

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Lucero v. Uldall

No. 2:24-cv-2890 TLN CKD P · No. No. 2:24-cv-2890 TLN CKD P · Decided May 28, 2025

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice a state prisoner’s motion for appointment of counsel in a 42 U.S.C. § 1983 action. The court held that the plaintiff had not demonstrated exceptional circumstances, noting that his complaint had been recommended for dismissal without leave to amend because it sought relief from an immune defendant.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 28, 2025
DOCKET	No. 2:24-cv-2890 TLN CKD P
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, a state prisoner proceeding pro se under 42 U.S.C. § 1983, moved for appointment of counsel.
STANDARD OF REVIEW	The court applied the exceptional-circumstances standard for requests for voluntary appointment of counsel in prisoner civil-rights actions, considering the plaintiff's likelihood of success on the merits and ability to articulate claims in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	Unpublished district court order; generally nonprecedential.
PARTIES	Albert Benjamin Lucero, Jr. v. Eric Uldall

TOPICS

- section 1983
- civil rights
- prisoners rights
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court should request or appoint counsel to represent the indigent prisoner in the § 1983 action.
2. Whether plaintiff demonstrated exceptional circumstances warranting voluntary assistance of counsel.

HOLDINGS

1. District courts lack authority to require an attorney to represent an indigent prisoner in a § 1983 action, but may request an attorney to voluntarily represent the plaintiff in exceptional circumstances.
2. Plaintiff failed to demonstrate exceptional circumstances warranting the appointment or voluntary assistance of counsel at that time; his motion was therefore denied without prejudice.

KEY QUOTATIONS

“When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved.” (at 1)

FACTUAL BACKGROUND

Plaintiff is a state prisoner proceeding without counsel in an action under 42 U.S.C. § 1983. He sought appointment of counsel. The court had recommended dismissal of his complaint without leave to amend because the defendant was immune from suit, and found that plaintiff had not demonstrated exceptional circumstances.

PROCEDURAL HISTORY

Plaintiff filed a prisoner civil-rights action and requested appointment of counsel. The magistrate judge noted that dismissal without leave to amend had been recommended because plaintiff sought relief from an immune defendant, then denied the request for counsel without prejudice.

DISPOSITION

other

CASES CITED

- Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989)
- Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991)
- Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)

OPINION

(PC) Lucero v. Uldall

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

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11 ALBERT BENJAMIN LUCERO, JR., No. 2:24-cv-2890 TLN CKD P

12 Plaintiff, 13 v. ORDER

14 ERIC ULDALL,

15 Defendant. 16

17 Plaintiff is a state prisoner proceeding pro se in an action brought under 42 U.S.C. § 1983. 18
Plaintiff requests that the court appoint counsel. District courts lack authority to require counsel 19
to represent indigent prisoners in section 1983 cases. *Mallard v. United States Dist. Court*, 490 20
U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to 21
voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1); *Terrell v. Brewer*, 935 F.2d 22
1015, 1017 (9th Cir. 1991); *Wood v. Housewright*, 900 F.2d 1332, 1335-36 (9th Cir. 1990). 23
When determining whether “exceptional circumstances” exist, the court must consider plaintiff’s
24 likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims
pro 25 se in light of the complexity of the legal issues involved. *Palmer v. Valdez*, 560 F.3d 965,
970 26 (9th Cir. 2009) (district court did not abuse discretion in declining to appoint counsel). The
27 burden of demonstrating exceptional circumstances is on the plaintiff. *Id.* Circumstances 28
common to most prisoners, such as lack of legal education and limited law library access, do not 1
| establish exceptional circumstances that warrant a request for voluntary assistance of counsel. 2
The undersigned has recommended plaintiff's complaint be dismissed without leave to 3 || amend
because plaintiff seeks relief from a defendant who is immune from suit. (See ECF No. 4 | 12.)
Considering the factors under *Palmer*, the court finds that plaintiff has failed to meet the 5 || burden
of demonstrating exceptional circumstances warranting the appointment of counsel at this 6 || time.
7 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for the appointment of 8 ||
counsel (ECF No. 15) is denied without prejudice. 9 | Dated: May 27, 2025 / hice ANKE) flo

"0 CAROLYNK.DELANEY/

11 UNITED STATES MAGISTRATE JUDGE

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