

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Downs v. Jiminez

Downs · No. 2:22-cv-1021 TLN AC P · Decided April 24, 2025

SUMMARY

The United States District Court for the Eastern District of California denies plaintiff Ivory Lewis Downs, Jr.'s request for appointment of counsel in his § 1983 action. The court concludes that the plaintiff's concerns about mail delivery and receipt of objections do not establish exceptional circumstances warranting voluntary appointment of counsel.

OPINION

(PC) Downs v. Jiminez

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 IVORY LEWIS DOWNS, JR., No. 2:22-cv-1021 TLN AC P

12 Plaintiff, 13 v. ORDER 14 M. JIMINEZ, et al., 15 Defendants. 16 17 Plaintiff has submitted a
letter to the court stating that he filed objections to the March 10, 18 2023 findings and
recommendations even though the order adopting the findings and 19 recommendations states that
he did not. ECF No. 45. He requests appointment of counsel on the 20 grounds that he believes
the mail room did not send out his mail and that he has had continuing 21 issues with mail. Id.
Accordingly, the letter is construed as a motion for appointment of counsel. 22 The United States
Supreme Court has ruled that district courts lack authority to require 23 counsel to represent
indigent prisoners in § 1983 cases. *Mallard v. United States Dist. Court*, 490 24 U.S. 296, 298
(1989). In certain exceptional circumstances, the district court may request the 25 voluntary
assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). *Terrell v. Brewer*, 935 F.2d 26 1015,
1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 27 “When
determining whether ‘exceptional circumstances’ exist, a court must consider ‘the 28 likelihood of
success on the merits as well as the ability of the [plaintiff] to articulate his claims 1 || pro se in
light of the complexity of the legal issues involved.’” *Palmer v. Valdez*, 560 F.3d 965, 2 | 970 (9th
Cir. 2009) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). The burden 3 || of
demonstrating exceptional circumstances is on the plaintiff. Id. Circumstances common to 4 ||
most prisoners, such as lack of legal education and limited law library access, do not establish 5 ||

exceptional circumstances that would warrant a request for voluntary assistance of counsel. 6
Although the order adopting the findings and recommendations states that plaintiff did not 7 || file
objections (ECF No. 42), the court did receive plaintiffs objections to the findings and 8 ||
recommendations on April 1, 2025. Since plaintiffs request for counsel is based primarily on his 9
|| belief that his objections were not received by the court, the request for counsel will be denied.
10 Accordingly, IT IS HEREBY ORDERED that plaintiffs request for the appointment of 11 ||
counsel (ECF No. 45) is DENIED. 12 | DATED: April 23, 2025 ~ 13 ththienr—Chnp—e_

ALLISON CLAIRE

14 UNITED STATES MAGISTRATE JUDGE

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