

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jefferey S. Nedd v. Charles Barrett, et al.

Case No. 1:25-cv-01033-KES-CDB (PC) · No. 1:25-cv-01033-KES-CDB (PC) · Decided November 20, 2025

SUMMARY

The United States District Court for the Eastern District of California denies Plaintiff Jefferey S. Nedd’s motions to amend the complaint, for entry of default, and to appoint counsel. The court recommends dismissal without leave to amend of Nedd’s amended 42 U.S.C. § 1983 complaint against Charles Barrett and Kelly Smith for failure to state a cognizable claim, explaining that the ineffective-assistance and related challenges belong in habeas proceedings and that the complaint lacks sufficient facts linking the defendants to a constitutional deprivation. The Findings and Recommendations allow 21 days for objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	November 20, 2025
DOCKET	1:25-cv-01033-KES-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner proceeding pro se brought a 42 U.S.C. § 1983 action. After the court previously screened the complaint and granted leave to amend, Plaintiff filed a first amended complaint and motions to amend, for entry of default judgment, and for appointment of counsel. The magistrate judge denied the motions and recommended dismissal of the action without leave to amend for failure to state a claim.
STANDARD OF REVIEW	On screening under 28 U.S.C. § 1915A, the court determines whether the complaint states a cognizable legal theory supported by sufficient factual allegations. Factual allegations are accepted as true for screening purposes, but legal conclusions and conclusory assertions are not.
PRECEDENTIAL VALUE	Nonprecedential findings and recommendations and interlocutory orders of a federal district court

PARTIES

Jefferey S. Nedd v. Charles Barrett, Kelly Smith

TOPICS

section 1983

prisoners rights

federal habeas corpus

motion to amend

default judgment

PRACTICE AREAS

civil procedure

prisoner civil rights

constitutional law

habeas corpus

pleading

QUESTIONS PRESENTED

1. Whether Plaintiff's motion to amend should be denied as moot because the court had already granted leave to amend and accepted the amended complaint as operative.
2. Whether Plaintiff was entitled to entry of default judgment when service had not been ordered or completed.
3. Whether Plaintiff demonstrated exceptional circumstances warranting appointment of counsel in his § 1983 action.
4. Whether the amended complaint stated a cognizable § 1983 claim under Federal Rule of Civil Procedure 8 and 28 U.S.C. § 1915A.
5. Whether Plaintiff's ineffective-assistance and related challenges to the validity of his confinement were properly brought in a § 1983 action rather than a habeas petition.
6. Whether further leave to amend would be futile.

HOLDINGS

1. A motion to amend is moot when the court has already granted leave to amend and the filed amended complaint is accepted as the operative complaint.
2. Entry of default judgment is premature when service has not been ordered or completed under Federal Rule of Civil Procedure 4(c)(3).
3. A prisoner proceeding under § 1983 is not constitutionally entitled to appointed counsel, and counsel may be requested only when exceptional circumstances exist, evaluated by considering both the likelihood of success on the merits and the plaintiff's ability to articulate claims in light of the complexity of the issues.
4. A prisoner complaint must be dismissed at screening if it lacks a cognizable legal theory or sufficient facts to support a cognizable claim.
5. Claims challenging the validity or duration of confinement, including ineffective-assistance claims, are generally cognizable in habeas corpus rather than under § 1983; a § 1983 action is proper for challenges to conditions of confinement that would not necessarily shorten the sentence.
6. Further leave to amend may be denied when the plaintiff has already amended after receiving notice of the deficiencies and the allegations show that the defects cannot be cured.

KEY QUOTATIONS

“Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions.” (at 5)

“In determining whether “exceptional circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.”” (at 6)

“Habeas corpus is the appropriate remedy for challenges to the validity of the fact or length of confinement or matters affecting the duration of confinement.” (at 9)

“Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”” (at 11)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, alleged that attorney Charles Barrett failed to prepare a motion for DNA testing and that prosecutor-related participants knew a witness had lied. He asserted ineffective assistance of counsel, access to evidence and DNA testing, illegal prosecution, false imprisonment, due process violations, and cruel and unusual punishment, seeking DNA testing. The amended complaint contained few factual allegations linking either named defendant to a constitutional deprivation concerning the conditions or circumstances of Plaintiff’s confinement.

PROCEDURAL HISTORY

The court issued an initial screening order on September 4, 2025, finding no cognizable claims and granting leave to amend. Plaintiff filed a first amended complaint on September 24, 2025, along with motions to amend and appoint counsel, and later filed a second motion to appoint counsel and a motion for entry of default. The magistrate judge accepted the first amended complaint as the operative complaint, denied the motions, and issued findings and recommendations to the assigned district judge recommending dismissal without leave to amend.

DISPOSITION

other

REMAND INSTRUCTIONS

The findings and recommendations were submitted to the assigned United States District Judge under 28 U.S.C. § 636(b)(1). The parties were given 21 days after service to file objections.

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997)
- Rand v. Rowland, 154 F.3d 952, 954 n.1 (9th Cir. 1998)
- Mallard v. U.S. Dist. Court, 490 U.S. 296, 304-05 (1989)
- LaMere v. Risley, 827 F.2d 622, 626 (9th Cir. 1987)

- Bonin v. Vasquez, 999 F.2d 425, 428-29 (9th Cir. 1993)
- Wilborn v. Escalderon, 789 F.2d 1328, 1331 (9th Cir. 1986)
- Dijkstra v. Campos, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 25, 2022)
- Gipbsin v. Kernan, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2
- Robinson v. Cryer, No. 1:20-cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D. Cal. Jan. 11, 2021)
- Callender v. Ramm, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 2018)
- Galvan v. Fox, No. 2:15-CV-01798-KJM (DB), 2017 WL 1353754, at *8 (E.D. Cal. Apr. 12, 2017)
- Ricks v. Austria, No. 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016)
- Thornton v. Schwarzenegger, No. 10CV01583 BTM RBB, 2011 WL 90320, at *7 (S.D. Cal. Jan. 11, 2011)
- Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990)
- Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512-13 (2002)
- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 570 (2007)
- Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010)
- Neitzke v. Williams, 490 U.S. 319, 330 n.9 (1989)
- Bruns v. Nat'l Credit Union Admin., 122 F.3d 1251, 1257 (9th Cir. 1997)
- Doe I v. Wal-Mart Stores, Inc., 572 F.3d 677, 681 (9th Cir. 2009)
- Rizzo v. Goode, 423 U.S. 362, 373-75 (1976)
- Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978)
- Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam)
- Preiser v. Rodriguez, 411 U.S. 475, 500 (1973)
- Nettles v. Grounds, 830 F.3d 922, 935 (9th Cir. 2016)
- Ramirez v. Galaza, 334 F.3d 850, 859 (9th Cir. 2003)
- United States v. Seesing, 234 F.3d 456, 464 (9th Cir. 2000)
- Hartman v. CDCR, 707 F.3d 1114, 1129-30 (9th Cir. 2013)
- Nedd v. Bird, No. 1:23-CV-01630-HBK (PC), 2024 WL 1198732, at *6 (E.D. Cal. Mar. 20, 2024), report and recommendation adopted, No. 1:23-CV-01630-KES-HBK (PC), 2024 WL 3471004 (E.D. Cal. July 19, 2024)
- Nedd v. Bird, No. 1:22-CV-0704 JLT HBK, 2023 WL 2696633, at *1 (E.D. Cal. Mar. 29, 2023)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)

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