

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Malenko v. United States Citizenship and Immigration Service, et al.

Malenko · No. 2:24-cv-03098-DJC-CKD PS · Decided March 11, 2025

SUMMARY

The United States District Court for the Eastern District of California grants Evgenii Malenko’s application to proceed in forma pauperis in an action seeking mandamus relief for delays in adjudicating his asylum application. The court finds the complaint states a cognizable claim, denies appointed counsel, substitutes current federal officials as defendants, and directs service of the complaint.

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	March 11, 2025
DOCKET	2:24-cv-03098-DJC-CKD PS
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed a complaint seeking a writ of mandamus concerning the delay in adjudicating his asylum and withholding-of-removal application, together with an application to proceed in forma pauperis and motions for appointment of counsel. The court granted in forma pauperis status, denied appointed counsel, found the complaint cognizable at the preliminary screening stage, and authorized service.
STANDARD OF REVIEW	For appointment of counsel in an indigent civil case, the court considers the likelihood of success on the merits and the plaintiff's ability to articulate claims pro se in light of the complexity of the legal issues. The complaint was evaluated at the preliminary screening stage to determine whether it stated a cognizable claim.
PRECEDENTIAL VALUE	unpublished

PARTIES

Evgenii Malenko v. United States Citizenship and Immigration Service, Danielle Lehman, Ur Jaddou, Alejandro Nicholas Mayorkas, Merrick Garland

TOPICS

mandamus immigration

immigration

civil procedure

administrative law

PRACTICE AREAS

immigration

mandamus

civil procedure

in forma pauperis

appointment of counsel

QUESTIONS PRESENTED

1. Whether Plaintiff satisfied the statutory requirements to proceed in forma pauperis.
2. Whether Plaintiff's complaint stated a cognizable mandamus claim based on the alleged delay in adjudicating his I-589 application.
3. Whether exceptional circumstances warranted appointment of counsel for Plaintiff in this civil action.

HOLDINGS

1. Plaintiff satisfied the requirements of 28 U.S.C. § 1915(a), and the court granted his application to proceed in forma pauperis.
2. At the preliminary screening stage, Plaintiff's allegations stated a cognizable claim for mandamus based on the alleged failure to act on his asylum application for more than six years.
3. Plaintiff did not demonstrate exceptional circumstances warranting appointment of counsel, so the request for counsel was denied.

KEY QUOTATIONS

"The extraordinary remedy of mandamus...will issue only to compel the performance of a 'clear nondiscretionary duty.'" (at 1)

"However, under 'exceptional circumstances,' a court may appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1)." (at 2)

FACTUAL BACKGROUND

On or about May 22, 2018, Malenko filed Form I-589, an application for asylum and withholding of removal, and received a Form I-797 notice of action dated May 25, 2018. He attended a biometric appointment on June 15, 2018. According to the complaint, USCIS had taken no further action for more than six years despite numerous inquiries, and his employment authorization document was at risk of expiring.

PROCEDURAL HISTORY

Evgenii Malenko filed this action on November 8, 2024, without paying the filing fee and submitted an application to proceed in forma pauperis. The matter was referred to Magistrate Judge Carolyn K. Delaney under 28 U.S.C. § 636(b) and Local Rule 302(c)(3). The court granted the IFP application, denied the request for counsel, substituted the current federal officials for former officials, and directed that the complaint be served.

DISPOSITION

other

CASES CITED

- Pittston Coal Grp. v. Sebben, 488 U.S. 105, 121 (1988)
- Heckler v. Ringer, 466 U.S. 602 (1984)
- Lucatero v. United States INS, 69 Fed. Appx. 836, 838 (9th Cir. 2003)
- Patel v. Reno, 134 F.3d 929, 931 (9th Cir. 1997)
- United States v. Sardone, 94 F.3d 1233, 1236 (9th Cir. 1996)
- Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009)