

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

Eberly v. Harris

No. 2:25-cv-1002-JDP (P), United States District Court for the Eastern District of California (August 22, 2025)

OPINION

(PC) Eberly v. Harris

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 GARY ALAN EBERLY, Case No. 2:25-cv-1002-JDP (P) 12 Plaintiff,

13 v. ORDER; FINDINGS AND

RECOMMENDATIONS

14 KAMALA DEVI HARRIS, et al., 15 Defendants, 16 17 Plaintiff, a state prisoner, brings this
action alleging that defendants violated his rights in 18 connection with his state criminal
conviction. ECF No. 17 at 4 (listing suppression of evidence, 19 witness tampering, ineffective
assistance of counsel as claims). As I explained in my previous 20 screening order, such claims
that attack, either directly or indirectly, the validity of a conviction 21 that has not been expunged,
must be brought in a habeas action. Accordingly, I now recommend 22 that this action be
dismissed for failure to state a cognizable section 1983 claim. If plaintiff 23 wishes to file a
separate habeas action attacking his conviction, he may do so. 24 Screening Order 25 I. Screening
and Pleading Requirements 26 A federal court must screen a prisoner’s complaint that seeks relief
against a governmental 27 entity, officer, or employee. See 28 U.S.C. § 1915A(a). The court must
identify any cognizable 28 claims and dismiss any portion of the complaint that is frivolous or
malicious, fails to state a 1 claim upon which relief may be granted, or seeks monetary relief from
a defendant who is 2 immune from such relief. See 28 U.S.C. §§ 1915A(b)(1), (2). 3 A complaint
must contain a short and plain statement that plaintiff is entitled to relief, 4 Fed. R. Civ. P. 8(a)(2),
and provide “enough facts to state a claim to relief that is plausible on its 5 face,” Bell Atl. Corp.
v. Twombly, 550 U.S. 544, 570 (2007). The plausibility standard does not 6 require detailed
allegations, but legal conclusions do not suffice. See Ashcroft v. Iqbal, 556 U.S. 7 662, 678
(2009). If the allegations “do not permit the court to infer more than the mere 8 possibility of
misconduct,” the complaint states no claim. Id. at 679. The complaint need not 9 identify “a
precise legal theory.” Kobold v. Good Samaritan Reg’l Med. Ctr., 832 F.3d 1024, 10 1038 (9th
Cir. 2016). Instead, what plaintiff must state is a “claim”—a set of “allegations that 11 give rise to
an enforceable right to relief.” Nagrampa v. MailCoups, Inc., 469 F.3d 1257, 1264 12 n.2 (9th Cir.

2006) (en banc) (citations omitted). 13 The court must construe a pro se litigant's complaint liberally. See *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). The court may dismiss a pro se litigant's complaint "if it 15 appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which 16 would entitle him to relief." *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). 17 However, "'a liberal interpretation of a civil rights complaint may not supply essential elements 18 of the claim that were not initially pled.'" *Bruns v. Nat'l Credit Union Admin.*, 122 F.3d 1251, 19 1257 (9th Cir. 1997) (quoting *Ivey v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982)). 20 II. Analysis 21 Plaintiff's complaint lists nineteen claims, all of which relate to a criminal conviction for 22 murder of his wife. ECF No. 17 at 83. He maintains that her death was a suicide and that his 23 conviction was illegally obtained.1 *Id.* at 10. In my previous screening order, I informed plaintiff 24 that challenges to the validity of any ongoing prison sentence must be brought, if at all, in a 25 habeas petition. See *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016) ("Challenges to the 26 27 1 The complaint does not contain a straightforward description of the procedural background leading to the claims at issue. I have done my best to infer the basics from the 28 complaint and the documents plaintiff has chosen to attach thereto. 1 validity of any confinement or to particulars affecting its duration are the province of habeas 2 corpus . . . [t]he Court has long held that habeas is the exclusive vehicle for claims brought by 3 state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 4 action."); see also *Heck v. Humphrey*, 512 U.S. 477, 487 (1994) ("A claim for damages bearing 5 that relationship to a conviction or sentence that has not been so invalidated is not cognizable 6 under § 1983."). His latest complaint makes no showing that his claims should proceed in a 7 section 1983 action; plaintiff may file a separate habeas petition if he wishes to pursue his claims. 8 It is ORDERED that: 9 1. The Clerk of Court shall assign a district judge to rule on these findings and 10 recommendations. 11 2. Plaintiff's motion for extension of time, ECF No. 14, is GRANTED, and his first amended 12 complaint is deemed timely. 13 3. Plaintiff's motion to appoint counsel, ECF No. 19, and motion for post-conviction DNA 14 testing, ECF No. 20, are denied without prejudice. If these recommendations are not adopted, he 15 may renew these motions. 16 4. The Clerk of Court shall also send plaintiff a federal habeas form. He is advised NOT to 17 file the form in this action. If he wishes to pursue habeas claims, they must be brought in a 18 separate case. 19 It is RECOMMENDED that the first amended complaint, ECF No. 17, be DISMISSED 20 without leave to amend for failure to state a viable section 1983 claim. 21 These findings and recommendations are submitted to the United States District Judge 22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of 23 service of these findings and recommendations, any party may file written objections with the 24 court and serve a copy on all parties. Any such document should be captioned "Objections to 25 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed 26 within fourteen days of service of the objections. The parties are advised that failure to file 27 objections within the specified time may waive the right to appeal the District Court's

order. See 28 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: _ August 22, 2025 q——

6 JEREMY D. PETERSON

7 UNITED STATES MAGISTRATE JUDGE

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