

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Edgar Agtarap v. Bailey, et al.

Agtarap · No. 1:25-cv-01534-KES-EPG · Decided December 22, 2025

SUMMARY

The United States District Court for the Eastern District of California denied Edgar Agtarap’s motion for appointment of counsel in his pro se civil rights action. The court found no exceptional circumstances because the complaint adequately articulated the claims, the legal issues were not unusually complex, and it was too early to assess the likelihood of success.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	December 22, 2025
DOCKET	1:25-cv-01534-KES-EPG
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff, proceeding pro se in a removed civil-rights action under 42 U.S.C. § 1983, moved for appointment of counsel. The district court denied the motion without prejudice.
STANDARD OF REVIEW	Appointment of counsel for an indigent civil litigant is evaluated under the exceptional-circumstances standard, considering both the likelihood of success on the merits and the plaintiff’s ability to articulate claims pro se in light of the complexity of the legal issues.
PRECEDENTIAL VALUE	unknown
PARTIES	Edgar Agtarap v. Bailey, et al.

TOPICS

- civil procedure
- section 1983
- civil rights
- constitutional law

PRACTICE AREAS

- civil procedure
- civil rights
- constitutional law

QUESTIONS PRESENTED

1. Whether the court should appoint counsel or request voluntary counsel for a pro se plaintiff under 28 U.S.C. § 1915(e)(1).
2. Whether exceptional circumstances existed based on the likelihood of success on the merits, the plaintiff's ability to articulate his claims, and the complexity of the legal issues.

HOLDINGS

1. A plaintiff in this civil-rights action has no constitutional right to appointed counsel, and the court may not require an attorney to represent the plaintiff under 28 U.S.C. § 1915(e)(1).
2. Exceptional circumstances did not warrant requesting voluntary counsel because plaintiff adequately articulated his claims, the legal issues were not unusually complex, and the case was at too preliminary a stage to establish a likelihood of success on the merits.

KEY QUOTATIONS

“in certain exceptional circumstances the Court may request the voluntary assistance of counsel pursuant to section 1915(e)(1).” (1)

“In determining whether “exceptional circumstances exist, a district court must evaluate both the likelihood of success of the merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the legal issues involved.”” (1)

FACTUAL BACKGROUND

Plaintiff Edgar Agtarap alleged excessive use of force and an unlawful search of private property under the Fourth Amendment, arising from defendants' alleged placement of a red "Stop Work" tag on a shed behind his fence. He sought appointed counsel based on his legal deafness, type two diabetes, inability to afford counsel, and the asserted difficulty of litigating the case. The court found that his typewritten complaint clearly articulated the relevant facts and legal claims, that the legal issues were not extremely complex, and that it was too early to assess his likelihood of success.

PROCEDURAL HISTORY

The action was removed from the Superior Court of the State of California, County of Kings, on November 10, 2025. Plaintiff filed a motion for appointment of counsel on December 16, 2025. The district court denied the motion, finding that the case did not present exceptional circumstances warranting a request for voluntary counsel.

DISPOSITION

other

CASES CITED

- Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds, 154 F.3d 952 (9th Cir. 1998)
- Mallard v. United States District Court for the Southern District of Iowa, 490 U.S. 296, 298 (1989)

OPINION

1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 EASTERN DISTRICT OF CALIFORNIA
9 10 EDGAR AGTARAP, Case No. 1:25-cv-01534-KES-EPG 11 12 Plaintiff, 13 v. ORDER
DENYING MOTION FOR APPOINTMENT OF COUNSEL 14 BAILEY, et al., 15 Defendants.
(ECF No. 29) 16 Plaintiff Edgar Agtarap proceeding pro se in this civil rights action filed pursuant
to 42 17 U.S.C. § 1983. (ECF No. 1).

This action was removed from the Superior Court of the State of 18 California, County of Kings
on November 10, 2025. 19 Before the Court is Plaintiff’s Motion for Appointment of Counsel filed
on December 16, 20 2025 (ECF No. 4). Plaintiff cites several reasons why the Court should
appoint him counsel, such 21 as being legally deaf, suffering from type two diabetes, and being
unable to afford counsel.

(Id., 22 p. 1). 23 Plaintiff does not have a constitutional right to appointed counsel in this action,
Rand v. 24 Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), withdrawn in part on other grounds,
154 F.3d 952 25 (9th Cir. 1998), and the Court cannot require an attorney to represent Plaintiff
pursuant to 28 26 U.S.C. § 1915(e)(1). Mallard v. United States District Court for the Southern
District of Iowa, 27 28 1 | 490 U.S. 296, 298 (1989).

However, in certain exceptional circumstances the Court may request 2 | the voluntary assistance
of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525. 3 Without a reasonable method
of securing and compensating counsel, the Court will seek 4 || volunteer counsel only in the most
serious and exceptional cases.

In determining whether 5 | “exceptional circumstances exist, a district court must evaluate both the
likelihood of success of 6 the merits [and] the ability of the [plaintiff] to articulate his claims pro
se in light of the 7 complexity of the legal issues involved.” /d. (citation and internal quotation
marks omitted). 8 The Court finds that appointment of counsel is not warranted here.

Plaintiff’s typewritten 9 complaint clearly articulates the facts and legal claims at issue. The legal
issues involved are not extremely complex, and Plaintiff is able to articulate those claims
adequately. Specifically, 8 Plaintiff alleges claims for excessive use of force and an unlawful
search of private property under the Fourth Amendment, stemming from Defendants allegedly
placing a red tag □□□□□□ to 12 Stop Work” on Plaintiff’s shed that is located behind his fence.

(ECF No. 1). Further, it is too 13 early to determine Plaintiff’s likelihood of success on the merits
or whether the case will proceed to trial. The case was recently removed to federal Court and an
initial scheduling conference is set 15 for February 5, 2026. (ECF No. 2). At this preliminary stage

of the case, there is no indication of 16 | the presence of complex legal issues warranting a finding of exceptional circumstances in which 17 | the Court may request the voluntary assistance of counsel pursuant to § 1915(e)(1).

Rand, 113 18 | F.3d at 1525 (holding that while the appellant might have fared better with counsel during 19 | discovery, this is not the test). 20 Plaintiff's complaint also alleges that he was able to hire a law firm to represent Plaintiff 21 | regarding these issues. (ECF No. 1, at p. 10). 22 Accordingly, the Court will deny Plaintiff's request for counsel (ECF No. 4) without 23 | Prejudice.

IT IS SO ORDERED. 24 25 Dated: _ December 22, 2025 [sf heey UNITED STATES MAGISTRATE JUDGE 27 28