

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Diaz v. Osman

Diaz v. Osman · No. 2:23-cv-1449-DAD-JDP (P) · Decided April 18, 2025

SUMMARY

The court dismisses plaintiff Miguel Enrique Diaz’s first amended complaint with leave to amend because he is a three-striker under 28 U.S.C. § 1915(g) and has not shown imminent physical danger. The court denies two duplicative in forma pauperis applications and a motion for extension of time, directs plaintiff to file an amended complaint or notice of voluntary dismissal within thirty days, and warns that failure to do so may result in dismissal with prejudice.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Jeremy D. Peterson
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 18, 2025
DOCKET	2:23-cv-1449-DAD-JDP (P)
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff filed an amended prisoner civil-rights complaint and applications to proceed in forma pauperis. The magistrate judge dismissed the amended complaint with leave to amend and denied two duplicative in forma pauperis applications and an extension motion.
PRECEDENTIAL VALUE	unpublished district court order
PARTIES	Miguel Enrique Diaz v. M. Osman, et al.

TOPICS

- prisoners rights
- section 1983
- pleadings
- civil procedure
- sanctions

PRACTICE AREAS

- prisoner civil rights
- federal civil procedure
- in forma pauperis proceedings

QUESTIONS PRESENTED

1. Whether a prisoner with at least three qualifying dismissals may proceed in forma pauperis when the complaint does not show that he was under imminent danger of serious physical injury.
2. Whether the amended complaint improperly joined separate and unrelated claims against multiple defendants.
3. Whether allegations in a separate filing may be considered to establish imminent danger when evaluating the complaint.
4. What disposition and filing requirements should apply to the deficient amended complaint and duplicative in forma pauperis applications.

HOLDINGS

1. A prisoner who has had at least three actions dismissed for failure to state a claim may proceed in forma pauperis only if the complaint shows that the prisoner is under imminent danger of serious physical injury; Diaz's amended complaint did not make that showing.
2. A prisoner may not bring separate and unrelated claims against multiple defendants in a single complaint.
3. The court may decline to consider allegations in a separate filing when determining whether the complaint itself establishes imminent physical danger for purposes of 28 U.S.C. § 1915(g).
4. An amended complaint supersedes its predecessors and must be complete in itself; plaintiff may not refer to other filings to bolster the amended complaint.

KEY QUOTATIONS

“Plaintiff is advised that he may not bring separate and unrelated claims against multiple defendants.” (2)

“Plaintiff is advised that any amended complaint will supersede its predecessors and, thus, must be complete in itself.” (2)

FACTUAL BACKGROUND

Plaintiff alleged inadequate wound care for a foot injury, denial of incontinence supplies in retaliation for grievances, delays or denials involving food and insulin, and failure to provide ice during hot weather. The alleged events involved separate medical and prison-condition claims, and the court found that the allegations did not establish imminent physical danger as required to overcome the three-strikes bar. Plaintiff also attempted to rely on allegations in a separate filing, rather than solely on the complaint.

PROCEDURAL HISTORY

Diaz filed this prisoner civil-rights action and later filed an amended complaint. Because he had at least three prior actions dismissed for failure to state a claim, the court treated him as a three-striker under 28 U.S.C. § 1915(g). The court found that the amended complaint did not show imminent physical danger, dismissed it with leave to amend, denied two duplicative in forma pauperis applications and an unnecessary extension motion, and allowed thirty days to file another amended complaint or a notice of voluntary dismissal.

DISPOSITION

other

CASES CITED

- Diaz v. Diaz, et al., No. 1:13-cv-0453-SKO (E.D. Cal. July 28, 2014)
- Diaz v. Vasquez, et al., No. 1:12-cv-0732-SAB (E.D. Cal. Feb. 25, 2013)
- Diaz v. Diaz, No. 1:12-cv-1296-AWI-SAB (E.D. Cal. Sept. 4, 2014)
- George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007)

OPINION

(PC) Diaz v. Osman

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 MIGUEL ENRIQUE DIAZ, Case No. 2:23-cv-1449-DAD-JDP (P) 12 Plaintiff, 13 v.
ORDER 14 M. OSMAN, et al., 15 Defendants. 16 17 18 Plaintiff has filed an amended complaint,
ECF No. 29, and three applications to proceed in 19 forma pauperis, ECF Nos. 31, 32, & 35. He
is, however, a “three-striker” within the meaning of
20 Title 28 U.S.C. § 1915(g). Plaintiff has had at least three cases dismissed for failure to state a
21 claim upon which relief can be granted: (1) Diaz v. Diaz, et al., No. 1:13-cv-0453-SKO (E.D.
Cal.

22 Jul. 28, 2014) at ECF No. 29; (2) Diaz v. Vasquez, et al., No. 1:12-cv-0732-SAB (E.D. Cal.
Feb.

23 25, 2013) at ECF No. 23; (3) Diaz v. Diaz, No. 1:12-cv-1296-AWI-SAB (E.D. Cal. Sept. 4,
2014) 24 at ECF No. 41. 25 Plaintiff might still be eligible to proceed in forma pauperis if his
complaint made a 26 showing of imminent physical danger, but it does not. He alleges that
“wound care” for his foot 27 in June through August 2023 was inadequate. ECF No. 29 at 3-5. The
specifics, however, are 28 1 difficult to understand. Separately, plaintiff alleges that he has been
denied incontinence supplies 2 in retaliation for filing grievances. Id. at 6-7. The only connection
between these separate 3 medical claims is the allegation that the lack of incontinence supplies
raises the risk of infecting 4 the wound on his foot. Id. at 7. In another unrelated claim stemming
from events in May 2024, 5 plaintiff alleges that his provision of food and insulin was being
delayed and sometimes denied.

6 Id. at 8. Finally, plaintiff alleges that, during July 2024, he was not offered any ice for the heat.

7 Id. Plaintiff is advised that he may not bring separate and unrelated claims against multiple 8
defendants. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). 9 Additionally, none of the

foregoing claims are connected to an allegation of imminent physical danger. Plaintiff references imminent physical danger in a separate filing, ECF No. 32, wherein he argues that the allegations in his complaint make the showing. I decline to consider pleadings outside the complaint, however, in weighing whether to allow plaintiff to proceed despite his status as a three-striker. I will dismiss the immediate complaint with leave to amend. Plaintiff should use the district's complaint form that will be sent to him with this order. He is advised that any amended complaint will supersede its predecessors and, thus, must be complete in itself. Plaintiff may not refer to other filings in his complaint for the purpose of bolstering his allegations. If the amended complaint fails to make the showing of imminent danger, I will recommend that plaintiff's most recent application to proceed in forma pauperis, ECF No. 35, be denied. I will deny his other applications to proceed in forma pauperis, ECF Nos. 31 & 32, as duplicative and his motion for extension of time to file an application, ECF No. 34, as unnecessary. Accordingly, it is ORDERED that: 1. Plaintiff's first amended complaint, ECF No. 29, is DISMISSED with leave to amend. 2. Within thirty days from service of this order, plaintiff shall file either (1) an amended complaint or (2) notice of voluntary dismissal of this action without prejudice. 3. I will defer ruling on this application for now. 4. Failure to timely file either an amended complaint or notice of voluntary dismissal may result in the imposition of sanctions, including a recommendation that this action be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b). 5. The Clerk of Court shall send plaintiff a complaint form with this order. 6. Plaintiff's applications to proceed in forma pauperis, ECF Nos. 31 & 32, are DENIED as duplicative, and his motion for extension of time, ECF No. 34, is DENIED as unnecessary. 7. IT IS SO ORDERED. Dated: April 17, 2025

JEREMY D. PETERSON

UNITED STATES MAGISTRATE JUDGE

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