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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTONIO GUTIERREZ, JR.,
Plaintiff,
v.
M. SANDOVAL,
Defendant.

Case No. 1:20-cv-01130-JLT-EPG

ORDER GRANTING IN PART
AND DENYING IN PART, WITHOUT
PREJUDICE, PLAINTIFF’S MOTION FOR
ATTENDANCE OF INCARCERATED
WITNESSES

(ECF No. 150)

Plaintiff Antonio Gutierrez, Jr. is proceeding *in forma pauperis* in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff is presently an inmate confined at California Correctional Training Facility (CTF) in Soledad, California.

On July 8, 2024, Plaintiff filed a motion titled Motion for the Appearance of Incarcerated Witnesses. (ECF No. 150).¹ In this motion, Plaintiff asks that the Court direct the CTF Warden to produce Plaintiff at trial and that Plaintiff “be presented in neat, civilian clothing—not prison garb—and to be unshackled during the trial.” (*Id.* at 2). Plaintiff does not request the attendance of any other incarcerated witness at trial other than himself.

¹ While the Court’s Scheduling Order allows Defendant to file opposition on or before July 26, 2024 (ECF No. 126 at 3), Plaintiff indicated that Defendant does not oppose this motion (ECF No. 150-1 at 2).

1 The Court will grant the motion insofar as it requests an order requiring the Warden to
2 produce Plaintiff for trial. While Plaintiff does not have an absolute right to attend trial, it is the
3 general practice of courts in the Eastern District of California to permit prisoners to personally
4 attend trial in their civil rights cases. *See Navarro v. Herndon*, No. 2:09-CV-1878 KJM KJN,
5 2015 WL 2128601, at *3 (E.D. Cal. May 6, 2015). The Court usually enters a writ of habeas
6 corpus ad testificandum about a month prior to trial without the need for Plaintiff to file a motion
7 on his own behalf. *See, e.g., Order and Writ of Habeas Corpus Ad Testificandum to Transport*
8 *Plaintiff for Trial*, ECF No. 116, *Bush v. Santoro, et al.*, No. 1:20-cv-00015-JLT-EPG (PC) (E.D.
9 Cal. Jan. 12, 2024); *Order and Writ of Habeas Corpus Ad Testificandum to Transport Plaintiff for*
10 *Trial*, ECF No. 129, *Hammler v. Gooch, et al.*, No. 19-cv-00653-JLT-EPG (E.D. Cal. Feb. 2,
11 2024). The Court does not normally issue writs further in advance than four to six weeks before
12 the trial because incarcerated plaintiffs or witnesses may be transferred or released from custody.
13 Since the jury trial in this case is set for more than three months from now, on October 29, 2024,
14 the Court will issue the writ for attendance approximately one month before that date. No further
15 request from Plaintiff is needed.

16 As to Plaintiff's request to appear in civilian clothes and unshackled, the Court will deny
17 that request without prejudice. Plaintiff may raise the request at the pretrial conference and/or in
18 pretrial motions before the District Judge.

19 Accordingly, Plaintiff's Motion for Attendance of Incarcerated Witnesses (ECF No. 150)
20 is GRANTED in part and DENIED in part without prejudice.

21 IT IS SO ORDERED.

22 Dated: July 9, 2024

23 /s/ Eric P. Gray
24 UNITED STATES MAGISTRATE JUDGE
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