 claims. We find Guerrero's situation to resemble *Cunningham* more closely than *Nonnette*. Though habeas relief for Guerrero may be "impossible as a matter of law," as in *Cunningham*, we decline to extend this relaxation of *Heck*'s requirements to the claims of a plaintiff whose failure to timely achieve habeas relief is self-imposed.²⁶

Guerrero attempts to rely on the language of the dissent in the Supreme Court case of *Spencer*,²⁷ which we cited with approval in *Nonnette*.²⁸ As in *Nonnette*, the plaintiff in *Spencer* diligently sought relief for his claim of invalid revocation of parole.²⁹ After appealing denial of his state habeas petition all the way to the State Supreme Court, he filed a federal habeas petition. His prison term ended, however, before the court could render a decision.³⁰ Justice Souter, writing for the *Spencer* dissent, argued, "*Heck* did not hold that a released prisoner in *Spencer's* circumstances is out of court on a § 1983 claim."³¹ Justice Souter explained that otherwise "[t]he convict given a fine alone, however onerous, or sentenced to a term too short to permit even expeditious litigation without continuances before expiration of the sentence, would always be ineligible for § 1983 relief."³² As stated above, we do not extend this reasoning to individuals like Guerrero who have failed, of their own accord, to diligently seek the appropriate overturning of their prior convictions.

²⁵*Id.* at 874-75.

²⁶*See Cunningham*, 312 F.3d at 1153 n.3.

²⁷523 U.S. 1 (1998).

²⁸*See Nonnette*, 316 F.3d at 876-77.

²⁹*See Spencer*, 523 U.S. at 1.

³⁰*Id.*

³¹*Id.* at 19 (emphasis added).

³²*Id.* at 21 n*.

[6] Guerrero never challenged his convictions by any means prior to filing this lawsuit. Nearly three years passed from his last encounter with the LAPD before he took any action at all. As with Cunningham, his “failure timely to pursue habeas remedies” cannot now be used as a shield against the implications of *Heck*. Accordingly, we hold that *Heck* bars Guerrero’s § 1983 claims of wrongful arrest, malicious prosecution, and conspiracy.

B. Statute of Limitations Bars Guerrero’s § 1983 Excessive Force Claim

[7] *Heck* is inapplicable to Guerrero’s § 1983 excessive force claim, because it does not “necessarily imply the invalidity of his conviction or sentence.”³³ The officers’ alleged use of excessive force during Guerrero’s arrest does not preclude the possibility that Guerrero was still guilty of possession of narcotics. Despite this fact, however, the statute of limitations prevents Guerrero from bringing the claim. The altercations of which Guerrero complains occurred in November 1995 and November 1997, yet Guerrero did not file this lawsuit until June 30, 2000. At the time this lawsuit was commenced, a one-year statute of limitations governed § 1983 claims.³⁴ Thus, the limitations period ended in November

³³*Heck*, 512 U.S. at 487. Compare *Smithart*, 79 F.3d at 952 (holding that *Heck* did not bar *Smithart*’s excessive force claim. Though *Smithart* had been convicted of assaulting his arresting officers by driving a truck toward them, the officers’ alleged excessive force took place after he had exited his truck and thus did not necessarily invalidate his conviction); with *Cunningham*, 312 F.3d at 1154-55 (holding that *Cunningham*’s excessive force claim was *Heck*-barred. As an element of his conviction for felony murder, the jury found that *Cunningham* had “committed an intentional provocative act” against the arresting police officers, causing the police to open fire on the defendant and his partner in crime. A finding of excessive force by the police would have invalidated this finding and thus his conviction).

³⁴CAL. CODE CIV. PROC. § 340(3) (2000). The Supreme Court has held that the applicable statute of limitations for civil claims under § 1983 is that of the forum state. See *Wilson v. Garcia*, 471 U.S. 261, 279-80 (1985).

1996 for his first encounter with the police and in November 1998 for his second encounter.

[8] Neither equitable tolling nor equitable estoppel save Guerrero's untimely claim. California allows equitable tolling of the statute of limitations in cases in which a plaintiff, "possessing several legal remedies . . . reasonably and in good faith, pursues one designed to lessen the extent of his injuries or damage," thereby allowing the statutory period to run.³⁵ A plaintiff whose ignorance of the statutory period is excusable may file a lawsuit outside that period as long as he causes no prejudice to the defendants by doing so.³⁶

In this case, Guerrero did not pursue his claims in any manner until he filed this lawsuit in June 2000. Neither did Guerrero provide advance notice of his claims to the 231 defendants prior to filing this suit, thereby mitigating any prejudice to the defendants due to his delay. Allowance of this lawsuit would clearly prejudice the defendants, who had no timely warning of Guerrero's allegations.³⁷ Further, Guerrero does not claim to have been ignorant of the applicable statute of limitations period. Accordingly, California's equitable tolling principles do not apply to him.

Similarly, equitable estoppel does not apply. Equitable

³⁵*Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1137 (9th Cir. 2001). In civil rights suits, this court applies state tolling rules as long as they "are not inconsistent with federal law." *Azer v. Connell*, 306 F.3d 930, 936 (9th Cir. 2002).

³⁶*See Santa Maria v. Pac. Bell*, 202 F.3d 1170, 1176 (9th Cir. 2000); *Lantzy v. Centex Homes*, 73 P.3d 517, 523 (Cal. 2003) (applying "equitable tolling in carefully considered situations to prevent the unjust technical forfeiture of causes of action, where the defendant would suffer no prejudice").

³⁷*See Gordon v. Law Offices of Aguirre & Meyer*, 83 Cal. Rptr. 2d 119, 123 (Cal. Ct. App. 1999) (holding that defendants were not prejudiced when "defendants were [timely] notified of the action and had the opportunity to begin gathering evidence and preparing their defense").

estoppel, also termed fraudulent concealment, halts the statute of limitations when there is “active conduct by a defendant, above and beyond the wrongdoing upon which the plaintiff’s claim is filed, to prevent the plaintiff from suing in time.”³⁸ The plaintiff must demonstrate that he relied on the defendant’s misconduct in failing to file in a timely manner and “must plead with particularity the facts which give rise to the claim of fraudulent concealment.”³⁹

The facts of this case do not justify equitable estoppel. Even assuming that Guerrero’s allegations of a conspiracy are true, the defendants did not engage in any fraudulent conduct “above and beyond the wrongdoing upon which the plaintiff’s claim is filed.”⁴⁰ Guerrero has failed to plead with particularity any additional fraudulent behavior on the part of the defendants that would excuse his delay in bringing this suit. Equitable estoppel therefore does not save Guerrero’s excessive force claim from the statute of limitations.

[9] Guerrero failed to file this lawsuit within the statutory period and has not offered a valid excuse for this failure. The statute of limitations therefore bars his § 1983 excessive force claim from our consideration.

C. Guerrero Lacks Standing to Bring RICO Claims as He has not Suffered the Required Injury to Business or Property

[10] Guerrero additionally asserts claims under RICO,⁴¹ alleging injury due to lost earnings and employment during his alleged wrongful incarceration. RICO forbids enterprises from engaging in “racketeering activity,” including “any act

³⁸*Santa Maria*, 202 F.3d at 1176.

³⁹*Conerly v. Westinghouse Elec. Corp.*, 623 F.2d 117, 120 (9th Cir. 1980); *See also Santa Maria*, 202 F.3d at 1176.

⁴⁰*Santa Maria*, 202 F.3d at 1177 (emphasis added).

⁴¹18 U.S.C. § 1961-68 (2003).

or threat involving murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in a controlled substance.”⁴² An individual may bring a civil claim under RICO if he has been “injured in his business or property by reason of a violation” of the statute.⁴³ To recover under RICO, the individual “must show proof of concrete financial loss”⁴⁴ and must demonstrate that the loss was proximately caused by the racketeering activity.⁴⁵ A “mere injury to a valuable intangible property interest”⁴⁶ is insufficient to confer standing under RICO.

[11] We have long held that RICO was not crafted to address claims of personal injury.⁴⁷ While acknowledging the interplay between pecuniary and nonpecuniary interests in many claims, we have specified that only direct, tangible, and concrete financial losses fall under RICO.⁴⁸ More recently, in *Diaz v. Gates*,⁴⁹ we specifically held that lost wages and employment stemming from wrongful incarceration constitute a personal injury, not an injury to business or property as required by RICO.⁵⁰ *Diaz*, like *Guerrero*, sought to bring claims under RICO due to employment and wage losses incurred as a result of his purported wrongful incarceration.⁵¹ We held that *Diaz*’s alleged injuries constituted, at most, “mere injury to a valuable intangible property interest”⁵² in his

⁴²18 U.S.C. §§ 1961(1), 1962 (2003).

⁴³18 U.S.C. § 1964(c) (2003).

⁴⁴*Chaset v. Fleer/Skybox Int’l*, 300 F.3d 1083, 1087 (9th Cir. 2002); see also *Oscar v. Univ. Students Co-op Ass’n*, 965 F.2d 783, 785-86 (9th Cir. 1992); *Berg v. First State Ins. Co.*, 915 F.2d 460, 464 (9th Cir. 1990).

⁴⁵*Chaset*, 300 F.3d at 1086.

⁴⁶*Berg*, 915 F.2d at 464.

⁴⁷See *Oscar*, 965 F.2d at 785-86; *Berg*, 915 F.2d at 464.

⁴⁸See *Oscar*, 965 F.2d at 783.

⁴⁹2004 WL 77907 (9th Cir.).

⁵⁰*Id.*

⁵¹*Id.*

⁵²*Berg*, 915 F.2d at 464.

right to pursue employment. Such injury, we held, does not satisfy RICO's standing requirement.⁵³

[12] Guerrero asserts claims identical to those asserted by Diaz, and like Diaz, his claims fail. While certain economic injuries may have flowed from Guerrero's incarceration, the core of his claims involve injury to his person.⁵⁴ Guerrero has failed to plead the required injury to business or property and thus lacks standing under RICO.

IV. CONCLUSION

We affirm the judgment of the district court granting the defendants' motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

AFFIRMED.

⁵³*Diaz*, 2004 WL 77907, 4.

⁵⁴*See id.*