

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

James Carl Kelly v. R. Cross

No. 2:23-cv-1422 TLN AC P, United States District Court for the Eastern District of California (March 31, 2025)

SUMMARY

The United States District Court for the Eastern District of California adopted findings and recommendations after Plaintiff James Carl Kelly filed no objections. The court denied Plaintiff's applications to proceed in forma pauperis, ordered him to pay the required \$405 filing fee within 30 days or face dismissal, and referred the matter back to the magistrate judge for further pretrial proceedings.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Troy L. Nunley
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 31, 2025
DOCKET	2:23-cv-1422 TLN AC P
DISPOSITION	other
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's findings and recommendations concerning Plaintiff's applications to proceed in forma pauperis after Plaintiff filed no objections.
STANDARD OF REVIEW	The district court presumed the magistrate judge's factual findings correct and reviewed the magistrate judge's legal conclusions de novo.
PRECEDENTIAL VALUE	unpublished

TOPICS

- prisoners rights
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

- civil rights
- prisoner civil rights
- federal civil procedure

QUESTIONS PRESENTED

1. Whether the district court should adopt the magistrate judge's findings and recommendations when Plaintiff filed no objections.
2. Whether Plaintiff's applications to proceed in forma pauperis should be denied and Plaintiff required to pay the full filing fee.

HOLDINGS

1. The district court adopted the magistrate judge's findings and recommendations in full after reviewing the record and determining that they were supported by the record and proper analysis.
2. Plaintiff's applications to proceed in forma pauperis were denied, and he was ordered to pay the entire \$405.00 filing fee within thirty days or face dismissal of the action.

KEY QUOTATIONS

“The magistrate judge’s conclusions of law are reviewed de novo.” (1)

“Having reviewed the file, the Court finds the findings and recommendations to be supported by the record and by the proper analysis.” (1)

FACTUAL BACKGROUND

James Carl Kelly, a state prisoner proceeding pro se, filed a civil-rights action seeking relief under 42 U.S.C. § 1983. He submitted applications to proceed in forma pauperis. The magistrate judge recommended denying those applications, and Kelly filed no objections.

PROCEDURAL HISTORY

Plaintiff filed a prisoner civil-rights action under 42 U.S.C. § 1983 and applied to proceed in forma pauperis. A magistrate judge issued findings and recommendations on February 21, 2025, recommending denial of the applications. Plaintiff did not object, and the district court adopted the findings and recommendations in full, denied in forma pauperis status, ordered payment of the full filing fee within thirty days, and referred the matter back to the magistrate judge for further pretrial proceedings.

DISPOSITION

other

REMAND INSTRUCTIONS

The matter was referred back to the assigned magistrate judge for all further pretrial proceedings. Plaintiff was required to pay the entire \$405.00 filing fee within thirty days of the order or face dismissal.

CASES CITED

- Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979)
- Robbins v. Carey, 481 F.3d 1143, 1147 (9th Cir. 2007)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 JAMES CARL KELLY, No. 2:23-cv-1422 TLN AC P 12 Plaintiff, 13 v.
ORDER 14 R. CROSS, et al., 15 Defendants. 16 17 Plaintiff James Carl Kelly (“Plaintiff”), a state
prisoner proceeding pro se, filed this civil 18 rights action seeking relief under 42 U.S.C. § 1983.

The matter was referred to a United States 19 Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)
(B) and Local Rule 302. 20 On February 21, 2025, the magistrate judge filed findings and
recommendations which 21 were served on Plaintiff and which contained notice that any
objections to the findings and 22 recommendations were to be filed within fourteen days.

(ECF No. 13). Plaintiff has not filed 23 objections to the findings and recommendations. 24 The
Court presumes that any findings of fact are correct. See *Orand v. United States*, 602 25 F.2d 207,
208 (9th Cir. 1979).

The magistrate judge’s conclusions of law are reviewed de novo. 26 See *Robbins v. Carey*, 481
F.3d 1143, 1147 (9th Cir. 2007) (“[D]eterminations of law by the 27 magistrate judge are reviewed
de novo by both the district court and [the appellate] court[.]”). 28 Having reviewed the file, the
Court finds the findings and recommendations to be supported by 1 | the record and by the proper
analysis.

2 Accordingly, IT IS HEREBY ORDERED that: 3 1. The findings and recommendations (ECF
No. 13) are ADOPTED in full; 4 2. Plaintiffs applications to proceed in forma pauperis (ECF Nos.
5, 10) are DENIED; 5 3. Within thirty (30) days of the filing of this order, Plaintiff shall pay the
entire \$405.00 6 in required fees or face dismissal of this case; and 7 4. This matter is referred
back to the assigned magistrate judge for all further pretrial 8 proceedings.

9 | DATED: March 28, 2025 10 12 TROY L. NUNLEY 13 CHIEF UNITED STATES DISTRICT
JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28