

1
2
3
4
5
6
7
8
9

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Ismael Guillermo Hernandez,
Plaintiff
v.
Sheriff Joe Lombardo, et al.,
Defendants

2:16-cv-01219-JAD-NJK

**Order Denying Motion for Permission
to File and Revoking Permission to
Proceed *in forma pauperis***

[ECF No. 15]

10 Ismael Guillermo Hernandez brings this civil-rights action to challenge the ongoing criminal
11 proceedings against him in Nevada's Eighth Judicial District Court. On January 24, 2017, the
12 magistrate judge entered a report recommending that I dismiss this action without prejudice to
13 Hernandez's ability to bring his claims in the proper forum at the proper time.¹ On February 10,
14 2017, I adopted without review the magistrate judge's then-unobjected to report and
15 recommendation.² A few days after I issued my dismissal order, the court received a timely
16 dispatched objection to the report and recommendation, and Hernandez moved for leave to file an
17 amended complaint and later appealed my dismissal order to the Ninth Circuit. The Ninth Circuit
18 has referred this matter for me to determine whether Hernandez's *in forma pauperis* status should
19 continue on appeal, which requires me to determine whether Hernandez's appeal is frivolous or
20 taken in bad faith.³

21 In making this determination, I first take this opportunity to review the magistrate judge's
22 report and recommendation and Hernandez's objections de novo. I agree with the magistrate judge
23 that Hernandez's claims are barred by *Younger v. Harris*,⁴ and that all four requirements for *Younger*

24
25 ¹ ECF No. 8.

26 ² ECF No. 8.

27 ³ See 28 U.S.C. § 1915(a)(3); see also *Hooker v. American Airlines*, 302 F.3d 1091,1092 (9th Cir.
28 2002).

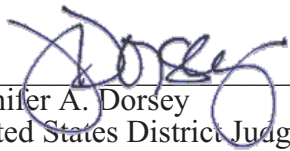
⁴ *Younger v. Harris*, 401 U.S. 37, 44 (1972).

1 abstention are present here. I therefore decline to enjoin the Nevada state court's criminal
2 proceedings against Hernandez or require that court to grant his bail request. Because these defects
3 cannot be cured by amendment, I deny Hernandez's motion for leave to file an amended complaint.⁵
4 And because this court lacks jurisdiction to enjoin Hernandez's ongoing state criminal proceedings, I
5 hereby certify that any appeal in this action is frivolous and taken in bad faith.

6 Accordingly, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Hernandez's
7 motion for permission to file new complaint [ECF No. 15] is **DENIED**, and Hernandez's *in forma*
8 *pauperis* status is hereby REVOKED.

9 The Clerk of Court is directed to CLOSE THIS CASE.

10 Dated this 21st day of March, 2017.

11 
12 _____
13 Jennifer A. Dorsey
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28

⁵ ECF No. 15.