

**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

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 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. *Jd.* 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

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