

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Juan Carlos Calderon v. H.E. Moseley, et al.

No. 2:25-cv-3223 AC P · No. No. 2:25-cv-3223 AC P · Decided November 13, 2025

SUMMARY

The United States District Court for the Eastern District of California addresses Juan Carlos Calderon’s application to proceed in forma pauperis in a prisoner civil rights action. The court finds that Calderon has at least three qualifying strikes under 28 U.S.C. § 1915(g), concludes that he has not plausibly alleged imminent danger of serious physical injury, and recommends denying in forma pauperis status and requiring payment of the full filing fee.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 13, 2025
DOCKET	No. 2:25-cv-3223 AC P
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se filed a civil-rights action and applied to proceed in forma pauperis. A magistrate judge issued an order and findings and recommendations concluding that the prisoner had at least three qualifying strikes under 28 U.S.C. § 1915(g) and had not shown imminent danger of serious physical injury.
STANDARD OF REVIEW	The court evaluated whether plaintiff’s prior cases qualified as strikes under 28 U.S.C. § 1915(g) and whether the complaint plausibly alleged imminent danger of serious physical injury at the time of filing.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

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

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff had at least three prior actions or appeals dismissed on grounds qualifying as strikes under 28 U.S.C. § 1915(g).
2. Whether plaintiff plausibly alleged that he was under imminent danger of serious physical injury at the time he filed the complaint, such that the statutory exception to the three-strikes bar applied.
3. Whether plaintiff should be denied in forma pauperis status and required to pay the full filing fee or face dismissal.

HOLDINGS

1. Plaintiff was precluded from proceeding in forma pauperis because at least three of his prior federal actions or appeals had been dismissed as frivolous or for failure to state a claim, and none of those strikes had been overturned.
2. Plaintiff did not satisfy the imminent-danger exception because the complaint did not plausibly allege that he faced an imminent danger of serious physical injury at the time of filing, and it did not establish the required nexus between the alleged danger and the legal violations asserted.

KEY QUOTATIONS

“[i]n no event shall a prisoner bring a civil action or appeal a judgement in a civil action or proceeding under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” (at 1)

“[T]he imminent danger exception to the PLRA three-strikes provision requires a nexus between the alleged imminent danger and the violations of law alleged in the complaint” (at 3)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that numerous named and unnamed defendants had violated his rights over approximately twenty-five years through alleged invasions of privacy, harmful chemicals, inadequate medical care, isolation, assaults, and other conduct. The allegations were largely vague, conclusory, and nonspecific. The most recent alleged assault occurred approximately five months before the complaint was filed, and the court found no plausible allegation of an imminent risk of serious physical injury at filing. The court identified three prior qualifying dismissals involving plaintiff.

PROCEDURAL HISTORY

Plaintiff filed this action and an application to proceed in forma pauperis. The magistrate judge reviewed plaintiff's prior federal cases, took judicial notice of those proceedings, found three qualifying strikes, and determined that the imminent-danger exception was not satisfied. The magistrate judge recommended denial of

in forma pauperis status and an order requiring payment of the full filing fee within thirty days or dismissal; the recommendation was submitted to an assigned district judge under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Rodriguez v. Cook, 169 F.3d 1176, 1178 (9th Cir. 1999)
- Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005)
- O’Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008)
- Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017)
- United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
- Andrews v. Cervantes, 493 F.3d 1047, 1053, 1055 (9th Cir. 2007)
- Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022)
- Richey v. Dahne, 807 F.3d 1202, 1208 (9th Cir. 2015)
- Coleman v. Tollefson, 575 U.S. 532, 538 (2015)
- Houston v. Lack, 487 U.S. 266, 276 (1988)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

Moseley
PER CURIAM.

1 2 3 4 5 6 7
8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10
11 JUAN CARLOS CALDERON, No. 2:25-cv-3223 AC P
12 Plaintiff,
13 v. ORDER AND FINDINGS AND
RECOMMENDATIONS

14 H.E. MOSELEY, et al., 15 Defendants. 16 17 Plaintiff is a state prisoner proceeding pro se with
this civil action and seeks leave to 18 proceed in forma pauperis under 28 U.S.C. § 1915(a). 19 I.
Three Strikes Analysis 20 Plaintiff seeks leave to proceed in forma pauperis under 28 U.S.C. §
1915(a). ECF No. 2. 21 The Prison Litigation Reform Act of 1995 (PLRA) permits any court of
the United States to 22 authorize the commencement and prosecution of any suit without
prepayment of fees by a person 23 who submits an affidavit indicating that the person is unable to
pay such fees. However, 24 [i]n no event shall a prisoner bring a civil action or appeal a judgement

in a civil action or proceeding under this section if the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury. 28 U.S.C. § 1915(g). The plain language of the statute makes clear that a prisoner is precluded from bringing a civil action or an appeal in forma pauperis if the prisoner has brought three frivolous actions and/or appeals (or any combination thereof totaling three). *Rodriguez v. Cook*, 169 F.3d 1176, 1178 (9th Cir. 1999). “[Section] 1915(g) should be used to deny a prisoner’s [in forma pauperis] status only when, after careful evaluation of the order dismissing an action, and other relevant information, the district court determines that the action was dismissed because it was frivolous, malicious or failed to state a claim.” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005). “[W]hen a district court disposes of an in forma pauperis complaint ‘on the grounds that [the claim] is frivolous, malicious, or fails to state a claim upon which relief may be granted,’ such a complaint is ‘dismissed’ for purposes of § 1915(g) even if the district court styles such dismissal as denial of the prisoner’s application to file the action without prepayment of the full filing fee.” *O’Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original). Dismissal also counts as a strike under § 1915(g) “when (1) a district court dismisses a complaint on the ground that it fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint” regardless of whether the case was dismissed with or without prejudice. *Harris v. Mangum*, 863 F.3d 1133, 1142-43 (9th Cir. 2017). Inspection of other cases filed by plaintiff has led to the identification of at least three cases that qualify as strikes. The court takes judicial notice of the following lawsuits filed by plaintiff: 1. *Calderon v. Bonta*, No. 2:23-cv-1064 WBS KJN (E.D. Cal.) case dismissed on August 22, 2023, for failure to state a claim (ECF Nos. 12, 16)); 2. *Calderon v. Bonta*, No. 2:23-cv-1971 DC CKD (E.D. Cal.) (case dismissed on September 5, 2025, for failure to state a claim (ECF Nos. 33, 41)); and 3. The court “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.” *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (citation and internal quotation marks omitted) (collecting cases); Fed. R. Evid. 201(b) (2) (court may take judicial notice of facts that are capable of accurate determination by sources whose accuracy cannot reasonably be questioned). 4. *Calderon v. Bonta*, No. 23-2515 (9th Cir.) (appeal dismissed as frivolous on May 21, 2025 (Dkt. 21)). 5. All of the preceding cases were dismissed in advance of the October 27, 2025 filing of the instant action, and none of the strikes have been overturned. Therefore, this court finds that plaintiff is precluded from proceeding in forma pauperis unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). To satisfy the exception, plaintiff must have alleged facts that demonstrate that he was “under imminent danger of serious physical injury” at the time of filing the

complaint. *Andrews v. Cervantes* (Cervantes), 493 F.3d 1047, 1053 (9th Cir. 2007) (“[I]t is the circumstances at the time of the filing of the complaint that matters for purposes of the ‘imminent danger’ exception to § 1915(g).”). “[T]he imminent danger exception to the PLRA three-strikes provision requires a nexus between the alleged imminent danger and the violations of law alleged in the complaint,” *Ray v. Lara*, 31 F.4th 692, 695 (9th Cir. 2022), and the allegations of such danger must be plausible, *Cervantes*, 493 F.3d at 1055 (“the exception applies if the complaint makes a plausible allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time of filing”). The complaint alleges that numerous defendants, both named and unnamed, have violated plaintiff’s rights over the past twenty-five years. ECF No. 1 at 6-7. The complaint includes a litany of allegations, many of which are made repeatedly. The allegations include, among other things, that plaintiff “is under some evil delusional unconstitutional experimental invasion of privacy torts;” defendants have used “professionally designed chemicals” on the food, water, and Dismissals of both a complaint and subsequent appeal in the same case count as separate strikes if both dismissals were for reasons listed in three strikes provision. See *Richey v. Dahne*, 807 F.3d 1202, 1208 (9th Cir. 2015) (counting district court dismissal and dismissal of subsequent appeal as separate strikes); see also *Coleman v. Tollefson*, 575 U.S. 532, 538 (2015) (“The in forma pauperis statute repeatedly treats the trial and appellate stages of litigation as distinct. (citing § 1915(a)(2), (a)(3), (b)(1), (e)(2), (g))). Since plaintiff is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox rule. *Houston v. Lack*, 487 U.S. 266, 276 (1988) (establishing rule that a prisoner’s court document is deemed filed on the date the prisoner delivered the document to prison officials for mailing). Although the certificate of service indicates that the complaint was mailed on August 17, 2025 (ECF No. 1 at 61), the complaint was accompanied by a letter from plaintiff dated

October 27, 2025 (ECF No. 1-1 at 1), and was received by the court on October 30, 2025.

1 air that cause deadly harm; he is being isolated from the outside world; he has unspecified 2 medical conditions related to various parts of his body and does not receive “real health care;” he 3 has been assaulted in the past; and “powerful gospel and T.V. radio media people” are trying to 4 harm him. *Id.* at 5-30. The allegations are largely vague and conclusory, do not allege any 5 specific conduct by any specific individual, and are often not plausible. To the extent plaintiff 6 does allege any specific incidents, they appear to be discrete incidents, the most recent of which 7 occurred approximately five months prior to the filing of the complaint. *Id.* at 14-15 (alleging he 8 was assaulted by inmate in May), 27 (alleging assaults in April and December 2024). None of 9 plaintiff’s many allegations demonstrate a plausible, imminent risk of serious physical injury at 10 the time of filing, and the undersigned will therefore recommend that plaintiff be required to pay 11 the filing fee in full or have the complaint dismissed. 12 II. Plain Language Summary of this Order for a Pro Se Litigant 13 You have at least three strikes under § 1915(g) and cannot be granted in forma pauperis 14 status unless you show the court that you were in imminent danger of

serious physical injury at 15 the time you filed the complaint. You have not shown that you were in imminent danger of 16 serious physical injury, and so it is being recommended that your motion to proceed in forma 17 pauperis be denied and you be required to pay the whole filing fee at one time. 18 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall randomly 19 assign a United States District Judge to this action. 20 IT IS FURTHER RECOMMENDED that: 21 1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) be DENIED; and 22 2. Plaintiff be ordered to pay the entire \$405.00 in required fees within thirty days or face 23 dismissal of the case. 24 These findings and recommendations are submitted to the United States District Judge 25 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 26 after being served with these findings and recommendations, plaintiff may file written objections 27 with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings 28 and Recommendations." Plaintiff is advised that failure to file objections within the specified 1] || time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 2 | (9th Cir. 1991). 3 | DATED: November 12, 2025 " 4 AMhan— lChne

ALLISON CLAIRE

5 UNITED STATES MAGISTRATE JUDGE

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