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8   UNITED STATES DISTRICT COURT

9   FOR THE EASTERN DISTRICT OF CALIFORNIA

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11   ROGELIO MAY RUIZ,   No. 2:19-cv-2352-TLN-EFB P

12   Plaintiff,

13   v.   FINDINGS AND RECOMMENDATIONS

14   NITA L. STORMES, et al.,

15   Defendants.

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17   Plaintiff is a state prisoner proceeding without counsel in an action brought under 42

18   U.S.C. § 1983. He seeks leave to proceed in forma pauperis. *See* 28 U.S.C. § 1915(a). For the

19   reasons stated below, the court finds that plaintiff has not demonstrated he is eligible to proceed

20   in forma pauperis.

21   A prisoner may not proceed in forma pauperis:

22   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
23   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
24   serious physical injury.

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26   28 U.S.C. § 1915(g). Court records reflect that on at least three prior occasions, plaintiff has

27   brought actions while incarcerated that were dismissed as frivolous, malicious, or for failure to

28   state a claim upon which relief may be granted. *See* (1) *Ruiz v. McGuire*, No. 3:16-cv-0388-AJB-

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BLM (S.D. Cal.), ECF No. 6 (May 9, 2016 order dismissing action after plaintiff failed to submit an amended complaint within allotted time following dismissal of complaint for failure to state a claim); (2) *Ruiz v. Curry*, No. 1:17-cv-1454-DAD-SAB (E.D. Cal.), ECF No. 19 (May 30, 2018 order dismissing action for failure to state a claim upon which relief could be granted); and (3) *Ruiz v. Curry*, No.1:17-cv-1407-SAD-SKO (E.D. Cal.), ECF No. 35 (February 25, 2019 order dismissing action for failure to state a claim upon which relief could be granted).

The section 1915(g) exception applies if the complaint makes a plausible allegation that the prisoner faced "imminent danger of serious physical injury" at the time of filing. 28 U.S.C. § 1915(g); *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007). In this case, plaintiff alleges that magistrate judges in the United States District Court for the Southern District of California have denied his requests for counsel and for an interpreter, thereby discriminating against him and obstructing justice. *See* ECF No. 1. These allegations fail to demonstrate that plaintiff was under an imminent danger of serious physical injury when he filed this action. Plaintiff's application for leave to proceed in forma pauperis must therefore be denied pursuant to § 1915(g). Plaintiff must submit the appropriate filing fee in order to proceed with this action.

Accordingly, IT IS HEREBY RECOMMENDED that:

1. Plaintiff's application to proceed in forma pauperis (ECF No. 2) be denied; and

2. Plaintiff be ordered to pay the $400 filing fee within fourteen days from the date of any order adopting these findings and recommendations and be warned that failure to do so will result in the dismissal of this action.

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(l). Within fourteen days after being served with these findings and recommendations, any party may file written objections with the court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Failure to file objections

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within the specified time may waive the right to appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

Dated: April 7, 2020.

EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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