

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 31 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ABU ALA M.D. BADRUDDOZA,

Plaintiff-Appellant,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY; et al.,

Defendants-Appellees.

No. 19-55221

D.C. No.

3:18-cv-02875-AJB-NLS

Southern District of California,
San Diego

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

The motion for reconsideration (Docket Entry No. 14) is denied, and the motion for reconsideration en banc (Docket Entry No. 15) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

19-55221

Abu Ala M.D. Badruddoza
c/o Interfaith Community Service
550 West Washington Avenue
Escondido, CA 92025

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No. 19-55221

D.C. No. 3:18-cv-02875-AJB-NLS
U.S. District Court for Southern
California, San Diego

MANDATE

The judgment of this Court, entered June 25, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7



**United States District Court
SOUTHERN DISTRICT OF CALIFORNIA**

Abu Ala MD Badruddoza

Civil Action No. 18-cv-2875-AJB-NLS

Plaintiff:

V.

The U.S. Department of Homeland Security; USCIS; USINS

Defendant.

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED:

The complaint must be dismissed for lack of jurisdiction and failure to state a claim. Thus, the Court DISMISSES WITHOUT LEAVE TO AMEND Plaintiff's 8 USCS § 1158 cause of action. The Court does not grant Plaintiff leave to amend on issues regarding 8 USCS § 1158 because this Court lacks proper jurisdiction to address Plaintiff's claim. Due to the dismissal of Plaintiff's complaint, the Court DENIES Plaintiff's IFP application, (Doc. No. 2), Request for Appointment of Counsel, (Doc. No. 3), Plaintiff's motion to issue address change as moot, (Doc. No. 5), and Plaintiff's motion to the FOI-PA and the incidents occurred, (Doc. No. 7).

Date: 1/31/19

CLERK OF COURT

JOHN MORRILL, Clerk of Court

By: s/ A. Corsello

I hereby attest and certify on 1/22/20, by: [Signature]
That the foregoing document is a full, true and correct
copy of the original on file in my office and in my legal
custody.

A. Corsello, Deputy

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ABU ALA MD BADRUDDOZA,

Plaintiff,

1

THE UNITED STATES DEPARTMENT
OF HOMELAND SECURITY

Defendant

Case No.: 18-CV-2875-AJB-NLS

ORDER:

- (1) DISMISSING PLAINTIFF'S COMPLAINT;**
- (2) DENYING PLAINTIFF'S MOTION TO PROCEED IN FORMA PAUPERIS;**
- (3) DENYING PLAINTIFF'S MOTION TO APPOINT COUNSEL;**
- (4) DENYING PLAINTIFF'S MOTION TO ISSUE ADDRESS CHANGE; AND**
- (5) DENYING PLAINTIFF'S MOTION TO THE FOI-PA AND THE INCIDENTS OCCURRED**

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1 This matter is before the Court on the Court's review of Plaintiff's complaint, (Doc.
2 No. 1). For the reasons set forth below, the Court **DENIES** Plaintiff's In Forma Pauperis
3 (hereinafter "IFP") motion, **DENIES** Plaintiff's Request for Appointment of Counsel as
4 moot, **DENIES** Plaintiff's motion to address change as moot, **DENIES** Plaintiff's motion
5 to the FOI-PA and the incidents occurred as moot, and **DISMISSES** Plaintiff's complaint.

6 **I. SCREENING PURSUANT TO 28 U.S.C. § 1915(e)**

7 Pursuant to 28 U.S.C. § 1915(e)(2), when reviewing an IFP motion, the Court must
8 rule on its own motion to dismiss before the complaint is served. *Lopez v. Smith*, 203 F.3d
9 1122, 1127 (9th Cir. 2000). Though the court has an obligation "where the petitioner is *pro
se*, particularly in civil rights cases, to construe the pleadings liberally and to afford the
10 petitioner the benefit of any doubt," *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir.
11 2010) (citing *Bretz v. Kelman*, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985))(emphasis in
12 original), it may not "supply essential elements of claims that were not initially pled." *Ivey
13 v. Board of Regents of the University of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982).

14 In order to survive a motion to dismiss, the complaint must contain "a short and plain
15 statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2).
16 The Court has discretion to dismiss claims that fail to comply with Rule 8's requirement
17 that claims be simple, concise, and direct. *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.
18 1996) (citing Fed. R. Civ. P. 8(e)). The Court must dismiss the complaint if it is frivolous,
19 malicious, failing to state a claim upon which relief may be granted, or seeking monetary
20 relief from a defendant immune from such relief. 28 U.S.C. § 1915(e)(2)(B); *Lopez*, 203
21 F.3d at 1127 ("[§] 1915(e) not only permits but requires a district court to dismiss an [IFP]
22 complaint that fails to state a claim"). Accordingly, the Court "may dismiss as frivolous
23 complaints reciting bare legal conclusions with no suggestion of supporting facts"
24 *Franklin v. Murphy*, 745 F.2d 1221, 1228 (9th Cir. 1984) (citation omitted).

25 Rule 8 of the Federal Rules of Civil Procedure states a pleading must contain "a
26 short and plain statement of the claim showing that the pleader is entitled to relief." Fed.
27 R. Civ. P. 8(a)(2). A claim satisfies Rule 8 if it can be determined from the complaint who

1 was being sued, for what relief, and on what theory. *McHenry*, 84 F.3d at 1178. A
2 complaint which is argumentative, prolix, replete with redundancy, and largely irrelevant
3 does not meet Rule 8's requirement of simplicity, directness, and clarity. *Id.* at 1177–78. If
4 the court determines that a claim lacks subject-matter jurisdiction, the court must dismiss
5 the action. Fed. R. Civ. P. 12(h)(3).

6 Plaintiff's complaint is only four pages in length and it is unclear what causes of
7 action Plaintiff is alleging due to Plaintiff's misunderstanding of the law; disorganization;
8 and lack of short, plain statements with legally relevant facts regarding his claim for relief.
9 From what the Court can decipher from Plaintiff's complaint, the Court assumes Plaintiff
10 is claiming asylum or refugee status. In particular, Plaintiff misunderstands the meaning
11 and purpose of claiming asylum or refugee status under 8 U.S.C § 1158.

12 Section 208(a) of the Immigration and Nationality Act, 8 U.S.C § 1158, authorizes
13 the Attorney General, in his discretion, to grant asylum to an alien who is a "refugee" as
14 defined in the Act. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). A "refugee" is an alien
15 who is unable or unwilling to return to his home country "because of persecution or a well-
16 founded fear of persecution on account of race, religion, nationality, membership in a
17 particular social group, or political opinion." 8 U.S.C § 1101 (a)(42)(A). The U.S.
18 Citizenship and Immigration Services has jurisdiction over an asylum application unless a
19 Notice to Appear or other charging document has been served on the applicant and filed
20 with an immigration court, in which case Executive Office for Immigration Review has
21 jurisdiction until proceedings are terminated. 8 C.F.R. § 208.2. Immigration judges have
22 exclusive jurisdiction over asylum applications. *Id.*

23 This complaint has not been filed in immigration court. Plaintiff has erroneously
24 filed in United States District Court, and therefore, the Court **DISMISSES WITHOUT**
25 **LEAVE TO AMEND.**

26 **II. MOTION TO PROCEED IN FORMA PAUPERIS**

27 Plaintiff moves to proceed IFP pursuant to 28 U.S.C. § 1915. All parties instituting
28 any civil action, suit, or proceeding in a district court of the United States, except an

1 application for writ of habeas corpus, must pay a filing fee of \$400. *See* 28 U.S.C. §
2 1914(a).¹ An action may proceed despite a plaintiff's failure to prepay the entire fee only
3 if the plaintiff is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*
4 *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). All actions sought to be filed IFP
5 pursuant to § 1915 must be accompanied by an affidavit, signed by the applicant under
6 penalty of perjury, that includes a statement of all assets which shows inability to pay initial
7 fees or give security. CivLR 3.2.a.

8 Here, Plaintiff fails to provide adequate information regarding his financial status.
9 According to a previous complaint filed by Plaintiff, Plaintiff is homeless and does not
10 have sufficient income to support himself. *Abu Alu MD Badruddoza v. United States*, No.
11 05CV1209 (S.D. Cal. filed June 23, 2005). However, for the reasons set forth above, the
12 Court DENIES Plaintiff's IFP motion as moot.

13 III. MOTION FOR APPOINTMENT OF COUNSEL

14 Plaintiff also requested the appointment of counsel to assist him in bringing this civil
15 action. The Constitution provides no right to appointment of counsel in a civil case, unless
16 an indigent litigant may lose his physical liberty if he loses the litigation. *Lassiter v. Dept.*
17 *of Soc. Serv.*, 452 U.S. 18, 26–27 (1981). Nevertheless, under 28 U.S.C. §1915(e)(1),
18 district courts are granted discretion to appoint counsel for indigent persons. This discretion
19 may be exercised only under “exceptional circumstances.” *Terrell v. Brewer*, 935 F.2d
20 1015, 1017 (9th Cir. 1991). “A finding of exceptional circumstances requires an evaluation
21 of both, the ‘likelihood of success on the merits and the ability of the [plaintiff] to articulate
22 his claims *pro se* in light of the complexity of the legal issues involved.’ Neither of these
23 issues is dispositive, and both must be viewed together before reaching a decision.” *Id.*
24 (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (emphasis in
25 original)).

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27
28 ¹ The filing fee includes the statutory fee of \$350 and an administrative fee of \$50. *See* 28
U.S.C. § 1914(a).

The complaint and exhibits demonstrate Plaintiff has previously initiated and defended numerous court and administrative proceedings. (*See generally* Doc. No. 1.) Furthermore, as discussed above, Plaintiff has not demonstrated a likelihood of success on the merits for a claim under 8 USCS § 1158. Further, Plaintiff's motion for appointment of counsel is **DENIED**, as moot for the reasons set forth above.

IV. CONCLUSION

For the foregoing reasons, the complaint must be dismissed for lack of jurisdiction and failure to state a claim. Thus, the Court **DISMISSES WITHOUT LEAVE TO AMEND** Plaintiff's 8 USCS § 1158 cause of action. The Court does not grant Plaintiff leave to amend on issues regarding 8 USCS § 1158 because this Court lacks proper jurisdiction to address Plaintiff's claim. Due to the dismissal of Plaintiff's complaint, the Court **DENIES** Plaintiff's IFP application, (Doc. No. 2), Request for Appointment of Counsel, (Doc. No. 3), Plaintiff's motion to issue address change as moot, (Doc. No. 5), and Plaintiff's motion to the FOI-PA and the incidents occurred, (Doc. No. 7).

IT IS SO ORDERED.

Dated: January 31, 2019

Anthony J. Battaglia
Hon. Anthony J. Battaglia
United States District Judge

I hereby attest and certify on 12/27/20
That the foregoing document is a full, true and correct
copy of the original on file in my office and in my legal
custody.

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

FILED

UNITED STATES COURT OF APPEALS

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JUN 25 2019

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Southern District of California,
San Diego

ORDER

Before: CLIFTON, N.R. SMITH, and FRIEDLAND, Circuit Judges.

Appellant's motion for an extension of time to file a response (Docket Entry No. 7) to the April 9, 2019 order is granted. The response has been filed.

Upon a review of the record, the responses to the April 9, 2019 order, and the opening brief received on April 5, 2019, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 2), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

DISMISSED.

**Additional material
from this filing is
available in the
Clerk's Office.**