

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Moreno v. Borla

Moreno · No. 25-cv-03448 BLF (PR) · Decided June 10, 2025

SUMMARY

The United States District Court for the Northern District of California denied a pro se prisoner’s motion for a preliminary injunction concerning double celling and alleged retaliation. The court denied the injunction without prejudice because the complaint had not yet been screened or served, and denied appointment of counsel because no exceptional circumstances were shown.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Beth Labson Freeman
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 10, 2025
DOCKET	25-cv-03448 BLF (PR)
DISPOSITION	other
PROCEDURAL POSTURE	A California state prisoner proceeding pro se under 42 U.S.C. § 1983 moved for a preliminary injunction and appointment of counsel before the court screened his complaint.
STANDARD OF REVIEW	A preliminary injunction requires notice to the adverse party under Federal Rule of Civil Procedure 65(a)(1); appointment of counsel for an indigent civil litigant under 28 U.S.C. § 1915 is committed to the district court's sound discretion and is available only in exceptional circumstances.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Albert Moreno v. Edward Borla, Jeffrey Macomber

TOPICS

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

PRACTICE AREAS

civil rights

prisoner litigation

civil procedure

equitable remedies

QUESTIONS PRESENTED

1. Whether the court could grant a preliminary injunction before the defendants had been served and before the complaint had been screened under 28 U.S.C. § 1915A.
2. Whether the plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his civil-rights action.

HOLDINGS

1. The court could not decide the preliminary-injunction motion before the adverse parties were served because Rule 65(a)(1) requires notice to the adverse party.
2. Appointment of counsel was not warranted because the plaintiff had not shown exceptional circumstances.

KEY QUOTATIONS

“Prior to granting a preliminary injunction, notice to the adverse party is required.” (at 2)

“The decision to request counsel to represent an indigent litigant under § 1915 is within “the sound discretion of the trial court and is granted only in exceptional circumstances.”” (at 3)

FACTUAL BACKGROUND

Moreno, a California inmate housed at the Correctional Training Facility, alleged that double-celling prisoners in certain smaller cells provided inadequate living space in violation of the Eighth Amendment. He also alleged that officers threatened or used disciplinary action to force him to accept double-cell housing. He sought an injunction requiring single-cell status and barring disciplinary action related to his refusal to be double-celled, as well as appointment of counsel.

PROCEDURAL HISTORY

Moreno filed a civil-rights action against Correctional Training Facility Warden Edward Borla and California Department of Corrections and Rehabilitation Secretary Jeffrey Macomber. He then moved for a preliminary injunction seeking single-cell housing and an end to alleged disciplinary retaliation, and moved for appointment of counsel. The district court had not yet screened the complaint under 28 U.S.C. § 1915A, denied the preliminary-injunction motion without prejudice to refile if the action proceeded past screening, and denied appointment of counsel for lack of exceptional circumstances.

DISPOSITION

other

CASES CITED

- *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1985)

- *Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981)
- *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997)
- *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) (en banc)
- *Franklin v. Murphy*, 745 F.2d 1221, 1236 (9th Cir. 1984)
- *Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th Cir. 2004)
- *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)
- *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 NORTHERN DISTRICT OF
CALIFORNIA 10 ALBERT MORENO, 11 Case No. 25-cv-03448 BLF (PR) Plaintiff, 12 ORDER
DENYING MOTION FOR v. PRELIMINARY INJUNCTION; 13 DENYING MOTION FOR
APPOINTMENT OF COUNSEL EDWARD BORLA, et al., 14 Defendants. 15 (Docket Nos. 13,
14) 16 17 18 Plaintiff, a California inmate, filed the instant pro se civil rights action pursuant to 19
42 U.S.C. § 1983 against Warden Edward Borla at the Correctional Training Facility 20 (“CTF”),
where he is currently housed, and Secretary Jeffrey Macomber for the California 21 Department of
Corrections and Rehabilitation (“CDCR”).

Dkt. No. 5. This matter was 22 reassigned to the undersigned on May 9, 2025. Dkt. No. 10. 23
Plaintiff filed a motion for preliminary injunction and a motion for appointment of 24 counsel.
Dkt. Nos. 13, 14. 25 DISCUSSION 26 A. Plaintiff’s Claims 27 Plaintiff claims he has been
subjected to cruel and unusual punishment since 1 Dkt. No. 5 at 4-5. He claims that double celling
inmates in certain smaller sized cells at 2 CTF provided inadequate living space “to meet the
minimal civilized measure of life’s 3 necessities.” *Id.* at 5.

Plaintiff claims that his grievance on this issue, seeking 4 compensation and to remain single-
celled, was ignored. *Id.* at 8. 5 B. Motion for Preliminary Injunction 6 Plaintiff filed a motion for
preliminary injunction “to preserve status quo pending 7 trial on merits.” Dkt. No. 13. Plaintiff
claims that he has been met with retaliation as 8 “officers have used and/or threatened to use the
disciplinary action to force the Plaintiff to 9 be double-celled.” *Id.* at 1.

He claims that forcing him to be double-celled would increase 10 the daily damages that he is
seeking through this action, and that he is also seeking to 11 recover punitive damages. *Id.* at 1-2.
Plaintiff seeks a preliminary injunction ordering 12 defendants to “refrain immediately and
pending the final hearing and resolution of this 13 action from: forcing Plaintiff to be double-
celled; to also grant Plaintiff single cell status; 14 to stop using the disciplinary process against the
Plaintiff in regards to refusing to be 15 double-celled.” *Id.* at 3.

He also seeks damages for the officers’ “acts of retaliation by 16 threatening to use or having
already used the disciplinary process against the Plaintiff.” *Id.* 17 Federal Rule of Civil Procedure

65 sets forth the procedure for issuance of a 18 preliminary injunction or temporary restraining order (“TRO”). Prior to granting a 19 preliminary injunction, notice to the adverse party is required.

See Fed. R. Civ. P. 20 65(a)(1). Therefore, a motion for preliminary injunction cannot be decided until the 21 parties to the action are served. See *Zepeda v. INS*, 753 F.2d 719, 727 (9th Cir. 1983). 22 Here, the Court has yet to screen the complaint under 28 U.S.C. § 1915A.

Accordingly, 23 the motion for a preliminary injunction is DENIED without prejudice to refile if this 24 matter proceeds past initial screening. 25 C. Motion for Appointment of Counsel 26 Plaintiff seeks appointment of counsel based on complexity of the issues, his lack of 1 || at2. There is no constitutional right to counsel in a civil case unless an indigent litigant 2 || may lose his physical liberty if he loses the litigation.

See *Lassiter v. Dep’t of Social 3 || Services*, 452 U.S. 18, 25 (1981); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997) 4 || (no constitutional right to counsel in § 1983 action), withdrawn in part on other grounds 5 || on reh’g en banc, 154 F.3d 952 (9th Cir. 1998) (en banc).

The decision to request counsel 6 || to represent an indigent litigant under § 1915 is within “the sound discretion of the trial 7 || court and is granted only in exceptional circumstances.” *Franklin v. Murphy*, 745 F.2d 8 || 1221, 1236 (9th Cir. 1984).

Here, Plaintiff’s asserted grounds do not set him apart from g || other prisoner-plaintiffs to establish exceptional circumstances. Accordingly, the request 10 || is DENIED for lack of exceptional circumstances. See *Agyeman v. Corrections Corp. of 11 || America*, 390 F.3d 1101, 1103 (9th Cir. 2004); *Rand*, 113 F.3d at 1525 (9th Cir. 1997); 2 *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir.

1991); *Wilborn v. Escalderon*, 789 F.2d E 13. || 1328, 1331 (9th Cir. 1986). 14 15 CONCLUSION
16 For the reasons discussed above, Plaintiffs motion for a preliminary injunction is 5 17 || DENIED without prejudice. Dkt. No. 13. Plaintiff’s motion for appointment of counsel is 5 18 || DENIED for lack of exceptional circumstances. Dkt. No. 14. 19 This order terminates Docket No. 13 and 14.

20 IT ISSO ORDERED. 21 || Dated: — June 10, 2025 nfhaccnan > BETH LABSON F REEMAN
United States District Judge 23 24 25 Order Denying PI & Atty PRO-
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