

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.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 ALBERT BENJAMIN LUCERO, JR., No. 2:24-cv-2890 TLN CKD P 12
Plaintiff, 13 v. ORDER 14 ERIC UL DALL, 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 / hie ANKE) flo "0
CAROLYNK.DELANEY/ 11 UNITED STATES MAGISTRATE JUDGE 12 13 || 8,
luce2890.31.new(2) 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28