

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

**Darrell Eugene Johnson, A.K.A. Darryl E. Johnson v. Cal.
Correctional Health Care Services, et al.**

Johnson v. Cal. Correctional Health Care Services · No. 1:25-cv-00921 GSA (PC) · Decided September 29, 2025

SUMMARY

The United States Magistrate Judge recommends denying Darrell Eugene Johnson’s application to proceed in forma pauperis under the Prison Litigation Reform Act’s three-strikes provision, 28 U.S.C. § 1915(g). The court finds that Johnson had accrued at least three qualifying strikes and had not adequately alleged imminent danger of serious physical injury when he filed the action, and therefore recommends requiring payment of the filing fee in full before proceeding.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Gary S. Austin
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	September 29, 2025
DOCKET	1:25-cv-00921 GSA (PC)
DISPOSITION	other
PROCEDURAL POSTURE	A state prisoner filed a civil-rights action under 42 U.S.C. § 1983 and applied to proceed in forma pauperis. The magistrate judge issued findings and recommendations recommending denial of in forma pauperis status under the Prison Litigation Reform Act's three-strikes provision and requiring payment of the filing fee before the action could proceed.
STANDARD OF REVIEW	The court reviewed the prior dismissals and the complaint to determine whether plaintiff had accrued at least three qualifying strikes and whether the complaint plausibly alleged imminent danger of serious physical injury at the time of filing.
PRECEDENTIAL VALUE	unpublished
PARTIES	Darrell Eugene Johnson, A.K.A. Darryl E. Johnson v. Calif. Correctional Health Care Services, et al.

TOPICS

prisoners rights

section 1983

civil rights

civil procedure

motions to dismiss

PRACTICE AREAS

prisoner civil rights

in forma pauperis

federal civil procedure

QUESTIONS PRESENTED

1. Whether plaintiff had accrued at least three prior strikes under 28 U.S.C. § 1915(g).
2. Whether plaintiff's complaint alleged facts demonstrating that he was under imminent danger of serious physical injury when the complaint was filed.
3. Whether plaintiff therefore could proceed in forma pauperis or was required to pay the filing fee in full before proceeding.

HOLDINGS

1. Plaintiff had accrued at least three prior strikes because prior actions had been dismissed for failure to state a claim, as frivolous or duplicative, or after dismissal for failure to state a claim followed by a failure to amend.
2. Plaintiff did not plausibly allege that he was under imminent danger of serious physical injury when he filed the complaint.
3. Plaintiff's application to proceed in forma pauperis should be denied, and plaintiff should be required to pay the filing fee in full before proceeding further.

KEY QUOTATIONS

"To proceed in forma pauperis is a privilege not a right." (at 5)

"An inmate who has accrued three strikes is precluded from proceeding in forma pauperis unless he is "under imminent danger of serious physical injury."" (at 7)

"Imminent danger of serious physical injury must be a real and present threat, not merely speculative or hypothetical." (at 8)

FACTUAL BACKGROUND

Plaintiff, a state prisoner, filed a § 1983 complaint concerning medical risks and treatment associated with his prior incarceration at North Kern Reception Center. At the time he filed the complaint, he was housed at Solano State Prison rather than North Kern. Court records showed at least three prior qualifying strikes, and plaintiff confirmed that the prior cases were his despite using inconsistent names and prisoner identification numbers.

PROCEDURAL HISTORY

Plaintiff filed the complaint and an in forma pauperis application on July 22, 2025, and the case was transferred to the relevant division on July 28, 2025. After reviewing plaintiff's identity information and prior litigation, the

court determined that at least three prior cases qualified as strikes under 28 U.S.C. § 1915(g). Plaintiff was ordered to show cause regarding discrepancies in his name and prisoner identification number; he confirmed that he was the person associated with the prior cases but did not allege facts showing imminent danger of serious physical injury when he filed this action. The magistrate judge recommended denying in forma pauperis status and requiring plaintiff to pay the filing fee in full, subject to fourteen days for objections.

DISPOSITION

other

CASES CITED

- Rodriguez v. Cook, 169 F.3d 1176, 1180 (9th Cir. 1999)
- Smart v. Heinze, 347 F.2d 114, 116 (9th Cir. 1963)
- Keeton v. Marshall, No. CV 17-01213 FMO (KS), 2018 WL 4381543, at *6 (C.D. Cal. June 8, 2018)
- Owens v. Matthews, No. CV 16-07755 JFW (KS), 2017 WL 603183, at *2 (C.D. Cal. Jan. 6, 2017)
- Weller v. Dickson, 314 F.2d 598, 600 (9th Cir. 1963)
- Shobe v. People of State of California, 362 F.2d 545, 546 (9th Cir. 1966)
- Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013)
- Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2006)
- O'Neal v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008)
- Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017)
- Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir. 2007)
- Abdul-Akbar v. McKelvie, 239 F.3d 307, 312-14 (3d Cir. 2001)
- Medberry v. Butler, 185 F.3d 1189, 1192-93 (11th Cir. 1999)
- Ashley v. Dilworth, 147 F.3d 715, 717 (8th Cir. 1998)
- Banos v. O'Guin, 144 F.3d 883, 885 (5th Cir. 1998)
- Lipsey v. Allison, No. 1:21-cv-00912 GSA, 2021 WL 2390424, at *3 (E.D. Cal. June 11, 2021)
- Blackman v. Mjening, No. 1:16-cv-01421 LJO GSA, 2016 WL 5815905, at *1 (E.D. Cal. Oct. 4, 2016)
- Ray v. Lara, 31 F.4th 692, 695 (9th Cir. 2022)
- United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992)
- Roberts v. Marshall, 627 F.3d 768, 769 n.1 (9th Cir. 2010)
- Jenkins v. Johnson, 330 F.3d 1146, 1149 n.2 (9th Cir. 2003)
- Pace v. DiGuglielmo, 544 U.S. 408 (2005)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 DARRELL EUGENE JOHNSON, A.K.A. No. 1:25-cv-00921 GSA (PC)
DARRYL E. JOHNSON, 12 ORDER AND FINDINGS AND Plaintiff, RECOMMENDATIONS
13 v. ORDER RECOMMENDING: 14 CALIF. CORRECTIONAL HEALTH (1) PLAINTIFF'S
APPLICATION TO 15 CARE SERVICES, et al. PROCEED IN FORMA PAUPERIS BE
DENIED CONSISTENT WITH 28 U.S.C. § 16 Defendants.

1915(G) 17 (ECF No. 2), AND 18 (2) PLAINTIFF BE REQUIRED TO PAY THE FILING FEE
IN FULL PRIOR TO 19 PROCEEDING ANY FURTHER WITH THIS ACTION 20
PLAINTIFF'S OBJECTIONS DUE IN 21 FOURTEEN DAYS 22 23 Plaintiff, a state prisoner
proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and 24 has requested authority
pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis.

ECF Nos. 1, 25 2, 10. The matter was referred to a United States Magistrate Judge pursuant to 28
U.S.C. § 26 636(b)(1)(B) and Local Rule 302. 27 For the reasons stated below the undersigned
will recommend that Plaintiff's application 28 to proceed in forma pauperis be denied consistent
with 28 U.S.C. § 1915(g), and that he be 1 required to pay the filing fee in full prior to proceeding
any further with this action.

Plaintiff will 2 be given fourteen days to file objections to this order. 3 I. RELEVANT FACTS 4 A.
Filing of Complaint 5 On July 22, 2025, Plaintiff's complaint and his application to proceed in
forma pauperis 6 were docketed in the Sacramento Division. ECF Nos. 1, 2. Shortly thereafter, on
July 28, 2025, 7 the matter was transferred to this division. ECF No. 6.

The same day, Plaintiff's six-month 8 prison trust fund account statement was docketed. ECF No.
10. Thus, Plaintiff's application to 9 proceed in forma pauperis is complete. 10 B. Discrepancies
with Plaintiff's True Name and Prison Identification Number 11 On July 29, 2025, the Court
reviewed Plaintiff's instant complaint as well as the cases that 12 Plaintiff had previously filed
with Court.

In so doing, it noted that on Plaintiff's instant complaint 13 he stated to the Court that his name
was "Darryl Johnson"; that his prisoner ID number was, "T- 14 52858," and that was incarcerated
at California State Prison – Solano ("CSP-Solano"). See ECF 15 No. 1 at 1 (case caption of
Plaintiff's complaint); see also ECF No. 9 at 2 (Court's order 16 remarking same).

The Court noted, however, that a search of the California Department of 17 Correction and
Rehabilitation's inmate search database yielded: (1) no inmates named "Darryl 18 Johnson" with a
prisoner ID number of "T-52858"; (2) no inmates named "Darryl Johnson" were 19 were
incarcerated at CSP-Solano, and (3) no individual currently incarcerated in the CDCR's 20 system
had a prisoner ID number of T-52858.

ECF No. 9 at 2. The Court further noted that there was, however, a prisoner in the CDCR's system with the name of "Darrell Eugene Johnson" who was currently incarcerated at CSP-Solano. Id. That individual had a prisoner ID number of "AX- 6100." C. Order Directing Plaintiff to Provide All Past Identification Numbers and to Show Cause Based on these findings, the "AX-6100" prisoner ID number was added to the docket in this case.

See ECF No. 9 at 2-3. In addition, because the "AX-6100" identification number and the name "Darrell Eugene Johnson" were collectively tied to four strikes in the Court's database, Plaintiff was ordered to inform the Court what his correct prisoner ID number was. Id. Plaintiff was given fourteen days to comply with the Court's order. Id. D. Plaintiff's Showing of Cause In Plaintiff's showing of cause, he verified that his current prisoner ID number is "AX- 6100." ECF No. 12 at 1.

He also confirms that the spelling of his true name is "Darrell Eugene Johnson." Id. Plaintiff provides all his past CDCR prisoner identification numbers, one of which, he states was "T-52858." Id. He also admits that at one point, he was incarcerated in the San Mateo County Jail. Id. He cannot, however, remember what his inmate ID number was while he was being held there.

Id. Plaintiff appears to assert that these errors in his complaint were due to the fact that he is in the prison's Mental Health System Delivery Program and that he takes "psych" medication that alter his thoughts and actions; that he cannot afford a lawyer; that he has an ADA helper; and, that he has a hard time comprehending or understanding and is mentally impaired.

ECF No. 12 at 1. As a result, Plaintiff states he sometimes is unaware of what he has done until later. Id. Plaintiff does not deny that he is the correct individual in the four cases that constitute strikes. See generally ECF No. 12. He simply asks the Court to allow him to proceed in forma pauperis because he cannot afford an attorney; he uses an Americans With Disabilities Act helper; and, that he has a hard time comprehending things or understanding them.

II. IN FORMA PAUPERIS STATUS "[In forma pauperis] status is not a constitutional right." *Rodriguez v. Cook*, 169 F.3d 1176, 1180 (9th Cir. 1999) (brackets added); *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965) ("To proceed in forma pauperis is a privilege not a right."). An inmate's in forma pauperis status may be revoked at any time if the court, either sua sponte or on a motion, determines that the status was improvidently granted.

Keeton v. Marshall, No. CV 17-01213 FMO (KS), 2018 WL 25 4381543, at *6 (C.D. Cal. June 8, 2018) (citation omitted) (italics added); *Owens v. Matthews*, 26 1 In the showing of cause, Plaintiff states that he used the name "Darryl E. Johnson" on the instant complaint because when he was incarcerated at the San Mateo County Jail, that is how they spelled his name.

ECF No. 12 at 1. As a result, he used it for a long time because the jail 28 was using it. Id. 1 No. CV 16-07755 JFW (KS), 2017 WL 603183, at *2 (C.D. Cal. Jan. 6, 2017) (stating same). 2 The grant or refusal of permission to proceed in forma pauperis is left to the sound discretion of 3 the district court. Smart, 347 F.2d 114, 116 (9th Cir. 1963) (citing Weller v. Dickson, 314 F.2d 4 598 (9th Cir.

1963)). The latitude given a district court in such matters is especially broad in civil 5 actions by prisoners against their wardens and other officials. Smart, 347 F.2d at 116 (footnote 6 citation omitted); Shobe v. People of State of California, 362 F.2d 545, 546 (9th Cir. 1966) (citing 7 Smart). 8 III. THREE STRIKES RULE: 28 U.S.C. § 1915(g) 9 28 U.S.C. § 1915(g) states: 10 In no event shall a prisoner bring a civil action or appeal a judgment in a civil action 11 or proceeding under this section if the prisoner has, on 3 or more prior occasions, 12 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, 13 or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

14 15 “It is well-settled that, in determining a [Section] 1915(g) ‘strike,’ the reviewing court 16 looks to the dismissing court’s action and the reasons underlying it.” Knapp v. Hogan, 738 F.3d 17 1106, 1109 (9th Cir. 2013) (brackets added) (emphasis added) (citation omitted). “[Section] 18 1915(g) should be used to deny a prisoner’s in forma pauperis status only when, after careful 19 evaluation of the order dismissing an action, and other relevant information, the district court 20 determines that the action was dismissed because it was frivolous, malicious or failed to state a 21 claim.” Andrews v. King, 398 F.3d 1113, 1121 (9th Cir.

2006) (brackets added). “[W]hen a 22 district court disposes of an in forma pauperis complaint ‘on the grounds that [the claim] is 23 frivolous, malicious, or fails to state a claim upon which relief may be granted,’ such a complaint 24 is ‘dismissed’ for purposes of § 1915(g) even if the district court styles such dismissal as denial of 25 the prisoner’s application to file the action without prepayment of the full filing fee.” O’Neal v. 26 Price, 531 F.3d 1146, 1153 (9th Cir.

2008) (second alteration in original). Dismissal also counts 27 as a strike under § 1915(g) “when (1) a district court dismisses a complaint on the ground that it 28 1 fails to state a claim, (2) the court grants leave to amend, and (3) the plaintiff then fails to file an 2 amended complaint” regardless of whether the case was dismissed with or without prejudice.

3 Harris v. Mangum, 863 F.3d 1133, 1142-43 (9th Cir. 2017). 4 An inmate who has accrued three strikes is precluded from proceeding in forma pauperis 5 unless he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

To satisfy 6 the exception, the plaintiff must have alleged facts that demonstrate that he was “under imminent 7 danger of serious physical injury” at the time of filing the complaint. *Andrews v. Cervantes*, 493 F.3d 1047, 1053 (9th Cir. 2007) (“[I]t is the circumstances at the time of the 9 complaint that matters for purposes of the ‘imminent danger’ exception to § 1915(g).”); see also 10 *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 312-14 (3rd Cir.

2001); *Medberry v. Butler*, 185 F.3d 1118, 1192-93 (11th Cir. 1999); *Ashley v. Dilworth*, 147 F.3d 715, 717 (8th Cir. 1998); *Banos v. O’Guin*, 144 F.3d 883, 885 (5th Cir. 1998); *Lipsey v. Allison*, No. 1:21-cv-00912 GSA, 2021 WL 132390424, at *3 (E.D. Cal. June 11, 2021) (“The availability of the imminent danger exception 14 turns on the conditions a prisoner faced at the time the complaint was filed, not at some earlier or 15 later time.”).

16 The danger faced by a prisoner at the time of filing must be imminent or ongoing. See, 17 e.g., *Medberry*, 185 F.3d at 1193 (finding plaintiff was not in either imminent or ongoing danger 18 and denying him ability to proceed in forma pauperis as three strikes litigant). “Imminent danger 19 of serious physical injury must be a real and present threat, not merely speculative or 20 hypothetical.” *Lipsey*, 2021 WL 132390424, at *3; *Blackman v. Mjening*, No. 1:16-cv-01421 LJO 21 GSA, 2016 WL 5815905, at *1 (E.D.

Cal. Oct. 4, 2016). In addition, “the imminent danger 22 exception to the [Prison Litigation Reform Act’s] three strikes provision requires a nexus between 23 the alleged imminent danger and the violations of law alleged in the complaint.” *Ray v. Lara*, 31 F.4th 692, 695 (9th Cir. 2022) (brackets added). 25 IV. PLAINTIFF’S THREE STRIKES STATUS 26 A review of court records reveals that at least three cases brought by Plaintiff qualify as 27 28 1 strikes under Section 1915(g).

The Court takes judicial notice of the following lawsuits 2 2 previously filed by Plaintiff and dismissed on grounds listed in Section 1915(g) prior to him 3 bringing the instant matter: 4 • *Johnson v. Davey*, No. 1:17-cv-01257 LJO BAM (E.D. Cal. Oct. 11, 2018) (dismissed 5 for failure to state a claim); 6 • *Johnson v. Doe*, No. 3:22-cv-00264 JD (N.D. Cal. Mar.

7, 2022) (“Doe”) (dismissed 7 as duplicative and frivolous in light of multiple complaints filed with same allegation); 8 • *Johnson v. State of California Dep’t of Corr. & Rehab.*, No. 2:21-cv-02348 WBS 9 DMC (E.D. Cal. Aug. 31, 2023) (dismissed for failure to state a claim), and 10 • *Johnson v. Gastelo*, No. 2:20-cv-08900 VBF SP (C.D. Cal. Mar. 18, 2024) (dismissed 11 after initial dismissal on failure to state claim grounds, and leave to amend was 12 simultaneously granted, but Plaintiff then failed to amend). 13 The Court notes for the record that in the Doe case, Plaintiff uses his true name, “Darrell 14 Eugene Johnson.” See Doe, ECF No. 1 at 1 (case caption of complaint).

In that case, Plaintiff 15 also states that at the time that he filed that complaint he was incarcerated at the San Mateo 16 County Jail, and that his inmate ID number was, “1099468.” Id. Based on these facts, coupled 17 with the fact that in the showing of cause, Plaintiff does not deny that the Doe matter – which is a 18 strike – is his case, the Court stands on its initial finding that it is his case.

19 V. DISCUSSION 20 A. Case Brought After Three Strikes Accrued 21 Plaintiff signed the complaint on July 20, 2025,4 and it was docketed in this Court on July 22 2 A court “may take notice of proceedings in other courts, both within and without the federal 23 judicial system, if those proceedings have a direct relation to matters at issue.” United States ex rel.

Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992) 24 (citation and internal quotation marks omitted) (collecting cases); Fed. R. Evid. 201(b)(2) (court may take judicial notice of facts that are capable of accurate determination by sources whose 25 accuracy cannot reasonably be questioned). 3 “[W]hen (1) a district court dismisses a complaint on the ground that it fails to state a claim, (2) 26 the court grants leave to amend, and (3) the plaintiff then fails to file an amended complaint, the 27 dismissal counts as a strike under § 1915(g).” Harris v. Mangum, 863 F.3d 1133, 1143 (9th Cir.

2017) (brackets added). 28 4 The signing date of a pleading is the earliest possible filing date pursuant to the mailbox rule. 1 22, 2025. See ECF No. 1 at 1, 18. July 20, 2025, is after the three strikes cases identified above 2 had been fully adjudicated. 3 Because the above-referenced strike cases were dismissed on Section 1915(g) grounds 4 before the instant matter was brought before the Court, as a three strikes litigant, Plaintiff was 5 required to pay the filing fee in full for this matter prior to proceeding in it unless, at the time that 6 he brought it on July 20, 2025, he alleged an adequate showing that he was in imminent danger of 7 serious physical harm.

See 28 U.S.C. § 1915(g) (serious physical harm requirement). 8 B. No Imminent Danger Alleged in Instant Matter 9 A review of the complaint indicates that Plaintiff does not make a plausible allegation that 10 he was in imminent danger of serious physical harm at the time that he filed it this month. See 11 generally ECF No. 1. Plaintiff simply alleges that in August of 2022, when he was sent to the 12 North Kern Reception Center, he told prison medical staff that he could not be incarcerated at that 13 particular prison because he “was high risk medical.” See ECF No. 1 at 8 (Claim One).

He 14 further asserts that his medical conditions made him more susceptible to infections. See generally 15 id. at 8-15. Importantly, at the time Plaintiff filed the instant complaint he was no longer housed 16 at North Kern Reception Center, but rather at Solano State Prison.

In sum, neither the content 17 of these allegations, nor when the alleged events occurred, show that when Plaintiff filed the 18 instant complaint on July 20, 2025, he was in imminent danger of

serious physical harm. 19 C. Plaintiff Is Required to Pay Filing Fee in Full First 20 Because Plaintiff was a three strikes litigant when he filed the instant case, and he has not 21 demonstrated that he was in imminent danger of serious physical harm when he did so, Section 22 1915(g) precludes him from proceeding any further with this matter prior to him first paying the 23 filing fee for it in full.

See 28 U.S.C. § 1915(g). For these reasons, the undersigned will 24 recommend that Plaintiff's application to proceed in forma pauperis be denied and that he be 25 required to pay the filing fee in full prior to proceeding any further with this action. Plaintiff will 26 See *Roberts v. Marshall*, 627 F.3d 768, 769 n.1 (9th Cir. 2010) (stating constructive filing date for 27 prisoner giving pleading to prison authorities is date pleading is signed); *Jenkins v. Johnson*, 330 F.3d 1146, 1149 n.2 (9th Cir.

2003), overruled on other grounds by *Pace v. DiGuglielmo*, 544 28 U.S. 408 (2005). 1 be given fourteen days to file objections to this order. 2 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court shall randomly assign a 3 District Judge to this matter. 4 IT IS FURTHER RECOMMENDED that Plaintiff's application to proceed in forma 5 pauperis (ECF No. 2) be DENIED and that he be required to pay the filing fee in full prior to 6 proceeding any further with this matter.

7 These findings and recommendations are submitted to the United States District Judge 8 assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days 9 after being served with these findings and recommendations, Plaintiff may file written objections 10 with the Court. Such a document should be captioned "Objections to Magistrate Judge's Findings 11 and Recommendations," and it shall not exceed fifteen pages.

12 The Court will not consider exhibits attached to the objections. To the extent that Plaintiff 13 wishes to refer to any exhibit, when possible, Plaintiff must reference the exhibit in the record by 14 its CM/ECF document and page number or reference the exhibit with specificity. Any pages filed 15 in excess of the fifteen-page limit may be disregarded by the District Judge when conducting the 16 28 U.S.C. § 636(b)(1)(C) review of the findings and recommendations.

Plaintiff's failure to file 17 objections within the specified time may result in the waiver of certain rights on appeal. See 18 *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014); *Martinez v. Ylst*, 951 F.2d 1153 (9th 19 Cir. 1991). 20 IT IS SO ORDERED. 21 22 Dated: September 27, 2025 /s/ Gary S. Austin UNITED STATES MAGISTRATE JUDGE 23 24 25 26 27 28