

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

Sivak v. Schroeder

Sivak · No. 25-cv-00963-AMO (PR); 25-cv-01197-AMO (PR); 25-cv-01460-AMO (PR); 25-cv-01490-AMO (PR); 25-cv-04487-AMO (PR); 25-cv-04531-AMO (PR) · Decided June 13, 2025

SUMMARY

The United States District Court for the Northern District of California dismissed with prejudice multiple actions filed by pro se prisoner Lacey Sivak. The court denied pending applications to proceed in forma pauperis under the three-strikes provision of 28 U.S.C. § 1915(g), finding no imminent danger of serious physical injury. The court also noted that claims involving judges were barred by mandamus limitations and judicial immunity, and directed the Clerk to close the cases.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Araceli Martinez-Olguin
JURISDICTION	United States District Court for the Northern District of California
DECIDED	June 13, 2025
DOCKET	25-cv-00963-AMO (PR); 25-cv-01197-AMO (PR); 25-cv-01460-AMO (PR); 25-cv-01490-AMO (PR); 25-cv-04487-AMO (PR); 25-cv-04531-AMO (PR)
DISPOSITION	dismissed
PROCEDURAL POSTURE	The court consolidated and resolved multiple actions filed by a pro se Idaho state prisoner, including mandamus petitions, criminal complaints against judicial officers, and another action invoking 28 U.S.C. § 1331. The court denied pending applications to proceed in forma pauperis and dismissed the actions with prejudice.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status is unknown and no reporter citation appears in the source.
PARTIES	Lacey Sivak v. Mary M. Schroeder, et al.

TOPICS

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

PRACTICE AREAS

civil procedure

civil rights

prisoner litigation

judicial immunity

mandamus

QUESTIONS PRESENTED

1. Whether Sivak could proceed in forma pauperis despite his three-striker status under 28 U.S.C. § 1915(g).
2. Whether the allegations established that Sivak was under imminent danger of serious physical injury when he filed the actions.
3. Whether the court could issue mandamus relief directing state courts, state judicial officers, federal judges, or other officials to perform specified duties.
4. Whether judicial officers were absolutely immune from Sivak's civil damages claims based on acts taken in their judicial capacities.
5. Whether the repetitive and frivolous nature of the filings required or justified recusal of the assigned judge.

HOLDINGS

1. Because Sivak had at least three prior cases dismissed as strikes, he could not proceed in forma pauperis unless he showed that he was under imminent danger of serious physical injury when he filed each action.
2. Sivak's allegations did not show that he was under imminent danger of serious physical injury when he filed the actions, so the three-strikes exception did not apply.
3. Federal courts lack power to issue a writ of mandamus directing state courts, state judicial officers, or other state officials in the performance of their duties.
4. A party who disagrees with a federal judge's disposition of an in forma pauperis application must seek review in the Ninth Circuit as appropriate and may not obtain review by another judge in the same district.
5. Judicial officers are absolutely immune from civil damages claims arising from acts taken in their judicial capacities.
6. Recusal was not warranted merely because Sivak had filed repetitive and frivolous cases against the assigned judge; absent legitimate grounds for recusal, a judge has a duty to sit.

KEY QUOTATIONS

“Because Sivak has had at least three cases dismissed that count as “strikes,” pursuant to section 1915(g), he may not proceed IFP in any of the above-captioned actions unless he demonstrates that he is “under imminent danger of serious physical injury” at the time he filed the petitions in each action.” (at 1)

“To the extent Sivak disagrees with a federal judge’s disposition of his applications to proceed IFP, he may appeal to the Ninth Circuit as circumstances warrant. He may not seek review by another judge in the District.” (at 2)

“In addition, these judges are absolutely immune from civil claims for damages alleged in connection with actions taken in their judicial capacity.” (at 2)

FACTUAL BACKGROUND

Lacey Sivak, an Idaho state prisoner and frequent pro se litigant, filed six actions challenging rulings or conduct involving judges in the Idaho courts, the District of Idaho, the Northern District of California, and the Ninth Circuit, as well as conduct by a prison law-library staff member. In one action, he alleged a matter involving the movement of a prisoner between housing units; in others, he filed petitions for writs of mandamus or so-called criminal complaints against judicial officers. Sivak had previously accumulated at least three qualifying dismissals and had been designated a three-striker in numerous cases.

PROCEDURAL HISTORY

Sivak filed the above-captioned actions in the Northern District of California. The court noted that he had previously been designated a three-striker under 28 U.S.C. § 1915(g) and had been barred from proceeding in forma pauperis absent a showing of imminent danger of serious physical injury. The court concluded that the allegations did not establish imminent danger, that some claims were independently barred by mandamus limitations and judicial immunity, and dismissed all actions with prejudice.

DISPOSITION

dismissed

CASES CITED

- *Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir. 1991)
- *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980)
- *Mullis*, 828
- *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996)
- *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008)
- *Sivak v. Winmill*, No. 1:02-cv-00353 (D. Idaho Oct. 17, 2002)
- *Sivak v. Nye*, No. 21-35760 (9th Cir. Nov. 8, 2021)
- *Sivak v. Duggan*, No. 21-35356 (9th Cir. Jan. 21, 2022)

OPINION

Sivak v. Schroeder

PER CURIAM.

1 2 3 4

5 UNITED STATES DISTRICT COURT

6 NORTHERN DISTRICT OF CALIFORNIA

7 8 LACEY SIVAK, Case No. 25-cv-00963-AMO (PR) Plaintiff, 25-cv-01197-AMO (PR) 9 25-

cv-01460-AMO (PR) v. 10 25-cv-01490-AMO (PR) 11 MARY M. SCHROEDER, et al., 25-cv-04487-AMO (PR) Defendants. 25-cv-04531-AMO (PR) 12

ORDER DISMISSING MULTIPLE

13 CASES WITH PREJUDICE

14 15 Lacey Sivak, an Idaho state prisoner and frequent litigant, filed the above-captioned 16 actions, representing himself. In some of the above-captioned actions, Sivak challenges previous 17 rulings in his cases before the Idaho Court, the District of Idaho, this District, or the Ninth Circuit. 18 For example, Sivak filed petitions for writ of mandamus seeking to compel certain conduct by 19 federal judges of the United States Court of Appeals for the Ninth Circuit. See Case Nos. 25-cv- 20 00963-AMO (PR), Dkt. 1; 25-cv-04487-AMO (PR), Dkt. 1. Sivak seeks relief related to his 21 petitions for a writ of mandamus seeking to compel certain conduct by a prison staff member 22 named Zahida Perea, who is the paralegal at the prison's law library, the Idaho State Correctional 23 Institution Resource Center. See *id.* In other cases, such as Case Nos. 25-cv-01197-AMO (PR), 24 25-cv-01460-AMO (PR), and 25-cv-04531-AMO (PR), Sivak filed a "Criminal Complaints" 25 against certain judges in the Idaho Court, the District of Idaho, this District, and the Ninth Circuit. 26 See Case Nos. 25-cv-01197-AMO (PR), Dkt. 1, 25-cv-01460-AMO (PR), Dkt. 1, and 25-cv- 27 04531-AMO (PR), Dkt. 1. Lastly, in Case No. 25-cv-01490-AMO (PR), Sivak listed no defendant 1 1331," which "is based on a known homosexual prisoner moved off the housing unit and to 2 another unit where evening crew kitchen workers lived." See Case No. 25-cv-01490-AMO (PR),

3 Dkt. 1 at 11-12. The Court notes that Sivak has an extensive history of filing similar frivolous 4 cases. 5 In many of the above-captioned actions, Sivak has requested leave to proceed in forma 6 pauperis ("IFP"). However, since May 2024, the undersigned has disqualified Sivak from 7 proceeding IFP under 28 U.S.C. § 1915(g) and issued numerous orders dismissing him as a three- 8 striker pursuant to section 1915(g) in more than 400 different cases in the Northern District of 9 California. See 28 U.S.C. § 1915(g). A nationwide federal court search on the Public Access To 10 Court Electronic Records or PACER database returns hundreds of results for lawsuits in his name. 11 The Ninth Circuit and the District of Idaho have also previously found him to be a three-striker. 12 See Ninth Circuit Case No. 23-35190, Dkt. 8 (June 2, 2023) (citing *Sivak v. Winmill*, No. 1: 02-cv- 13 00353 (D. Idaho Oct. 17, 2002) (dismissed for failure to state claim); *Sivak v. Nye*, No. 21-35760 14 (9th Cir. Nov. 8, 2021) (dismissed as frivolous); *Sivak v. Duggan*, No. 21-35356 (9th Cir. Jan. 21, 15 2022) (dismissed as frivolous)). Because Sivak has had at least three cases dismissed that count as 16 "strikes," pursuant to section 1915(g), he may not proceed IFP in any of the above-captioned 17 actions unless he demonstrates that he is "under imminent danger of serious physical injury" at the 18 time he filed the petitions in each action. See 28 U.S.C. § 1915(g). The allegations in the above- 19 captioned actions do not show that Sivak was in imminent danger at the time of filing. Therefore, 20 he may not proceed IFP, and any pending motion for leave to proceed IFP is DENIED. 21 Moreover, even if an IFP application were

granted, some of his lawsuits against judges 22 would be barred under *Demos v. U.S. District Court*, 925 F.2d 1160, 1161-62 (9th Cir. 1991) 23 (finding that federal courts are without power to issue mandamus to direct state courts, state 24 judicial officers, or other state officials in performance of their duties). To the extent Sivak 25 disagrees with a federal judge's disposition of his applications to proceed IFP, he may appeal to 26 the Ninth Circuit as circumstances warrant. He may not seek review by another judge in the 27 District. See *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 35 (1980); see also *Mullis*, 828 1 "district court lacks authority to issue a writ of mandamus to another district court"). In addition, 2 || these judges are absolutely immune from civil claims for damages alleged in connection with 3 actions taken in their judicial capacity. See *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 4 1996). 5 Furthermore, these are not cases in which the undersigned Judge's impartiality might be 6 || reasonably questioned due to the repetitive and frivolous nature of the filings. See *United States v. 7 Holland*, 519 F.3d 909, 912 (9th Cir. 2008) (finding that absent legitimate reasons to recuse 8 || himself or herself, a judge has a duty to sit in judgment in all cases assigned to that judge).! 9 Accordingly, the above-captioned actions are DISMISSED WITH PREJUDICE. 10 The Clerk of the Court shall TERMINATE all pending motions and close these above- 11 captioned actions. Further, Sivak may not continue submitting documents in these closed cases. 12 || Any further motions submitted by Sivak in these closed cases, other than those specifically 13 permitted by law in closed cases, will not be considered by the Court and will be returned to 14 || Sivak. IT IS SO ORDERED. 16 || Dated: June 13, 2025 tf / 7 { Macel Wed

18 ARACELI MARTINEZ-OLGUIN

United States District Judge 19 20 21 ' Sivak previously named the undersigned as a respondent in five cases before the Honorable Judge James Donato. See Case Nos. 24-cv-04592-JD (PR), 24-cv-04653-JD (PR), 24-cv-06543- 2 JD (PR), 24-cv-06544-JD (PR), 25-cv-00562-JD (PR). On October 15, 2024, Judge Donato dismissed four cases with prejudice upon finding that "[n]one of the cases plausibly allege[d] a 3 claim of any sort, even when read generously for a pro se litigant." See Case No. 24-cv-04592-JD (PR), Dkt. 7 at 2. On May 13, 2025, Judge Donato dismissed the fifth case upon finding that 24 || "Judge Martinez-Olguin is immune from civil claims for damages alleged in connection with actions taken in her judicial capacity." See Case No. 25-cv-00562-JD (PR), Dkt. 4 at 1 (citing 25 *Moore v. Brewster*, 96 F.3d 1240, 1243 (9th Cir. 1996)). On February 5, 2025, the undersigned dismissed twenty-eight similar cases filed by Sivak upon determining not only that the 26 || undersigned is immune but also that he "has had at least three cases dismissed that count as "strikes," pursuant to [28 U.S.C. §] 1915(g), [and] he may not proceed IFP in the [those] actions 97 || unless he demonstrates that he is "under imminent danger of serious physical injury" at the time he filed the petitions in each action. See Case No. 25-cv-00727-AMO (PR), Dkt. 2 at 2. In the 28 above-captioned cases, Sivak does not seek recusal, nor is recusal warranted considering the frivolous nature of the cases.

