

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BILLY RAY SHANEE MALDONADO,  
Plaintiff,  
v.  
JOE A. LIZARRAGA, et al.,  
Defendants.

No. 2:15-cv-2682 GEB AC P

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff seeks leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. ECF No. 10.

The Prison Litigation Reform Act of 1995 (PLRA) permits any court of the United States to authorize the commencement and prosecution of any suit without prepayment of fees by a person who submits an affidavit indicating that the person is unable to pay such fees; however,

[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior 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.

////

1 28 U.S.C. § 1915(g). The court takes judicial notice<sup>1</sup> of the following lawsuits previously filed  
2 by plaintiff:

3 (1) Maldonado v. Yates, et al., 1:11-cv-01735 LJO GSA (E.D. Cal. Jun. 13, 2013),  
4 dismissed for failure to state a claim upon which relief may be granted. Id., ECF No.  
5 19.

6 (2) Maldonado v. Trimble, et al., 1:11-cv-02160 LJO DLB (E.D. Cal. Apr. 19, 2013)  
7 dismissed for failure to state a claim upon which relief may be granted. Id., ECF No.  
8 13.

9 (3) Maldonado v. Yates, et al., 1:11-cv-01885 AWI JLT (E.D. Cal. Jan. 17, 2014),  
10 dismissed for failure to state a claim upon which relief may be granted. Id., ECF No.  
11 16.

12 The court's review of the above records reveals that on at least three occasions, lawsuits  
13 filed by plaintiff have been dismissed on the grounds that they were frivolous or malicious or  
14 failed to state a claim upon which relief may be granted. Therefore, this court finds that plaintiff  
15 is precluded from proceeding in forma pauperis in this action unless plaintiff is "under imminent  
16 danger of serious physical injury." 28 U.S.C. § 1915(g). To meet the exception, plaintiff must  
17 have alleged facts that demonstrate that he was "under imminent danger of serious physical  
18 injury" at the time of filing the complaint. Andrews v. Cervantes, 493 F.3d 1047, 1053 (9th Cir.  
19 2007) (holding that "it is the circumstances at the time of the filing of the complaint that matters  
20 for purposes of the 'imminent danger' exception under § 1915(g).").

21 Plaintiff has not alleged any facts which suggest that he is under imminent danger of  
22 serious physical injury. In his complaint, plaintiff alleges that he was issued a rules violation  
23 report for the theft of two pens. ECF No. 1 at 4. He claims there is no evidence that he stole the  
24 pens and that defendants tricked him into signing a document that incriminated himself. Id.  
25 Nothing in the complaint indicates that he is in danger of being physically injured.

26  
27 <sup>1</sup> Judicial notice may be taken of court records. Valerio v. Boise Cascade Corp., 80  
28 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), aff'd, 645 F.2d 699 (9th Cir.), cert. denied, 454 U.S. 1126  
(1981).

1           Because the court finds that plaintiff has not made the requisite showing of “imminent  
2 danger” to qualify for an exception to the “three strikes” bar under 1915(g), plaintiff will be  
3 denied in forma pauperis status and be required to pay the full filing fee in order to proceed with  
4 this action.

5           Accordingly, IT IS HEREBY ORDERED that:

- 6           1. Plaintiff’s request to proceed in forma pauperis (ECF No. 10) is denied;
- 7           2. Plaintiff is required to pay the filing of \$400.00 in full within twenty-one (21) days of  
8           this order’s entry; and
- 9           3. Failure to pay the filing fee as directed will result in a recommendation that this action  
10           be dismissed.

11 DATED: May 10, 2017

12   
13 \_\_\_\_\_  
14 ALLISON CLAIRE  
15 UNITED STATES MAGISTRATE JUDGE  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28