

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Elijah Lee Miller v. M. Bobbala, et al.

No. 2:25-cv-0467-SCR · No. No. 2:25-cv-0467-SCR · Decided September 17, 2025

SUMMARY

The United States District Court for the Eastern District of California recommends denying Elijah Lee Miller’s motion to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g). The court finds that Miller had previously accrued at least three qualifying strikes and that the complaint’s allegations concerning liquid nutritional supplements did not establish imminent danger of serious physical injury, recommending payment of the full filing fee within 30 days.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Sean C. Riordan
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 17, 2025
DOCKET	No. 2:25-cv-0467-SCR
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se under 42 U.S.C. § 1983, moved to proceed in forma pauperis. The magistrate judge issued an order randomly assigning the matter to a district judge and findings and recommendations that the motion be denied under the Prison Litigation Reform Act's three-strikes provision and that plaintiff be required to pay the full filing fee or face dismissal.
STANDARD OF REVIEW	The court independently reviewed plaintiff's prior dismissals to determine whether they constituted strikes under 28 U.S.C. § 1915(g), and evaluated whether the complaint alleged imminent danger at the time of filing.
PRECEDENTIAL VALUE	Nonprecedential magistrate judge order and findings and recommendations

TOPICS

- prisoners rights
- section 1983
- civil rights
- civil procedure

PRACTICE AREAS

prisoner civil rights

in forma pauperis proceedings

civil procedure

QUESTIONS PRESENTED

1. Whether plaintiff had accrued three or more prior strikes under 28 U.S.C. § 1915(g).
2. Whether the complaint's allegations concerning the number of liquid nutritional supplements provided at meals demonstrated that plaintiff was under imminent danger of serious physical injury when the complaint was filed.
3. Whether plaintiff should be denied in forma pauperis status and required to pay the full filing fee.

HOLDINGS

1. Plaintiff had accrued at least three qualifying strikes, so § 1915(g) barred her from proceeding in forma pauperis absent the imminent-danger exception.
2. Plaintiff's allegations about receiving two liquid nutritional supplements per day rather than two per meal were insufficient to establish imminent danger of serious physical injury.

KEY QUOTATIONS

“In no event shall a prisoner bring a civil action . . . [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” (at 1)

“Section § 1915(g)’s “imminent danger” exception cannot be triggered solely by complaints of past harm or generalized fears of potential harm.” (at 1)

FACTUAL BACKGROUND

Plaintiff is incarcerated and transgender and alleges that prison officials provide her with two liquid nutritional supplements per day rather than two supplements at each meal. She argued that these allegations demonstrated imminent danger of serious physical injury. The court concluded that the allegations did not establish the type of imminent harm required to invoke the statutory exception to the three-strikes bar.

PROCEDURAL HISTORY

Plaintiff filed this prisoner civil-rights action and sought leave to proceed in forma pauperis. A prior judge had determined in an earlier action that plaintiff had accrued at least three qualifying strikes, and the magistrate judge independently reviewed and agreed that the prior dismissals counted. The magistrate judge further concluded that the complaint did not establish imminent danger of serious physical injury at the time of filing, recommended denial of in forma pauperis status, and required payment of the filing fee within 30 days subject to dismissal.

DISPOSITION

other

CASES CITED

- Miller v. Lynch, No. 2:23-cv-2145-TLN-JDP, ECF Nos. 9, 10 (E.D. Cal. Feb. 6 and Mar. 12, 2024)
- Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007)
- Harris v. County of Orange, 682 F.3d 1126, 1131-32 (9th Cir. 2012)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

Bobbala

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ELIJAH LEE MILLER, No. 2:25-cv-0467-SCR

12 Plaintiff,

13 v. ORDER AND

14 M. BOBBALA, et al., FINDINGS AND RECOMMENDATIONS

15 Defendants. 16

17 Plaintiff is a transgender person incarcerated in prison who is representing herself in this 18 civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to the 19 undersigned by operation of Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1). 20 Plaintiff has requested leave to proceed in forma pauperis. Title 28 U.S.C. § 1915(g) 21 reads as follows: 22 In no event shall a prisoner bring a civil action . . . [in forma pauperis] if the prisoner has, on 3 or more prior occasions, while incarcerated 23 or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is 24 frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious 25 physical injury. 26 This is known as the “three strikes” provision. A review of court records reveals that, while 27 incarcerated, and before this action was filed, another judge found plaintiff to have accrued three 28 or more prior strikes. Miller v. Lynch, No. 2:23-cv-2145-TLN-JDP, ECF No. 9 (E.D. Cal. Feb. 6, 1 2024) (finding that four dismissals of plaintiff’s prior cases counted as strikes), ECF No. 10 2 (March 12, 2024) (order adopting those findings).1 The undersigned has independently reviewed 3 those prior dismissals and agrees they are strikes. Therefore, it is recommended that plaintiff’s 4 motion to proceed in forma pauperis be denied under 28 U.S.C. § 1915(g). 5 Having determined that plaintiff has accrued three prior strikes, she is therefore precluded 6 from proceeding in forma pauperis in this action unless she is “under

imminent danger of serious 7 physical injury.” 28 U.S.C. § 1915(g). This exception applies at the time of filing the complaint. 8 *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (emphasizing that “it is the 9 circumstances at the time of the filing of the complaint that matters for purposes of the ‘imminent 10 danger’ exception to § 1915(g).”). The allegations in the complaint concern the specific number 11 of liquid nutritional supplements that plaintiff should receive at each meal. ECF No. 1 at 3. 12 Plaintiff contends that she should receive two per meal, but she is only receiving a total of two 13 each day. ECF No. 1 at 3. These factual allegations are not sufficient to demonstrate the type of 14 imminent harm that would allow plaintiff to proceed with this action without paying fees. 15 Section § 1915(g)’s “imminent danger” exception cannot be triggered solely by complaints of 16 past harm or generalized fears of potential harm. See *Andrews*, 493 F.3d at 1053. In light of 17 plaintiff’s prior strikes and the lack of imminent danger at the time this complaint was filed, the 18 undersigned recommends requiring plaintiff to pay the entire filing fee within a period of 30 days 19 or face dismissal of the present action. 20 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign this 21 matter to a district court judge. 22 IT IS FURTHER RECOMMENDED that: 23 1. Plaintiff’s motion for leave to proceed in forma pauperis (ECF No. 2) be denied based 24 on plaintiff’s three or more prior strikes under 28 U.S.C. § 1915(g). 25 26 1 The court takes judicial notice of this finding that plaintiff is a three strikes litigant. See Fed. R. Evid. 201 (the court may take judicial notice of facts that are capable of accurate determination by 27 sources whose accuracy cannot reasonably be questioned); *Harris v. County of Orange*, 682 F.3d 1126, 1131-32 (9th Cir. 2012) (a court may take judicial notice of undisputed matters of public 28 record including documents on file in federal or state courts).] 2. Plaintiff be required to pay the full \$405 filing fee for this action within 30 days or face 2 || dismissal of this action. 3 These findings and recommendations are submitted to the United States District Judge 4 | assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty one days 5 || after being served with these findings and recommendations, plaintiff may file written objections 6 || with the court. Such a document should be captioned “Objections to Magistrate Judge’s Findings 7 || and Recommendations.” Plaintiff is advised that failure to file objections within the specified 8 | time may waive the right to appeal the District Court’s order. *Martinez v. Ylst*, 951 F.2d 1153 9 | (Oth Cir. 1991). 10 | DATED: September 16, 2025 12

SEAN C. RIORDAN

13 UNITED STATES MAGISTRATE JUDGE

14 15 16 17 18 19 20 21 22 23 24 25 26 27 28