

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Driver v. Jacinto

No. 2:24-cv-3800-DAD-JDP (P), Findings and Recommendations (E.D. Cal. May 22, 2025) · No. 2:24-cv-3800-DAD-JDP (P) · Decided May 22, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge concerning Billy Driver’s amended prisoner civil-rights complaint and application to proceed in forma pauperis. The court recommends denying in forma pauperis status under 28 U.S.C. § 1915(g) because Driver is a three-striker and has not shown that he faced imminent physical danger when he filed the action. It further recommends that Driver be required to pay the filing fee to proceed.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	May 22, 2025
DOCKET	2:24-cv-3800-DAD-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed an amended prisoner civil-rights complaint and an application to proceed in forma pauperis. A magistrate judge issued findings and recommendations that the application be denied under the three-strikes provision of 28 U.S.C. § 1915(g) and that plaintiff be required to pay the filing fee.
STANDARD OF REVIEW	The court assessed whether plaintiff satisfied the imminent-danger exception to the three-strikes bar in 28 U.S.C. § 1915(g), considering the allegations as of the time the complaint was filed.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Billy Driver, Jr. v. Jacinto, et al.

TOPICS

- prisoners rights
- civil rights
- civil procedure

PRACTICE AREAS

prisoner civil rights

in forma pauperis procedure

federal civil procedure

QUESTIONS PRESENTED

1. Whether plaintiff, who had previously brought at least three actions dismissed for failure to state a claim, demonstrated that he was in imminent danger of serious physical injury when he filed the action and therefore qualified for the exception to the three-strikes bar under 28 U.S.C. § 1915(g).
2. Whether plaintiff's amended complaint alleged a specific and non-generalized threat of imminent physical harm sufficient to proceed in forma pauperis.

HOLDINGS

1. For purposes of the imminent-danger exception to the three-strikes bar, the relevant circumstances are those existing when the complaint is filed.
2. Plaintiff's allegations of safety concerns, an alleged hostile statement, and a generalized fear of unidentified harm were insufficient to demonstrate imminent danger of serious physical injury under § 1915(g).

KEY QUOTATIONS

"We are in agreement with all of these cases in holding that it is the circumstances at the time of the filing of the complaint that matters for purposes of the 'imminent danger' exception to §1915(g)." (at 2)

FACTUAL BACKGROUND

Plaintiff alleged that he had safety concerns involving prison personnel, including Captain Konrad, and that defendant Jacinto made statements concerning plaintiff's transfer and criminal conviction. He also alleged that another inmate had previously been stabbed to death, but did not connect that event to his alleged safety concerns. The court found that plaintiff alleged no physical harm or specific, imminent threat of serious physical injury at the time he filed the complaint.

PROCEDURAL HISTORY

Plaintiff's initial complaint and application to proceed in forma pauperis were previously considered, and the complaint was dismissed with leave to amend because the allegations did not clearly establish imminent danger. Plaintiff filed an amended complaint, but the magistrate judge concluded that it still failed to demonstrate imminent physical danger at the time of filing. The court recommended denial of in forma pauperis status and directed that plaintiff be required to tender the filing fee within twenty-one days of any order adopting the recommendations.

DISPOSITION

other

CASES CITED

- Andrews v. Cervantes, 493 F.3d 1047, 1053, 1055-56 (9th Cir. 2007)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)
- Driver v. Martel, No. 08-cv-1910-GEB-EFB (E.D. Cal. Sept. 15, 2009)
- Driver v. Kelso, No. 2:11-cv-2397-EFB-P (E.D. Cal. Aug. 9, 2012)
- Driver v. Epp, No. 2:12-cv-0589-EFB (E.D. Cal. Sept. 5, 2012)

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