

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

| | | |
|-------------------------------|---|----------------------|
| RICARDO VALDEZ, | § | No. 2:08–CV–1978–DAE |
| | § | |
| Plaintiff, | § | |
| | § | |
| vs. | § | |
| | § | |
| CORRECTIONAL OFFICERS | § | |
| WALKER, GUFFEE, and VORON, et | § | |
| al., | § | |
| | § | |
| Defendants. | § | |

ORDER CERTIFYING THAT PLAINTIFF’S APPEAL IS NOT IN GOOD
FAITH UNDER 28 U.S.C. § 1915(A)(3)

This is a closed federal civil rights action. Plaintiff Ricardo Valdez (“Plaintiff”), a current inmate at the R.J. Donovan Correctional Facility in San Diego, California, appeals to the Ninth Circuit Court of Appeals this Court’s denial of his motion to reopen the case. The Ninth Circuit referred the matter to this Court for a determination of whether Plaintiff’s in forma pauperis (“IFP”) status “should continue for this appeal or whether the appeal is frivolous or taken in bad faith.” (Dkt. # 78.)

This Court determines that Plaintiff’s IFP status should not continue. There are no valid grounds on which an appeal can be based given that none of the arguments that Plaintiff made to this Court would be non-frivolous if made again on appeal. This Court twice dismissed Plaintiff’s motions to reopen (Dkts. ## 71,

73) because Plaintiff's time to request to be appointed counsel had long passed,¹ and the Court stands by its previous May 10, 2012 Order granting summary judgment for Defendants.² Based on the record before it, the Court finds and certifies that any appeal taken from its Order denying Plaintiff's motion to reopen is not taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A); Hooker v. American Airlines, 302 F.3d 1091, 1092 (9th Cir. 2002) (noting that an appeal is taken in "good faith" if it seeks review of "non-frivolous" issues); O'Loughlin v. Doe, 920 F.2d 614, 617 (9th Cir. 1990) ("[A]n issue is frivolous if it has 'no arguable basis in fact or law.'" (citation omitted)).

Accordingly, Plaintiff's IFP status is hereby **REVOKED**.

The Clerk of the Court shall forthwith notify Plaintiff and the Ninth Circuit of this Order. See Fed. R. App. P. 24(a)(4). Plaintiff may file a motion for leave to proceed IFP on appeal in the Ninth Circuit within thirty (30) days after service of notice of this Order. See Fed. R. App. P. 24(a)(5). Any such motion "must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action." Id.

¹ Plaintiff has been proceeding IFP since January 8, 2009 (Dkt. # 10).

² Notably, Plaintiff appealed this Court's judgment on October 9, 2012 (Dkt. # 62), and the Ninth Circuit Court of Appeals denied that appeal for lack of jurisdiction on November 8, 2012 (Dkt. # 66).

IT IS SO ORDERED.

DATED: San Antonio, Texas, April 30, 2020.



A handwritten signature in blue ink, appearing to read "David Alan Ezra". The signature is written in a cursive style and is positioned above a horizontal line.

David Alan Ezra
Senior United States District Judge