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

FRANCISCO J. VALADAO and JOHN W.)
FRASER, Individually and on behalf of all)
other[s] similarly situated,)
)
Plaintiffs,)
)
vs.)
)
SANTA CLARA COUNTY,)
)
Defendant.)
_____)

No. C 05-2770 WHA (PR)
ORDER OF SERVICE;
RULINGS
(Doc 2)

This is a civil rights case filed pro se by two plaintiffs who, at the time they filed the complaint, were confined at the Santa Clara County Jail pending civil commitment proceedings under the California Sexually Violent Predators Act. After some difficulty regarding in forma pauperis applications, plaintiff Valadao was granted leave to proceed IFP and plaintiff Fraser was dismissed for failure to provide a proper IFP application. Valadao has paid a partial filing fee as required by the Court. The Court will now perform the screening authorized in IFP cases by 28 U.S.C. § 1915(e)(2).

DISCUSSION

A. Standard of Review

A federal court must dismiss an in forma pauperis case if at any time it determines that the allegation of poverty is untrue or that the action is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. *Id.* Pro se pleadings must be liberally construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential

1 elements: (1) that a right secured by the Constitution or laws of the United States was
2 violated, and (2) that the alleged deprivation was committed by a person acting under the
3 color of state law. See West v. Atkins, 487 U.S. 42, 48 (1988).

4 B. Class action

5 Valadao purports to bring this case as a class action. However, pro se plaintiffs are not
6 adequate class representatives able to fairly represent and adequately protect the interests of
7 the class. Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975); see also Russell v.
8 United States, 308 F.2d 78, 79 (9th Cir. 1962) ("a litigant appearing in propria persona has no
9 authority to represent anyone other than himself"). The Court will not certify a class.

10 C. Legal claims

11 Plaintiff contends that defendant Santa Clara County, through its Board of
12 Supervisors, has determined that persons such as he who are accused of being Sexually
13 Violent Predators will be confined in the county jail under the conditions about which he
14 complains.

15 Petitioner's first claim is that his due process rights are violated by being confined
16 under conditions which are the same as, or more severe than, those applied to prisoners who
17 are accused or crimes or convicted of them. A civil detainee awaiting adjudication is entitled
18 to conditions of confinement that are not punitive. Jones v. Blanas, 393 F.3d 918, 932 (9th
19 Cir. 2004). A restriction is punitive where it is intended to punish, or where it is excessive in
20 relation to its non-punitive purpose, or is employed to achieve objectives that could be
21 accomplished in so many alternative and less harsh methods. Id. at 933-34 (citations omitted).
22 Legitimate, non-punitive government interests include ensuring a detainee's presence at trial,
23 maintaining jail security, and effective management of a detention facility. Id. at 932.

24 With respect to an individual confined awaiting adjudication under civil process, as is
25 plaintiff's situation, a presumption of punitive conditions arises where the individual is
26 detained under conditions identical to, similar to, or more restrictive than those under which
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1 pretrial criminal detainees are held, or where the individual is detained under conditions more
2 restrictive than those he or she would face upon commitment. Id. at 934. The government
3 must be afforded an opportunity to rebut this presumption. See id. at 934-35 (on remand,
4 government should be permitted to demonstrate legitimate, non-punitive interests justifying
5 the conditions of detainee awaiting SVPA proceedings, and to show that the restrictions
6 imposed on detainee were not excessive in relation to these interests). Under this standard,
7 plaintiff has stated a due process claim.

8 Plaintiff also asserts that restrictions on or prohibitions of his exercise of his Roman
9 Catholic religion, such as refusal to provide a chaplain and not permitting him to attend
10 services or wear a cross, violate the Religious Land Use and Institutionalized Persons Act of
11 2000, 42 U.S.C. § 2000cc-1 et seq. ("RLUIPA"). RLUIPA provides: "[n]o government shall
12 impose a substantial burden on the religious exercise of a person residing in or confined to an
13 institution, as defined in section 1997 [which includes state prisons, state psychiatric
14 hospitals, and local jails], even if the burden results from a rule of general applicability, unless
15 the government demonstrates that imposition of the burden on that person (1) is in furtherance
16 of a compelling governmental interest; and (2) is the least restrictive means of furthering that
17 compelling governmental interest." 42 U.S.C. § 2000cc-1(a). RLUIPA defines "religious
18 exercise" to include "any exercise of religion, whether or not compelled by, or central to, a
19 system of religious belief." San Jose Christian College v. Morgan Hill, 360 F.3d 1024, 1034
20 (9th Cir. 2004) (citing § 2000cc-5(7)(A)). RLUIPA does not define "substantial burden." Id.
21 Construing the term in accord with its plain meaning, the Ninth Circuit holds that "a
22 'substantial burden' on 'religious exercise' must impose a significantly great restriction or onus
23 upon such exercise." Id.

24 In view of the sweeping provisions of RLUIPA, plaintiff has stated a claim.

25 D. Motion for appointment of counsel

26 There is no constitutional right to counsel in a civil case. Lassiter v. Dep't of Social
27 Services, 452 U.S. 18, 25 (1981). 28 U.S.C. § 1915 confers on a district court only the power
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1 to "request" that counsel represent a litigant who is proceeding in forma pauperis. 28 U.S.C. §
2 1915(e)(1). This does not give the courts the power to make "coercive appointments of
3 counsel." Mallard v. United States Dist. Court, 490 U.S. 296, 310 (1989). In short, the Court
4 has only the power to ask pro bono counsel to represent plaintiff, not the power to "appoint"
5 counsel.

6 Plaintiff has presented his claims effectively, and appears to be capable of handling a
7 case of this sort. The motion will be denied.

8 CONCLUSION

9 1. Plaintiff's request to certify a class contained in the complaint is DENIED. His
10 motion for appointment of counsel (doc 2) also is DENIED.

11 2. The clerk shall issue summons and the United States Marshal shall serve, without
12 prepayment of fees, copies of the complaint in this matter and copies of this order upon
13 defendant Santa Clara County. The clerk shall also serve a copy of this order on the plaintiff.

14 3. In order to expedite the resolution of this case, the court orders as follows:

15 a. No later than sixty days from the date of service, defendant shall file a
16 motion for summary judgment or other dispositive motion. If defendant is of the opinion that
17 this case cannot be resolved by summary judgment, it shall so inform the court prior to the
18 date their summary judgment motion is due. All papers filed with the court shall be promptly
19 served on the plaintiff.

20 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
21 court and served upon defendant no later than thirty days from the date of service of the
22 motion. Plaintiff must read the attached page headed "NOTICE -- WARNING," which is
23 provided to him pursuant to Rand v. Rowland, 154 F.3d 952, 953-954 (9th Cir. 1998) (en
24 banc), and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988).

25 c. If defendant wishes to file a reply brief, it shall do so no later than fifteen
26 days after the date of service of the opposition.

27 d. The motion shall be deemed submitted as of the date the reply brief is due.

1 No hearing will be held on the motion unless the court so orders at a later date.

2 4. All communications by the plaintiff with the court must be served on defendant, or
3 defendant's counsel once counsel has been designated, by mailing a true copy of the document
4 to defendant or defendant's counsel. Papers intended to be filed in this case should be
5 addressed to the clerk rather than to the undersigned.

6 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
7 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is
8 required before the parties may conduct discovery.

9 6. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the
10 court informed of any change of address by filing a separate paper with the clerk headed
11 "Notice of Change of Address." He also must comply with the court's orders in a timely
12 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute
13 pursuant to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

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16 DATED: November ____18____, 2005.

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19 WILLIAM ALSUP
20 United States District Judge
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