

**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

OPINION

Moseley

PER CURIAM.

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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 25 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 26 States that was dismissed on the grounds that it is frivolous, malicious, or fails to
state a claim upon which relief may be granted, 27 unless the prisoner is under imminent danger
of serious physical injury. 28 1 28 U.S.C. § 1915(g). The plain language of the statute makes clear
that a prisoner is precluded 2 from bringing a civil action or an appeal in forma pauperis if the
prisoner has brought three 3 frivolous actions and/or appeals (or any combination thereof totaling
three). *Rodriguez v. Cook*, 4 169 F.3d 1176, 1178 (9th Cir. 1999). 5 “[Section] 1915(g) should be
used to deny a prisoner’s [in forma pauperis] status only 6 when, after careful evaluation of the
order dismissing an action, and other relevant information, 7 the district court determines that the
action was dismissed because it was frivolous, malicious or 8 failed to state a claim.” *Andrews v.*
King, 398 F.3d 1113, 1121 (9th Cir. 2005). “[W]hen a 9 district court disposes of an in forma
pauperis complaint ‘on the grounds that [the claim] is 10 frivolous, malicious, or fails to state a

claim upon which relief may be granted,’ such a complaint 11 is ‘dismissed’ for purposes of § 1915(g) even if the district court styles such dismissal as denial of 12 the prisoner’s application to file the action without prepayment of the full filing fee.” O’Neal v. 13 Price, 531 F.3d 1146, 1153 (9th Cir. 2008) (second alteration in original). Dismissal also counts 14 as a strike under § 1915(g) “when (1) a district court dismisses a complaint on the ground that it 15 fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an 16 amended complaint” regardless of whether the case was dismissed with or without prejudice. 17 Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017). 18 Inspection of other cases filed by plaintiff has led to the identification of at least three 19 cases that qualify as strikes. The court takes judicial notice of the following lawsuits filed by 20 plaintiff: 21 1. Calderon v. Bonta, No. 2:23-cv-1064 WBS KJN (E.D. Cal.) case dismissed on August 22 23, 2023, for failure to state a claim (ECF Nos. 12, 16)); 23 2. Calderon v. Bonta, No. 2:23-cv-1971 DC CKD (E.D. Cal.) (case dismissed on 24 September 5, 2025, for failure to state a claim (ECF Nos. 33, 41)); and 25 1 The court “may take notice of proceedings in other courts, both within and without the federal 26 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) 27 (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 28 accuracy cannot reasonably be questioned). 1 3. Calderon v. Bonta, No. 23-2515 (9th Cir.) (appeal dismissed as frivolous on May 21, 2 2025 (Dkt. 21)). 2 3 All of the preceding cases were dismissed in advance of the October 27, 2025 filing of the 4 instant action, 3 and none of the strikes have been overturned. Therefore, this court finds that 5 plaintiff is precluded from proceeding in forma pauperis unless he is “under imminent danger of 6 serious physical injury.” 28 U.S.C. § 1915(g). To satisfy the exception, plaintiff must have 7 alleged facts that demonstrate that he was “under imminent danger of serious physical injury” at 8 the time of filing the complaint. Andrews v. Cervantes (Cervantes), 493 F.3d 1047, 1053 (9th 9 Cir. 2007) (“[I]t is the circumstances at the time of the filing of the complaint that matters for 10 purposes of the ‘imminent danger’ exception to § 1915(g).”). “[T]he imminent danger exception 11 to the PLRA three-strikes provision requires a nexus between the alleged imminent danger and 12 the violations of law alleged in the complaint,” Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022), 13 and the allegations of such danger must be plausible, Cervantes, 493 F.3d at 1055 (“the exception 14 applies if the complaint makes a plausible allegation that the prisoner faced ‘imminent danger of 15 serious physical injury’ at the time of filing”). 16 The complaint alleges that numerous defendants, both named and unnamed, have violated 17 plaintiff’s rights over the past twenty-five years. ECF No. 1 at 6-7. The complaint includes a 18 litany of allegations, many of which are made repeatedly. The allegations include, among other 19 things, that plaintiff “is under some evil delusional unconstitutional experimental invasion of 20 privacy torts;” defendants have used “professionally designed chemicals” on the food, water, and 21 2 Dismissals of both a

complaint and subsequent appeal in the same case count as separate strikes 22 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))). 25 3 Since plaintiff is a prisoner proceeding pro se, he is afforded the benefit of the prison mailbox 26 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 27 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

28 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

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ALLISON CLAIRE

5 UNITED STATES MAGISTRATE JUDGE

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