

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JUN 20 2024

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

ALMA ROSALES,

Plaintiff-Appellant,

v.

IDAHO DEPARTMENT OF HEALTH
AND WELFARE; et al.,

Defendants-Appellees.

No. 23-35574

D.C. No. 1:19-cv-00426-DCN
District of Idaho,
Boise

ORDER

Before: CANBY, PAEZ, and SUNG, Circuit Judges.

The district court certified that this appeal is not taken in good faith and denied appellant leave to proceed on appeal in forma pauperis. *See* 28 U.S.C. § 1915(a). On September 25, 2023, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record and the response to the court's September 25, 2023 order, we conclude that this appeal is frivolous. We therefore confirm that appellant is not entitled to proceed in forma pauperis in this appeal, and we dismiss the appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

DKT 68
9/1/23

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ALMA ROSALES,

Plaintiff,

vs.

IDAHO DEPARTMENT OF HEALTH
AND WELFARE, et al.,

Defendants.

Case No. 1:19-cv-00426-DCN

ORDER

Before the Court is Plaintiff Alma Rosales's Motion to Reopen Case. Dkt. 66. The Defendants responded. Dkt. 67. Rosales did not reply. The Motion is fully briefed and ripe for the Court's review.

In July of 2020, the Court dismissed Rosales's Complaint without prejudice so she could find an attorney or refile the case on her own. Dkt. 53. The Court took this action because her non-lawyer son, Raul Mendez, was inappropriately acting as her attorney and filing papers on her behalf. Rosales appealed the Court's decision and the Ninth Circuit Court of Appeals affirmed. Dkt. 63. The Ninth Circuit specifically noted the Court's procedure—dismissal of the Complaint without prejudice so Rosales could find counsel or take other action—was appropriate. *Id.* at 3.

Rosales's Motion to Reopen is less than one page and written entirely in Spanish. Dkt. 66, at 1. As this Court has noted in other cases, all filings with the District of Idaho must be in English. *See, e.g.,* Case No. 1:21-cv-00112, Dkt. 6. Nevertheless, the Court had the document informally translated and is aware of its contents.

Besides being written in Spanish, the problem with this Motion is Rosales has not done what the Court and the Ninth Circuit told her she needed to do. She has not appeared via counsel and has not indicated she intends to proceed pro se. At the end of her motion, Rosales states that it is the Court's job to find her counsel. Dkt. 66, at 1. Her son, Raul, sent the Court's law clerk an email sharing the same opinion. Not so. In general, the constitutional right to counsel exists only in criminal cases, not in civil cases. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009). This is Rosales's *civil* case. It is her job to obtain representation and abide by all the Court's rules and procedures.

Besides not having obtained representation, Rosales has not provided any basis for the reopening of this case under Federal Rule of Civil Procedure 59 or 60. Her Motion is completely void of any explanation or reasoning for why the Court should reopen this case at this time when she has wholly failed to follow the Court's prior orders.

IT IS HEREBY ORDERED:

1. Rosales's Motion to Reopen (Dkt. 66) is DENIED.
2. This case remains CLOSED.¹



DATED: August 2, 2023


David C. Nye
Chief U.S. District Court Judge

¹ Unrelatedly, as part of their response, Defendants offered to continue to help Rosales in her efforts to obtain benefits. The Court recommends Rosales take Defendants up on that offer as it may resolve her concerns that led to this lawsuit.

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