

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Wu v. Pesce

Wu · No. 2:25-cv-0760-TLN-JDP (PS) · Decided March 13, 2025

SUMMARY

The court recommends dismissing without leave to amend a pro se plaintiff's § 1983 complaint concerning an allegedly unlawful eviction and state criminal proceedings. It concludes that the federal court lacks jurisdiction under the Rooker-Feldman doctrine and that the defendants are otherwise immune or were not alleged to act under color of state law. The plaintiff's motion to proceed in forma pauperis was granted, and the matter was referred to a district judge for review of the recommendations.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ICHI WU, Case No. 2:25-cv-0760-TLN-JDP (PS) 12 Plaintiff, 13 v.
FINDINGS AND RECOMMENDATIONS 14 JAMIE PESCE, et al., 15 Defendants. 16 17
Plaintiff brings this action against Judge Jamie Pesce; District Attorney Vern R. Pierson; 18 Public
Defenders Joshua Stillnian, Sarah Reimche, Kathryn Schulz, and Abigail Rosemon; 19 plaintiff's
former employer, Emig Max Ordonez; and Margorie, Ordonez's niece.

Plaintiff 20 alleges that he was wrongfully convicted of resisting arrest and evicted from his home.
This court 21 lacks jurisdiction over plaintiff's claims, and so the complaint should be dismissed
without leave 22 to amend. 23 Screening and Pleading Requirements 24 A federal court must
screen the complaint of any claimant seeking permission to proceed 25 in forma pauperis.

See 28 U.S.C. § 1915(e). The court must identify any cognizable claims and 26 dismiss any
portion of the complaint that is frivolous or malicious, fails to state a claim upon 27 which relief
may be granted, or seeks monetary relief from a defendant who is immune from such 28 relief. Id.
1 A complaint must contain a short and plain statement that plaintiff is entitled to relief, 2 Fed.

R. Civ. P. 8(a)(2), and provide "enough facts to state a claim to relief that is plausible on its 3
face," Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 4
require detailed allegations, but legal conclusions do not suffice. See Ashcroft v. Iqbal, 556 U.S. 5
662, 678 (2009). If the allegations "do not permit the court to infer more than the mere 6
possibility of misconduct," the complaint states no claim.

Id. at 679. The complaint need not identify “a precise legal theory.” *Kobold v. Good Samaritan Reg’l Med. Ctr.*, 832 F.3d 1024, 8 1038 (9th Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that give rise to an enforceable right to relief.” *Nagrampa v. MailCoups, Inc.*, 469 F.3d 1257, 1264 10 n.2 (9th Cir. 2006) (en banc) (citations omitted).

11 The court must construe a pro se litigant’s complaint liberally. See *Haines v. Kerner*, 404 12 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant’s complaint “if it 13 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 14 would entitle him to relief.” *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir.

2017). 15 However, “a liberal interpretation of a civil rights complaint may not supply essential elements 16 of the claim that were not initially pled.” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 17 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 18 Analysis 19 The complaint centers on plaintiff’s allegedly unlawful eviction and conviction for 20 resisting arrest.

ECF No. 1 at 6-7. While the facts are difficult to piece together, as best the court 21 can discern, defendant Ordonez employed plaintiff. Id. As part of plaintiff’s employment, he 22 lived at Ordonez’s home in Cameron Park, California. Id. An unknown event occurred, which 23 resulted in plaintiff not being welcome in the home. Id. It appears plaintiff choose not to leave 24 the home voluntarily, which led eviction from the property by El Dorado County Sheriff’s 25 deputies.

Id. It also seems like during plaintiff’s eviction, he was arrested for resisting arrest, 26 among other charges. Id. 27 Attached to the complaint are minutes from certain of plaintiff’s criminal proceeding in 28 the El Dorado County Superior Court, dating from November 2022 to September 2024. Id. at 9- 1 67.

The minutes from the September 6, 2024 hearing suggest that plaintiff’s criminal charges 2 were dismissed pursuant to his successful completion of the court’s mental health diversion 3 program. Id. at 9. 4 In this suit, plaintiff appears to allege that the eviction was unlawful, and he is now 5 homeless. Id. at 5.

In his statement of the claim, plaintiff alleges that he has not committed any 6 crime and that he has not trespassed or obstructed justice, and he asks that the Sheriff’s Office 7 (presumably the El Dorado County Sheriff’s Office) review his documents. Id. 8 This court does not have jurisdiction to review state court decisions.

Under the Rooker- 9 Feldman doctrine, federal courts cannot adjudicate constitutional claims that “are inextricably 10 intertwined with the state court’s denial in a judicial proceeding of a particular plaintiff’s 11 application [for relief].” *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983); see 12 also *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.

2003). Thus, the doctrine bars federal 13 courts from adjudicating claims that seek to redress an injury allegedly resulting from a state 14 court decision, even if the party contends the state judgment violated his or her federal rights. 15 *Bell v. City of Boise*, 709 F.3d 890, 897 (9th Cir. 2013); see *Feldman*, 460 U.S. at 486 (“[District 16 courts] do not have jurisdiction... over challenges to state court decisions in particular cases 17 arising out of judicial proceedings even if those challenges allege that the state court’s action was 18 unconstitutional.”).

19 In addition to the jurisdictional issue, plaintiff cannot state a claim under § 1983 against 20 any of the defendants. His claim against defendant Judge Pesce is barred by judicial immunity. 21 *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1988) (per curiam) (“Judges are absolutely 22 immune from damages actions for judicial acts taken within the jurisdiction of their courts....

A 23 judge loses absolute immunity only when [the judge] acts in the clear absence of all jurisdiction 24 or performs an act that is not judicial in nature.”). Defendant prosecutor Pierson is immune as a 25 prosecutor. A prosecutor is protected by absolute immunity from liability in a civil rights suit for 26 damages “when performing the traditional functions of an advocate.” *Kalina v. Fletcher*, 522 U.S. 118, 131 (1997) (citing *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993); *Imbler v. 28 Pachtman*, 424 U.S. 409, 430 (1976)).

And criminal defense lawyers like defendants Stillnian, 1 Reimche, Schulz, and Rosemon are not subject to liability under § 1983 for their work on 2 criminal cases. See *Polk Cnty. v. Dodson*, 454 U.S. 312, 325 (1982) (public defenders do not act 3 under color of law for purposes of § 1983 liability).

As for the remaining two defendants— 4 *Ordonez* and *Majorie*—plaintiff has not alleged that either acted “under color of state law,” which 5 is necessary to state a claim under § 1983. See *Price v. Hawaii*, 939 F.2d 702, 707-08 (9th Cir. 6 1991) (“[P]rivate parties are not generally acting under color of state law.”). 7 Accordingly, plaintiff’s complaint should be dismissed for lack of jurisdiction and for 8 failure to state a claim.

Given that the jurisdictional deficiencies cannot be cured by amendment, 9 I recommend dismissal without leave to amend. See *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th 10 Cir. 1987) (holding that while the court ordinarily would permit a pro se plaintiff leave to amend, 11 leave to amend should not be granted where it appears amendment would be futile); *Silva v. Di 12 Vittorio*, 658 F.3d 1090, 1105 (9th Cir.

2011) (“Dismissal of a pro se complaint without leave to 13 amend is proper only if it is absolutely clear that the deficiencies of the complaint could not be 14 cured by amendment.”) (internal quotation marks omitted). 15 Accordingly, it is hereby ORDERED that: 16 1. Plaintiff’s motion to proceed in forma pauperis, ECF No. 2, is GRANTED. 17 2.

The Clerk of Court shall randomly assign a district judge to this action. 18 Further, it is hereby RECOMMENDED that: 19 1. Plaintiff's complaint, ECF No. 1, be DISMISSED without leave to amend for want of 20 subject matter jurisdiction and failure to state a claim. 21 2.

The Clerk of Court be directed to close the case. 22 These findings and recommendations are submitted to the United States District Judge 23 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of 24 service of these findings and recommendations, any party may file written objections with the 25 court and serve a copy on all parties.

Any such document should be captioned "Objections to 26 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed 27 within fourteen days of service of the objections. The parties are advised that failure to file 28 objections within the specified time may waive the right to appeal the District Court's order. See 1 Turner v. Duncan, 158 F.3d 449, 455 (9th Cir.

1998); Martinez v. Yist, 951 F.2d 1153 (9th Cir. 2 | 1991). 3 4 IT IS SO ORDERED. Dated: _
March 12, 2025 q—— 6 JEREMY D. PETERSON 7 UNITED STATES MAGISTRATE
JUDGE 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28