

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Weston v. Deputy Sheriff #2549, et al.

Weston · No. 24-cv-04213-PCP · Decided July 23, 2025

SUMMARY

The United States District Court for the Northern District of California orders plaintiff Andre D. Weston to show cause why his in forma pauperis status should not be revoked under the Prison Litigation Reform Act's three-strikes provision, 28 U.S.C. § 1915(g). The court identifies four prior dismissals that likely qualify as strikes and concludes that the complaint does not appear to invoke the imminent-danger exception. Weston is given until August 22, 2025, to show cause or pay the filing fee.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	P. Casey Pitts
JURISDICTION	United States District Court for the Northern District of California
DECIDED	July 23, 2025
DOCKET	24-cv-04213-PCP
DISPOSITION	other
PROCEDURAL POSTURE	Pro se prisoner civil-rights action under 42 U.S.C. § 1983; after granting plaintiff in forma pauperis status and permitting an amended complaint, the district court issued an order to show cause why pauper status should be revoked and the action dismissed under the Prison Litigation Reform Act's three-strikes provision.
STANDARD OF REVIEW	The court evaluated prior dismissal orders and docket records to determine whether the dismissals likely qualified as strikes under 28 U.S.C. § 1915(g), and assessed the imminent-danger exception based on the allegations at the time of filing.
PRECEDENTIAL VALUE	Unclear; district court order with no published reporter citation and no precedential-status designation in the supplied metadata.
PARTIES	Andre D. Weston v. Deputy Sheriff #2549, et al.

TOPICS

prisoners rights

section 1983

civil procedure

PRACTICE AREAS

prisoner civil rights

civil procedure

in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether four identified prior prisoner actions likely qualified as strikes under 28 U.S.C. § 1915(g).
2. Whether Weston could invoke the imminent-danger exception to the three-strikes rule based on an alleged excessive-force incident that had ended before he filed this action.
3. Whether Weston was entitled to notice and an opportunity to be heard before revocation of in forma pauperis status and dismissal under § 1915(g).

HOLDINGS

1. Only prior actions dismissed as frivolous, malicious, or for failure to state a claim may count as strikes; the mere fact that a prisoner has filed many cases is insufficient. Based on the dismissal orders and docket records, the court concluded that the four identified dismissals likely counted as strikes.
2. Before dismissing under § 1915(g), the court must notify the prisoner of the prior dismissals that may constitute strikes and provide an opportunity to be heard; the prisoner bears the ultimate burden of persuading the court that § 1915(g) does not bar pauper status.
3. The imminent-danger exception is assessed when the complaint is filed and requires a plausible allegation of imminent danger of serious physical injury with a nexus to the unlawful conduct alleged in the complaint. An isolated excessive-force incident that ended well before filing does not appear to satisfy that requirement.

KEY QUOTATIONS

“A dismissal under § 1915(g) means that a prisoner cannot proceed with his action as a pauper under § 1915, but he still may pursue his claims if he pays the full” (at 2)

“the imminent danger clause indicates that “imminent danger” is to be assessed at the time of the filing of the complaint.” (at 3)

“a three-strikes prisoner must allege imminent danger of serious physical injury that is both fairly traceable to unlawful conduct alleged in his complaint and redressable by the court.” (at 3)

FACTUAL BACKGROUND

Weston, an inmate at Santa Rita Jail, alleged that he had been subjected to excessive force on September 7, 2023. He filed this action in July 2024 and did not allege that excessive force was ongoing or occurred on more than one occasion. The court identified four earlier federal actions dismissed as frivolous or after Weston failed to amend following identification of qualifying defects.

PROCEDURAL HISTORY

Weston, an inmate at Santa Rita Jail, filed a § 1983 action. Magistrate Judge Virginia DeMarchi screened the complaint under 28 U.S.C. § 1915A, dismissed it with leave to amend, and separately granted in forma pauperis status. After Weston filed an amended complaint, the district court identified four prior dismissals that likely qualified as strikes and ordered him to show cause why pauper status should not be revoked; the order allowed him alternatively to pay the filing fee.

DISPOSITION

other

CASES CITED

- Tierney v. Kupers, 128 F.3d 1310, 1311-12 (9th Cir. 1997)
- El-Shaddai v. Zamora, 833 F.3d 1036, 1042 (9th Cir. 2016)
- Andrews v. King, 398 F.3d 1113, 1120-21 (9th Cir. 2005)
- Harris v. Mangum, 863 F.3d 1133, 1141-43 (9th Cir. 2017)
- Andrews v. Cervantes, 493 F.3d 1047, 1053, 1055-56 (9th Cir. 2007)
- Medberry v. Butler, 185 F.3d 1189, 1193 (11th Cir. 1999)
- Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022)
- Houston v. Lack, 487 U.S. 266 (1988)

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