

United States District Court

For the Northern District of California

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

CHARLES MUHAMMAD,
Plaintiff,
v.
DON KASSIG, et al.
Defendants

No. C 06-5362 MMC

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND; DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS; DENYING
APPLICATION FOR TEMPORARY
RESTRAINING ORDER**

Before the Court is plaintiff Charles Muhammad's complaint, application to proceed in forma pauperis, and application for a temporary restraining order, each filed August 31, 2006. When a party seeks to proceed in forma pauperis, the district court is required to dismiss the case if the court determines that the plaintiff fails to state a claim upon which relief can be granted. See 28 U.S.C. § 1915(e)(2)(B)(ii).

To state a claim upon which relief can be granted, a plaintiff must comply with Rule 8(a) of the Federal Rules of Civil Procedure, which requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." See Fed. R. Civ. Proc. 8(a)(2). Plaintiff's complaint fails to comply with this requirement. Plaintiff's complaint, in addition to listing the names of the defendants, disclosing plaintiff's mailing address, and pleading a prayer for relief, alleges only that "[d]efendants violated the Fourth Amendment," "[d]efendants violated the Fifth Amendment," "[d]efendants violated

1 the Sixth Amendment,” and “[d]efendants violated the Eighth Amendment.” There being no
2 factual allegations in the complaint indicating how each particular defendant violated the
3 four constitutional provisions referenced in the complaint, plaintiff has failed to state a claim
4 showing he is entitled to relief. See Fed. R. Civ. P. 8(a)(2).


5 Accordingly, plaintiff’s complaint is hereby DISMISSED, with leave to file, no later
6 than September 25, 2006, a First Amended Complaint. If plaintiff elects to do so, plaintiff
7 must comply with Rule 8(a)(2) by alleging, as to each named defendant, facts to support
8 plaintiff’s conclusion that a constitutional violation or violations have occurred. If plaintiff
9 does not file a First Amended Complaint by the required date, or the First Amended
10 Complaint does not comply with Rule 8(a)(2), the Court will dismiss the action without
11 further leave to amend.

12 In light of the dismissal of plaintiff’s complaint, plaintiff’s application to proceed in
13 forma pauperis is DENIED. Plaintiff may, however, resubmit an application to proceed in
14 forma pauperis in the event plaintiff files a First Amended Complaint.

15 Finally, plaintiff’s application for a temporary restraining order, by which plaintiff
16 seeks issuance of such order without notice to defendants, is hereby DENIED for failure to
17 comply with Rule 65(b) of the Federal Rules of Civil Procedure.

18 **IT IS SO ORDERED.**

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20 Dated: September 1, 2006

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22 MAXINE M. CHESNEY
23 United States District Judge
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