

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Marroquin v. Gordon

No. 25-cv-1075-RSH-DEB (S.D. Cal. June 11, 2025) · No. 25-cv-1075-RSH-DEB · Decided June 11, 2025

SUMMARY

The U.S. District Court for the Southern District of California denied Frank Anthony Marroquin’s renewed motion to proceed in forma pauperis because his application did not sufficiently establish inability to pay. The court also determined that the complaint, which sought reinstatement of a California driver’s license through mandamus, would fail mandatory screening because a federal district court cannot issue mandamus directing state officials, and dismissed the action.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Robert S. Huie
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 11, 2025
DOCKET	25-cv-1075-RSH-DEB
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff filed a civil action and sought leave to proceed in forma pauperis. After denying his initial IFP application, the court considered his renewed application and screened the complaint under 28 U.S.C. § 1915(e)(2)(B).
STANDARD OF REVIEW	Under 28 U.S.C. § 1915(a)(1), the plaintiff must submit an affidavit showing inability to pay the filing fee, alleging poverty with particularity, definiteness, and certainty. Under 28 U.S.C. § 1915(e)(2) (B), an IFP complaint is subject to sua sponte dismissal if it is frivolous, malicious, or fails to state a claim.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

TOPICS

- civil procedure
- administrative law
- remedies
- federalism

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff's renewed affidavit established that he was unable to pay the filing fee and therefore qualified to proceed in forma pauperis.
2. Whether the complaint was subject to dismissal under 28 U.S.C. § 1915(e)(2)(B) because it sought federal mandamus relief against a state official.
3. Whether a federal district court may issue mandamus directing a state agency or state official to reinstate a driver's license.

HOLDINGS

1. Plaintiff's renewed IFP application was insufficient because it did not allege poverty with enough particularity, definiteness, and certainty to show that he could not pay the filing fee while meeting life's necessities.
2. The complaint was dismissed because, even if IFP status were granted, it would fail mandatory screening under 28 U.S.C. § 1915(e)(2)(B).

KEY QUOTATIONS

“Nonetheless, “a plaintiff seeking IFP status must allege poverty ‘with some particularity, definiteness and certainty.’” (1)

“However, “[f]ederal district courts are without power to issue mandamus to direct state official[s] in the performance of their duties.” (2)

“To the extent that plaintiff has any mandamus remedy, it lies in state court.” (2)

FACTUAL BACKGROUND

Plaintiff stated that he lived with his father and received a \$20 monthly gift as his only income, which he used for necessities. He reported spending \$10 monthly on personal items and appeared to receive EBT assistance, but did not identify the amount and improperly listed EBT as an expense. His complaint sought clarification of the conditions for reinstating his California driver's license or a federal writ of mandamus compelling the California DMV to reinstate it.

PROCEDURAL HISTORY

Plaintiff commenced the action on April 28, 2025, and filed an initial IFP motion that the court denied on April 30, 2025. Plaintiff then filed an amended IFP motion. The court denied the renewed motion because the financial information did not establish inability to pay with sufficient particularity and dismissed the action after concluding that the complaint would fail mandatory IFP screening.

DISPOSITION

dismissed

CASES CITED

- Moore v. Maricopa Cnty. Sheriff's Office, 657 F.3d 890, 892 (9th Cir. 2011)
- Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th Cir. 1999)
- Escobedo v. Applebees, 787 F.3d 1226, 1234 (9th Cir. 2015)
- Jefferson v. United States, 277 F.2d 723, 725 (9th Cir. 1960)
- United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981)
- Lopez v. Smith, 203 F.3d 1122, 1129 (9th Cir. 2000)
- Biesenbach v. City & Cnty. of San Francisco, No. 25-CV-01277-TLT, 2025 WL 589035, at *2 (N.D. Cal. Feb. 24, 2025)
- Clark v. Washington, 366 F.2d 678, 681 (9th Cir. 1966)
- Gougher v. Mnuchin, No. 19-CV-07217-YGR (PR), 2020 WL 19148839, at *2 (N.D. Cal. Apr. 20, 2020)
- Najarro v. Wollman, No. C 12-1925 PJH, 2012 U.S. Dist. LEXIS 104447, at *7 (N.D. Cal. July 26, 2012)
- VR Sch. v. California Dep't of Educ., No. 23-CV-06286-SI, 2024 WL 5431354, at *3 (N.D. Cal. Sept. 20, 2024)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 SOUTHERN DISTRICT OF
CALIFORNIA 10 11 FRANK ANTHONY MARROQUIN, Case No.: 25-cv-1075-RSH-DEB 12
Plaintiff, ORDER DENYING MOTION TO 13 v. PROCEED IN FORMA PAUPERIS AND
DISMISSING ACTION 14 MR. GORDON, Office of the Director, Department of Motor Vehicles,
15 Defendant. 16 17 18 19 On April 28, 2025, plaintiff Frank Anthony Marroquin, proceeding pro
se, 20 commenced this action.

ECF No. 1. On April 30, 2025, the Court denied plaintiff's motion 21 for leave to proceed in
forma pauperis ("IFP"). ECF No. 6. On May 28, 2025, plaintiff 22 filed an amended IFP motion.
ECF No. 4. For the reasons below, the Court dismisses this 23 action. 24 All parties instituting a
civil action, suit, or proceeding in a district court of the 25 United States, other than a petition for
writ of habeas corpus, must pay a filing fee.

28 26 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay the filing fee only
27 if the party is granted leave to proceed in IFP pursuant to 28 U.S.C. § 1915(a)(1). See 28 Moore
v. Maricopa Cnty. Sheriff's Office, 657 F.3d 890, 892 (9th Cir. 2011) ("All persons, 1 not just
prisoners, may seek IFP status."); Rodriguez v. Cook, 169 F.3d 1176, 1177 (9th 2 Cir.

1999). A federal court may authorize the commencement of an action without the 3 prepayment of
fees if the party submits an affidavit, including a statement of assets, 4 showing inability to pay the
required filing fee. 28 U.S.C. § 1915(a). "An affidavit in 5 support of an IFP application is

sufficient where it alleges that the affiant cannot pay the 6 court costs and still afford the necessities of life[.]” *Escobedo v. Applebees*, 787 F.3d 1226, 7 1234 (9th Cir.

2015). 8 Here, as with Plaintiff’s initial IFP application, it remains unclear to the Court 9 whether Plaintiff qualifies for IFP status. In his renewed application, Plaintiff states he lives 10 with his father and that his only source of income is a twenty dollar monthly gift used to 11 pay for necessities. ECF No. 4 at 2, 4. Plaintiff further states he spends ten dollars monthly 12 for “shampoo, soap, underwear, and clothes.” *Id.* at 8.

It is unclear, however, how Plaintiff 13 is able to afford food or any other necessities of life. Plaintiff appears to receive EBT 14 assistance, but he does not specify the amount of assistance he receives. *Id.* at 7. Instead, 15 Plaintiff again improperly identifies EBT as an expense. *Id.* The Court is mindful that 16 “[o]ne need not be absolutely destitute to obtain benefits of the in forma pauperis statute.” 17 *Escobedo*, 787 F.3d at 1234 (quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th 18 Cir.

1960)). Nonetheless, “a plaintiff seeking IFP status must allege poverty ‘with some 19 particularity, definiteness and certainty.’” *Id.* (quoting *United States v. McQuade*, 647 F.2d 20 938, 940 (9th Cir. 1981)). Plaintiff has not done so here.

For these reasons, Plaintiff’s 21 motion to proceed IFP is DENIED. 22 Even if the Court granted Plaintiff leave to proceed IFP in this case, Plaintiff’s 23 Complaint would fail to withstand mandatory screening under 28 U.S.C. § 1915(e)(2)(B). 24 A complaint filed by any person seeking to proceed IFP pursuant to 28 U.S.C. § 1915(a) is 25 subject to sua sponte review and dismissal should the Court determine, inter alia, that it is 26 frivolous, malicious, or fails to state a claim upon which relief may be granted.

See 28 27 U.S.C. § 1915(e)(2)(B); see *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) 28 1 || ([S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed by 2 || prisoners.”). 3 Here, liberally construed, the basis of Plaintiff's Complaint appears to be his 4 ||attempts to have his driver’s license reinstated by the California Department of Motor 5 || Vehicles (“DMV”).

See ECF No. 1. Plaintiff requests that the Court either confirm he must 6 || satisfy specific conditions under the California Vehicle Code to qualify for reinstatement 7 || of his driver’s license or issue a writ of mandamus compelling the DMV to reinstate his 8 || license under 28 U.S.C. § 1651. *Id.* at 6.

However, “[f]ederal district courts are without 9 ||power to issue mandamus to direct state official[s] in the performance of their duties.” 10 || *Biesenbach v. City & Cnty. of San Francisco*, No. 25-CV-01277-TLT, 2025 WL 589035, 11 *2 (N.D. Cal. Feb. 24, 2025); see *Clark v. Washington*, 366 F.2d 678, 681 (9th Cir. 1966) 12 || (“The federal courts are without power to issue

writs of mandamus to direct state courts or 13 judicial officers in the performance of their duties, including disbarment 14 || proceedings.”); Gougher v. Mnuchin, No. 19-CV-07217-YGR (PR), 2020 WL 19148839, at 15 || *2 (N.D.

Cal. Apr. 20, 2020) (“A petition for a writ of mandamus to compel a state court 16 || or official to take or refrain from some action is frivolous as a matter of law.”); Najarro v. 17 || Wollman, No. C 12-1925 PJH, 2012 U.S. Dist. LEXIS 104447, at *7 (N.D. Cal. July 26, 18 2012) (“[E]ven were plaintiff to file a petition for administrative mandamus, this court 19 || would be powerless to order the DMV to restore plaintiff’s driving privileges.”).

20 To the extent that plaintiff has any mandamus remedy, it lies in state court. See VR 21 || Sch. v. California Dep’t of Educ., No. 23-CV-06286-SI, 2024 WL 5431354, at *3 (N.D. 22 Sept. 20, 2024). For the above reasons, the Court the action is hereby DISMISSED 23 the Clerk of Court is directed to close the case. 24 IT IS SO ORDERED. 25 || Dated: June 11, 2025 C ‘ Kebuct S Howe 17 Hon. Robert S. Huie United States District Judge 28