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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ISMAEL L. PADILLA,  
Plaintiff,  
v.  
DAVIS, *et al.*,  
Defendant.

Case No. 1:18-cv-01427-JDP  
FINDINGS AND RECOMMENDATIONS  
DENYING MOTION TO PROCEED IN  
FORMA PAUPERIS AND REQUIRING  
PAYMENT OF FILING FEE IN FULL  
WITHIN TWENTY-ONE DAYS  
ECF No. 4  
OBJECTIONS DUE WITHIN 14 DAYS  
ORDER TO ASSIGN CASE TO DISTRICT  
JUDGE

Plaintiff Ismael L. Padilla is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. On October 15, 2018, plaintiff filed an application to proceed *in forma pauperis* under 28 U.S.C. § 1915. ECF No. 4.

The Prison Litigation Reform Act provides that “[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more 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.” 28 U.S.C. § 1915(g). Plaintiff has had three or more actions dismissed as frivolous, as malicious, or

1 for failing to state a claim upon which relief maybe granted.<sup>1</sup> Plaintiff has been informed in prior  
2 cases that he is subject to § 1915(g).<sup>2</sup>

3 Plaintiff has not satisfied the imminent danger exception to § 1915(g). *See Andrews v.*  
4 *Cervantes*, 493 F.3d 1047, 1053-55 (9th Cir. 2007). Though plaintiff's complaint is difficult to  
5 decipher, it states that the "mailroom supervisor, name unknown, . . . assaulted and attempted to  
6 murder" plaintiff. ECF No. 1, at 2. Plaintiff does not elaborate on these allegations, failing to  
7 provide any context or factual support that would make them credible. But even if an assault or  
8 murder attempt occurred, plaintiff's allegation is only about the past; he does not allege that he is  
9 currently at risk.

10 Accordingly, plaintiff's *in forma pauperis* application should be denied, and he should  
11 pay the filing fee in full, since he has accrued three or more strikes and was not under imminent  
12 danger of serious physical harm at the time this action was initiated. *See* 28 U.S.C. § 1915(g).

### 13 **Order**

14 The clerk of court is directed to assign this case to a district judge who will review the  
15 findings and recommendations.

### 16 **Findings and Recommendation**

17 Based on the foregoing, it is HEREBY RECOMMENDED that:

- 18 1. plaintiff's *in forma pauperis* application, ECF No. 4, be DENIED;
- 19 2. plaintiff be required to pay the \$400 filing fee in full within twenty-one days of adoption  
20 of these findings and recommendations; and
- 21 3. if plaintiff fails to pay the \$400 filing fee in full within twenty-one days of adoption of  
22 these findings and recommendations, all pending motions be terminated and this action  
23 be dismissed without prejudice.

24 The undersigned submits the findings and recommendations to a district judge under 28

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26 <sup>1</sup> The cases include *Padilla v. Pride-Richardson*, 533 F. App'x 442 (5th Cir. 2013); *Padilla v.*  
27 *Watkins*, 491 F. App'x 484 (5th Cir. 2012); *Padilla v. Jenkins*, No. 3:11-cv-3509-M-BH, 2012 WL  
1161643 (N.D. Tex. Mar. 7, 2012), *findings and recommendations adopted*, 2012 WL 1174835  
(N.D. Tex. Apr. 9, 2012).

28 <sup>2</sup> *See Padilla v. Pride-Richardson*, 533 F. App'x 442 (5th Cir. 2013).

1 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of Practice for the United States District  
2 Court, Eastern District of California. Within fourteen days of the service of the findings and  
3 recommendations, plaintiff may file written objections to the findings and recommendations with  
4 the court and serve a copy on all parties. That document should be captioned “Objections to  
5 Magistrate Judge’s Findings and Recommendations.” The district judge will review the findings  
6 and recommendations under 28 U.S.C. § 636(b)(1)(C). Plaintiff’s failure to file objections within  
7 the specified time may result in the waiver of rights on appeal. *See Wilkerson v. Wheeler*, 772  
8 F.3d 834, 839 (9th Cir. 2014).

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10 IT IS SO ORDERED.

11 Dated: October 24, 2018

  
UNITED STATES MAGISTRATE JUDGE

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