

**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

OPINION

Barrett

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 JEFFEREY S. NEDD, Case No.: 1:25-cv-01033-KES-CDB (PC) 12 Plaintiff, FINDINGS
AND RECOMMENDATIONS TO

DISMISS PLAINTIFF’S COMPLAINT FOR

13 v. FAILURE TO STATE A CLAIM UPON

WHICH RELIEF CAN BE GRANTED

14 CHARLES BARRETT, et al., (Doc. 13) 15 Defendants.

ORDER DENYING PLAINTIFF’S MOTIONS

16 (1) TO AMEND COMPLAINT, (2) FOR

ENTRY OF DEFAULT, AND (3) TO

17 APPOINT COUNSEL

18 (Docs. 10, 11, 12, 14)

19 21-DAY DEADLINE

20 Plaintiff Jefferey S. Nedd (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights
21 action. On September 4, 2025, the Court issued its first screening order finding Plaintiff failed
to 22 bring any cognizable claims and granting leave to amend. (Doc. 6). Plaintiff filed his first
amended 23 complaint on September 24, 2025. (Doc. 13). Plaintiff also filed two motions to
appoint counsel 24 (Docs. 10, 14), a motion to amend the complaint (Doc. 11), and a motion for
entry of default (Doc. 25 12).

26 I. MOTION TO AMEND THE COMPLAINT

27 The Court granted Plaintiff leave to amend his complaint in its first screening order. See (Doc.
6). Plaintiff filed his first amended complaint (Doc. 13) the same day as his motion to amend 1 the
complaint (Doc. 11). As Plaintiff was granted leave to amend his complaint prior, the Court 2 will
accept Plaintiff’s first amended complaint as the operative complaint. Thus, Plaintiff’s motion 3 to
amend the complaint will be denied as moot.

4 II. MOTION FOR ENTRY OF DEFAULT JUDGMENT

5 Plaintiff seeks entry of default against Defendants, asserting that the docket shows 6 Defendants were served by the United States Marshals Service on August 15, 2025, with the 7 summons and complaint. (Doc. 12 at 1). No such service has been ordered and there is no such 8 indication on the docket. Plaintiff’s motion for entry of default judgment is therefore premature, as 9 service has not yet been ordered pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure. 10 Thus, Plaintiffs motion for entry of default judgment will be denied.

11 III. MOTIONS TO APPOINT COUNSEL

12 Plaintiff filed a motion to appoint counsel (Doc. 10) on September 24, 2025, and a second 13 motion to appoint counsel (Doc. 14) on October 6, 2025. Therein, Plaintiff incorrectly refers to this 14 proceeding as a habeas corpus action and represents that he is indigent. (Doc. 10 at 1). 15 A. Governing Law 16 Plaintiffs do not have a constitutional right to appointed counsel in section 1983 actions. 17 *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997), rev’d in part on other grounds, 154 F.3d 18 952, 954 n.1 (9th Cir. 1998). Nor can the Court require an attorney to represent a party under 28 19 U.S.C. § 1915(e)(1). See *Mallard v. U.S. Dist. Court*, 490 U.S. 296, 304-05 (1989). However, in 20 “exceptional circumstances,” the Court may request the voluntary assistance of counsel pursuant 21 to section 1915(e)(1). *Rand*, 113 F.3d at 1525. 22 Given that the Court has no reasonable method of securing and compensating counsel, the 23 Court will seek volunteer counsel only in extraordinary cases. In determining whether “exceptional 24 circumstances exist, a district court must evaluate both the likelihood of success on the merits [and] 25 the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal 26 issues involved.” *Rand*, 113 F.3d at 1525 (quotations and citations omitted). 27 B. Analysis 1 claims. *Rand*, 113 F.3d at 1525. The Court is required to screen complaints brought by prisoners 2 seeking relief against a governmental entity or officer or employee of a governmental entity. 28 3 U.S.C. 1915A(a); see also (Doc. 6 at 1). At screening, the Court is tasked with determining whether 4 a plaintiff has sufficiently and plausibly alleged a cause of action or claim entitling the plaintiff to 5 relief. The Court previously screened the operative complaint and determined that it failed to assert 6 any cognizable claims. (Doc. 13). In light of this, and given that the Court at screening does not 7 test the merits of the allegations but assumes the factual allegations to be true for purposes of 8 screening, Plaintiff is not likely to succeed on the claims asserted. 9 Next, the Court must also evaluate Plaintiff’s ability to articulate his claims pro se in light 10 of the complexity of the legal issues involved. *Rand*, 113 F.3d at 1525. In this case, the Court notes 11 that Plaintiff’s filings reflect Plaintiff is logical and articulate. See, e.g., (Docs. 1, 12, 13); see 12 *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987) (affirming district court’s denial of request for 13 appointment of counsel, where pleadings demonstrated petitioner had “a good understanding of the 14 issues and the ability to present forcefully and coherently his contentions”). 15 Neither the claims asserted nor the relevant events and transactions are complex. See *Bonin 16 v. Vasquez*, 999 F.2d 425, 428–29 (9th Cir. 1993) (while Plaintiff may have limited knowledge of 17 the law, the Court does not find the issues in this case “so complex that due

process violations will occur absent the presence of counsel”); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (explaining that “[a]lthough discovery was essential ... the need for such discovery does not necessarily qualify the issues involved as ‘complex’”). Stated another way, Plaintiff’s belief that the claims are complex is not the test. Rather, the type of claim or claims asserted are the subject of the Court’s consideration of complexity. To the extent Plaintiff relies upon his indigency and incarceration to support his motion, those circumstances do not qualify as exceptional circumstances warranting the appointment of counsel. See *Dijkstra v. Campos*, No. 1:21-cv-01223-HBK, 2022 WL 222518, at *1 (E.D. Cal. Jan. 26, 2022) (“Plaintiff’s indigence does not qualify ‘as an exceptional circumstance in a prisoner civil rights case’”); *Gipbsin v. Kernan*, No. 2:12-cv-0556 KJM DB P, 2021 WL 242570, at *2 (E.D. Cal. 1 success on the merits or his ability to articulate his claims pro se”); *Robinson v. Cryer*, No. 1:20- 2 cv-00622-HBK (PC), 2021 WL 9541411, at *1 (E.D. Cal. Jan. 11, 2021) (“Although Plaintiff is proceeding pro se and is incarcerated, he faces the same obstacles all pro se prisoners face”). *Callender v. Ramm*, No. 2:16-cv-0694 JAM AC P, 2018 WL 6448536, at *3 (E.D. Cal. Dec. 10, 5 2018) (“The law is clear: neither plaintiff’s indigence, nor his lack of education, nor his lack of legal expertise warrant the appointment of counsel”); *Galvan v. Fox*, No. 2:15-CV-01798-KJM 7 (DB), 2017 WL 1353754, at *8 (E.D. Cal. Apr. 12, 2017) (“Circumstances common to most prisoners, such as lack of legal education and limited law library access, do not establish exceptional circumstances that warrant a request for voluntary assistance of counsel”). Further, that an attorney may be better able to perform research, investigate, and represent Plaintiff during trial does not amount to an exceptional circumstance. *Rand*, 113 F.3d at 1525 (finding no abuse of discretion under 28 U.S.C. § 1915(e) when district court denied appointment of counsel despite fact that pro se prisoner “may well have fared better-particularly in the realm of discovery and the securing of expert testimony ”); *Wilborn*, 789 F.2d at 1331 (same); *Ricks v. Austria*, No. 1:15-cv-01147-BAM (PC), 2016 WL 1734326, at *2 (E.D. Cal. May 2, 2016) (while a pro se litigant may be better served with the assistance of counsel were the case to proceed to trial, the court need not appoint counsel if plaintiff can articulate his claims and exceptional circumstances do not exist); *Thornton v. Schwarzenegger*, No. 10CV01583 BTM RBB, 2011 WL 19 90320, at *7 (S.D. Cal. Jan. 11, 2011) (explaining that “[f]actual disputes and anticipated cross-examination of witnesses do not indicate the presence of complex legal issues warranting a finding of exceptional circumstances”). The test is not whether Plaintiff would benefit from the appointment of counsel; the test is whether exceptional circumstances exist. Here, no exceptional circumstances exist warranting the appointment of counsel. As such, Plaintiff’s motions for appointment of counsel will be denied.

25 IV. SCREENING REQUIREMENT

26 The Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The 1 to state a claim upon which relief may be granted, or seeks monetary relief from a

defendant who 2 is immune from such relief. 28 U.S.C. § 1915A(b). The Court should dismiss a complaint if it lacks 3 a cognizable legal theory or fails to allege sufficient facts to support a cognizable legal theory. See 4 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

5 V. PLEADING REQUIREMENTS

6 A. Federal Rule of Civil Procedure 8(a) 7 “Rule 8(a)’s simplified pleading standard applies to all civil actions, with limited 8 exceptions.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 513 (2002). A complaint must contain “a 9 short and plain statement of the claims showing that the pleader is entitled to relief.” Fed. R. Civ. 10 P. 8(a)(2). “Such a statement must simply give the defendant fair notice of what the plaintiff’s claim 11 is and the grounds upon which it rests.” *Swierkiewicz*, 534 U.S. at 512 (internal quotation marks & 12 citation omitted). 13 Detailed factual allegations are not required, but “[t]hreadbare recitals of the elements of a 14 cause of action, supported by mere conclusory s tatements, do not suffice.” *Ashcroft v. Iqbal*, 556 15 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Plaintiff must 16 set forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’” 17 *Id.* (quoting *Twombly*, 550 U.S. at 570). Factual allegations are accepted as true, but legal 18 conclusions are not. *Id.* (citing *Twombly*, 550 U.S. at 555). 19 The Court construes pleadings of pro se prisoners liberally and affords them the benefit of 20 any doubt. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010) (citation omitted). However, “the 21 liberal pleading standard . . . applies only to a plaintiff’s factual allegations,” not his legal theories. 22 *Neitzke v. Williams*, 490 U.S. 319, 330 n.9 (1989). Furthermore, “a liberal interpretation of a civil 23 rights complaint may not supply essential elements of the claim that were not initially pled,” *Bruns 24 v. Nat’l Credit Union Admin.*, 122 F.3d 1251, 1257 (9th Cir. 1997) (internal quotation marks & 25 citation omitted), and courts “are not required to indulge unwarranted inferences.” *Doe I v. Wal- 26 Mart Stores, Inc.*, 572 F.3d 677, 681 (9th Cir. 2009) (internal quotation marks & citation omitted). 27 The “sheer possibility that a defendant has acted unlawfully” is not sufficient to state a cognizable 1 at 678 (internal quotation marks & citation omitted). 2 B. Linkage and Causation

3 Section 1983 provides a cause of action for the violation of constitutional or other federal 4 rights by persons acting under color of state law. See 42 U.S.C. § 1983. To state a claim under 5 section 1983, a plaintiff must show a causal connection or link between the actions of the defendants 6 and the deprivation alleged to have been suffered by the plaintiff. See *Rizzo v. Goode*, 423 U.S. 7 362, 373-75 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation 8 of a constitutional right, within the meaning of section 1983, if he does an affirmative act, 9 participates in another’s affirmative acts, or omits to perform an act which he is legal required to 10 do that causes the deprivation of which complaint is made.” *Johnson v. Duffy*, 588 F.2d 740, 743 11 (9th Cir. 1978) (citation omitted).

12 VI. DISCUSSION

13 In the first amended complaint, Plaintiff names Charles Barrett and Kelly Smith as 14

Defendants.¹ (Doc. 1 at 2). Plaintiff alleges that Charles Barrett is an attorney and Kelly Smith a 15 district attorney. Id. 16 A. Plaintiff's Allegations 17 Plaintiff provides scant assertions of facts within his first amended complaint. Plaintiff 18 alleges that Charles Barrett failed to prepare a motion for DNA testing, that a rape test showed "she 19 was with somebody else" and "they know she lied." Plaintiff represents that this is why he is trying 20 to test the DNA again, as "it has to match[,] she was with someone else." Id at 3. Plaintiff alleges 21 that he "told them the truth" and that Lara Boyed, the district attorney, knew and lied. Plaintiff 22 asserts ineffective assistance of counsel, violation of a constitutional right to have access to 23 evidence that was introduced at the preliminary hearing and DNA testing, that his prosecution was 24 illegal, that he is falsely imprisoned, due process violations, and cruel and unusual punishment. Id. 25 at 2-3. As to relief, Plaintiff seeks DNA testing. Id. at 4. 26 B. Analysis 27 i. Improperly Brought Habeas Claims 1 Notwithstanding the Court's earlier admonition in its first screening order (Doc. 6 at 4), 2 Plaintiff again improperly asserts claims alleging ineffective assistance of counsel (i.e., habeas 3 corpus claims) in this section 1983 action. 4 Federal law provides two main avenues for relief on complaints related to imprisonment: a 5 petition for habeas corpus, and a complaint under 42 U.S.C. § 1983. *Muhammad v. Close*, 540 U.S. 6 749, 750 (2004) (per curiam). Habeas corpus is the appropriate remedy for challenges to the validity 7 of the fact or length of confinement or matters affecting the duration of confinement. *Preiser v. 8 Rodriquez*, 411 U.S. 475, 500 (1973). If a favorable challenge would not "necessarily lead to [a 9 petitioner's] immediate or earlier release from confinement," the claim does not fall within "the 10 core of habeas corpus." *Nettles v. Grounds*, 830 F.3d 922, 935 (9th Cir. 2016). In contrast, requests 11 for relief turning on circumstances of confinement may be presented in a § 1983 action. 12 *Muhammad*, 540 U.S. at 750; see *Ramirez v. Galaza*, 334 F.3d 850, 859 (9th Cir. 2003) ("habeas 13 jurisdiction is absent, and a § 1983 action is proper, where a successful challenge to a prison 14 condition will not necessarily shorten the prisoner's sentence."). 15 Habeas actions and § 1983 prisoner civil right cases "differ in a variety of respects—such 16 as the proper defendant, filing fees, the means of collecting them, and restrictions on future 17 filings—that may make recharacterization impossible or, if possible, disadvantageous to the 18 prisoner compared to a dismissal without prejudice of his petition for habeas corpus." Id. at 935-36 19 (citations omitted); *United States v. Seesing*, 234 F.3d 456, 464 (9th Cir. 2000) (courts should not 20 recharacterize a prisoner's pro se filing as a federal habeas petition when doing so may be to the 21 prisoner's disadvantage). 22 As claims of ineffective assistance of counsel in general are properly brought in a petition 23 for habeas corpus, they are non-cognizable and may not be asserted in a section 1983 action. 24 Additionally, as another judge of this Court recounted to Plaintiff in a prior section 1983 action 25 filed by Plaintiff, his preceding habeas corpus petition was dismissed "because it was filed more 26 than a year after AEDPA's one-year limitation period had expired, and the district court further had 27 denied Plaintiff a certificate of appealability. Further, the Ninth Circuit, after affording Plaintiff an 1 Plaintiff a certificate of appealability." *Nedd v. Bird*, No. 1:23-CV-01630-HBK (PC),

2024 WL 2 1198732, at *6 (E.D. Cal. Mar. 20, 2024), report and recommendation adopted, No. 1:23-CV- 3 01630-KES-HBK (PC), 2024 WL 3471004 (E.D. Cal. July 19, 2024) (referencing Nedd v. Bird,

4 No. 1:22-CV-0704 JLT HBK, 2023 WL 2696633, at *1 (E.D. Cal. Mar. 29, 2023), certificate of 5 appealability denied, No. 23-15730, 2023 WL 5163337 (9th Cir. July 25, 2023)). 6 Thus, it appears that if Plaintiff commenced any such action with a petition for writ of 7 habeas corpus, it would be denied as untimely. 8 ii. Section 1983 Claims 9 Here, Plaintiff names only Charles Barrett and Kelly Smith as Defendants and has not 10 asserted any facts that either Defendant violated his constitutional rights as to the circumstances or 11 conditions of his confinement. He has not alleged any actions taken or actions omitted by 12 Defendants relating to any alleged deprivations cognizable under section 1983. As the Court 13 advised Plaintiff in its first screening order, Plaintiff's complaint is devoid of facts supporting any 14 claims cognizable under section 1983 and, thus, fails to comply with Rule 8. 15 C. Further Leave to Amend Would Be Futile 16 Because Plaintiff's first amended complaint is deficient for the same reasons as those 17 articulated in the Court's first screening orders (see Doc. 6) and because Plaintiff has failed to 18 remedy those deficiencies, the Court assesses that Plaintiff cannot cure his pleadings and, thus, that 19 leave to amend would be futile. See Hartman v. CDCR, 707 F.3d 1114, 1129-30 (9th Cir. 2013) 20 (affirming dismissal of first amended complaint and finding leave to amend futile where 21 complaint's allegations belied plaintiff's entitlement to relief).

22 VII. CONCLUSION, ORDER, AND RECOMMENDATION

23 For the foregoing reasons, it is HEREBY ORDERED that: 24 1. Plaintiff's motion to amend the complaint (Doc. 11) is DENIED as moot. 25 2. Plaintiff's motion for entry of default judgment (Doc. 12) is DENIED. 26 3. Plaintiff's motions to appoint counsel (Docs. 10, 14) are DENIED. 27 And it is HEREBY RECOMMENDED that this action be dismissed, without leave to 1 These Findings and Recommendations will be submitted to the United States District Judge 2 | assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days after 3 | being served with a copy of these Findings and Recommendations, a party may file written 4 | objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 5 | Magistrate Judge's Findings and Recommendations" and shall not exceed 15 pages without leave 6 | of Court and good cause shown. The Court will not consider exhibits attached to the Objections. 7 | To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the 8 | record by its CM/ECF document and page number, when possible, or otherwise reference the 9 | exhibit with specificity. Any pages filed in excess of the 15-page limitation may be disregarded by 10 | the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 11 | 636(b)d)(C). 12 A party's failure to file any objections within the specified time may result in the waiver of 13 | certain rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014). 14 | SO ORDERED. 'S | Dated: __November 19, 2025 | Word bo

16 UNITED STATES MAGISTRATE JUDGE

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