

Jerry Baxter



Plaintiff, Pro Se

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JERRY BAXTER,

Plaintiff,

v.

**SAN BERNARDINO COUNTY,
et al.,**

Defendants.

Case No.: 5:25-cv-02620-
DOC-MAR

**PLAINTIFF'S
OBJECTIONS TO THE
REPORT AND
RECOMMENDATION
OF THE MAGISTRATE
JUDGE**

**[28 U.S.C. § 636(b)(1); Fed.
R. Civ. P. 72(b)(3)]**

INTRODUCTION

Plaintiff objects to the specified portions of the Report and Recommendation identified below and respectfully requests that the Court conduct the de novo review to which those portions are subject. 28 U.S.C. § 636(b)(1); Federal Rule of Civil Procedure 72(b)(3).

The Report recited the standard governing a Rule 12(b)(6) motion, which asks whether a claim is plausible on facts accepted as true, and then dismissed each federal claim, with prejudice and without leave to amend, on a finding that Plaintiff had not "established" its elements. Establishment is a burden of proof, not a pleading standard. That error is the subject of the first objection and recurs in the dispositions that follow. The remaining objections address the RLUIPA individualized-assessment trigger, the Free Exercise general-applicability analysis the Report did not reach, the equal protection and due process rulings, the substantial-burden and municipal-liability elements the Report dismissed claims without analyzing, and the supplemental-jurisdiction dismissal that depends on them.

The interest at stake is concrete and present. Edwin Baxter died on June 6, 2025. His remains remain in the County Coroner's custody nearly a year later, under a written County notice contemplating their cremation and interment as "Indigent/Abandonment." Baxter Decl. Ex. J (Doc. 4, PageID #118). The objections that follow are directed to the legal errors in the Report. This fact identifies what those errors bear upon.

STANDARD OF REVIEW

A party may object to a magistrate judge's report and recommendation, and the district judge must make a de novo determination of those portions to which objection is made. 28 U.S.C. § 636(b)(1); Federal Rule of Civil Procedure 72(b)(3); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). The de novo determination is the Court's own; it does not defer to the magistrate judge's conclusions on the objected-to portions. The motion before the Court is one under Rule 12(b)(6), which asks whether the Complaint states a plausible claim on facts accepted as true. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

OBJECTION 1: PLEADING STANDARD

The Report recites the standard governing a Rule 12(b)(6) motion: the Court must accept all material factual allegations as true, construe the pleading in the light most favorable to the pleader, resolve all doubts in the pleader's favor, and construe a pro se filing liberally. R&R p. 4 (PageID #337) (citing *Hamilton v. Brown*, 630 F.3d 889, 892–93 (9th Cir. 2011); *Berg v. Popham*, 412 F.3d 1122, 1125 (9th Cir. 2005); *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)). The question at this stage is plausibility, not proof. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

The Report disposed of each federal claim on a finding that Plaintiff had not established its elements: as to RLUIPA, "Plaintiff has not established that the County performed an 'individualized assessment' as required for an RLUIPA claim," R&R 7:10–11 (PageID #340); as to Free Exercise, "Plaintiff has not established that Section 7054 lacks facial neutrality," R&R 10:3 (PageID #343); and as to Equal Protection, "Plaintiff has not

alleged any facts to establish that the County acted with an 'intent or purpose' to discriminate," R&R 11:16–18 (PageID #344).

"Establish" states a burden of proof. Rule 12(b)(6) asks whether a claim is plausibly pleaded on facts accepted as true. Plaintiff requests that the Court apply that standard on de novo review.

OBJECTION 2: RLUIPA TRIGGER

The Report treats Section 7054 as the non-discretionary command that rendered the registrar's denial ministerial. R&R 7:11–12 (PageID #340). Section 7054 does not command the registrar. It binds the person who disposes of remains, making it a misdemeanor to deposit human remains "in any place, except in a cemetery." Cal. Health & Safety Code § 7054(a) (1); R&R fn. 1 (PageID #339). Section 103055(a) is the provision that addresses the registrar, and it directs that the registrar "shall issue a permit for disposition." Cal. Health & Safety Code § 103055(a). The two sections govern different actors. Section 7054 cannot supply a non-discretionary command to an official it does not address.

RLUIPA's land-use provision applies where a government implements "a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved." 42 U.S.C. § 2000cc(a)(2) (C). The Report quotes that language at page 5. R&R 5:21–28 (PageID #338).

The trigger is the scheme's permission to assess. It is satisfied when the regulatory scheme confers individualized judgment, whether or not the

government exercises it favorably. The Ninth Circuit applied RLUIPA to a discretionary conditional-use permit scheme notwithstanding the county's denial of the permit. *Guru Nanak Sikh Soc'y of Yuba City v. County of Sutter*, 456 F.3d 978, 986 (9th Cir. 2006). The Report cites *Guru Nanak* for the trigger. R&R 5:24 (PageID #338).

The Report then applies a different test. It holds that "Plaintiff has not established that the County performed an 'individualized assessment.'" R&R 7:10–11 (PageID #340). Whether the County performed an assessment is not the statutory question. The statutory question is whether the scheme permits one.

Section 103055(a) directs that "the local registrar of births and deaths shall issue a permit for disposition," specifying one of four categories, and subdivision (a)(4) provides that the permit specify the location of disposition "under the conditions the state registrar may approve..." Cal. Health & Safety Code § 103055(a)(4). "May approve" is discretionary authority on the face of the section. RLUIPA looks to the system of land use regulations, not to any single permit decision under it; section 103055 is that system, and a system that authorizes the registrar to approve a disposition on individualized conditions is one that "permit[s] the government to make[] individualized assessments," 42 U.S.C. § 2000cc(a)(2)(C), whether or not subdivision (a)(4) is the provision that governs Plaintiff's own disposition. The trigger is satisfied on the face of the statute, and the burden falls to the County to show that any substantial burden it imposes is the least restrictive means of furthering a compelling interest, 42 U.S.C. § 2000cc(a)(1), a showing not made and not available on a motion to dismiss.

The Report describes section 103055 otherwise. It holds that the section "does not create a discretionary procedure through which the registrar

'may approve' of burial sites that are not cemeteries," R&R 7:22 – 8:1 (PageID #340–341); subdivision (a)(4), set out above, is that procedure. It holds that the permit "was denied pursuant to non-discretionary health and safety statutes," R&R 7:11–12 (PageID #340), and that nothing in section 103055 "revoke[s]" section 7054, R&R 7:22 – 8:2 (PageID #340–341). The latter two readings share a single error: each treats section 7054 as though it governed the registrar's permit. Section 7054(a) binds the person who disposes of remains, making it a misdemeanor to deposit human remains "in any place, except in a cemetery," Cal. Health & Safety Code § 7054(a)(1); R&R fn. 1 (PageID #339). It confers no authority on the registrar and addresses no permit.

Section 103055 need not "revoke" section 7054, because the two govern different actors and do not conflict. Section 103055(a) commands the registrar to issue the permit, Cal. Health & Safety Code § 103055(a); R&R fn. 2 (PageID #339), and the only refusal authority the section confers is subdivision (b), for a death from a disease declared infectious, contagious, or communicable, Cal. Health & Safety Code § 103055(b), a ground the County never invoked. For the denial to be the ministerial act the Report describes, a statute would have to command the registrar to refuse this permit. The County identifies none in its motion. The County identifies none in its reply. The Report supplies none.

Beyond the text, the County's own conduct reflects the discretion the scheme confers. The County argues that section 103055 cannot authorize private-property burial because otherwise "a deceased individual could be buried at a park, at a school, in front of a hospital, or any one of a number of other impermissible locations." Mot. p. 13 (PageID #255). Distinguishing a permissible site from an impermissible one under section 103055(a)(3) is the individualized judgment the scheme authorizes.

The County's denial is a letter addressed to Plaintiff and responding to his specific request. It recites RLUIPA's individualized-assessment standard and states: "Here, there is no individualized assessment on the part of the County. There is no discretion being made whether or not to issue you, in particular, a burial permit." [REDACTED] Doc. 4, PageID #116. A determination that addresses a named applicant and recites a specific individualized-assessment standard relevant to the applicant's request is itself a reflection of discretionary conduct.

The Report states that Plaintiff has identified "no legal authority from any jurisdiction, treatise, or restatement which supports his interpretation of Health and Safety Code §§ 7054 and 103055." R&R fn. 3 (PageID #341). Three orders of the Superior Court of California, County of Mendocino, each resulted in the issuance of a section 103055 private-property burial permit: In re Baker, No. SCUk CVPT-01-008496-1 (Cal. Super. Ct., Mendocino Cty. Jan. 5, 2001); In re Tebbutt, No. SCUk-CVPT-02-82582 (Cal. Super. Ct., Mendocino Cty. Mar. 20, 2002); In re Estate of Hamburg, No. SCUk-CVPB-13-26080 (Cal. Super. Ct., Mendocino Cty. Aug. 16, 2013). RJN Exhs. A, B, C. These are unpublished trial-court orders, offered not as binding precedent but as instances in which the permit the Report describes as unavailable was in fact issued. Their existence answers the Report's premise that no authority from any jurisdiction supports the interpretation.

The trigger is met on the face of the scheme; the claim must proceed.

OBJECTION 3: GENERAL APPLICABILITY

The Report framed the Free Exercise inquiry as whether Plaintiff had "established that Section 7054 lacks facial neutrality," R&R 10:3 (PageID

#343), and applied rational-basis review on the premise that the statute "proscribes all burials on private property, regardless of religious or secular motivation." R&R 10:3–6, 10:12–15 (PageID #343). Neutrality and general applicability are independent requirements: a facially neutral law is still subject to strict scrutiny if it is not generally applicable. A law is not generally applicable if it permits secular conduct that undermines its asserted interests while forbidding comparable religious conduct, or if it provides a mechanism for individualized exemptions. *Tandon v. Newsom*, 593 U.S. 61, 62 (2021) (per curiam); *Fulton v. City of Philadelphia*, 593 U.S. 522, 533–34 (2021); *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 543 (1993). The Report reached only neutrality and did not analyze general applicability, and the premise on which it assumed general applicability is contradicted by the scheme it reviewed.

The scheme the Report reviewed does not proscribe all burials on private property. Section 7054(c) provides that subdivision (a) "shall not apply to the reburial of Native American remains under an agreement developed pursuant to subdivision (l) of Section 5097.94 of the Public Resources Code, or implementation of a recommendation or agreement made pursuant to Section 5097.98 of the Public Resources Code." Cal. Health & Safety Code § 7054(c). The prohibition is not categorical; it contains an exemption defined by the status of the remains.

San Bernardino County Code section 32.0105 provides that when any dog or other animal dies, the owner shall provide for its burial or other disposition "in a safe and sanitary manner," and makes it unlawful to dispose of the animal on property other than the owner's own without authorization. San Bernardino Cty. Code § 32.0105. The County thus permits secular burial on private property subject to a safe-and-sanitary condition, while they forbid that same disposition for human remains.

The conduct the County permits and the conduct it forbids are comparable as to the interest the Health and Safety Code asserts, which is public health and safety. Two California public health officers have addressed that interest in sworn declarations, of which Plaintiff requests judicial notice for the fact that the determinations were made and by whom. Dr. Charles Evans, the Mendocino County Communicable Disease Health Officer, declared: "As in the burial of domestic and natural decay of wild animals, there is no public health or infectious disease liability or hazard that would require the burial of dead human bodies to be limited to a pre-identified cemetery as opposed to on a rural parcel of real property." RJN Exh. D (Evans Decl. ¶ 8). Dr. Marvin Trotter, a former Mendocino County Public Health Officer, declared that "the burial of a human being, in a casket or in a shroud, three to five feet below the surface of the earth, would not cause infectious disease [or] other public health problem." RJN Exh. E (Trotter Decl. ¶ 10). That public health officers have made these determinations confirms that the comparability Plaintiff alleges is plausible, and on a motion to dismiss that allegation is accepted as true.

The Report addressed neither section 7054(c) nor County Code section 32.0105, and it cited neither Tandon nor Fulton. Where a law is not generally applicable, it is subject to strict scrutiny. *Lukumi*, 508 U.S. at 531–32.

OBJECTION 4: DISCRIMINATORY INTENT

The Report recites the standard for an equal protection claim: a plaintiff must show that the defendant "acted with an intent or purpose to discriminate against [the] plaintiff based upon membership in a protected class." R&R 11:1–5 (PageID #344) (quoting *Furnace v. Sullivan*, 705 F.3d

1021, 1030 (9th Cir. 2013), quoting *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998)).

The Report recites Plaintiff's allegation that the County treats religious burial less favorably than the secular dispositions it permits: cemetery burial, cremation, and animal burial on private property under County Code section 32.0105 subject only to a safe-and-sanitary requirement. R&R 11:7–12 (PageID #344) (citing Compl. ¶¶ 87–94; Opp. p. 21).

The Report resolved the claim on the intent element alone. It held that Plaintiff "has not alleged any facts to establish that the County acted with an 'intent or purpose' to discriminate against him." R&R 11:16–18 (PageID #344). The authority it cited for that proposition, *Furnace*, was decided on summary judgment and affirmed because the plaintiff "failed to raise a triable issue of fact" as to intentional differential treatment. "Establish" states the burden a plaintiff carries on a developed record at summary judgment. It is not the standard that governs a pleading.

At the pleading stage, intent is alleged, not proved. The Ninth Circuit once required a plaintiff alleging discriminatory motive to plead it with heightened particularity, but it abandoned that requirement in *Galbraith v. County of Santa Clara*, holding that heightened pleading of improper motive "[is] no longer good law" and that motive is pleaded under ordinary notice standards and accepted as true. 307 F.3d 1119, 1125 (9th Cir. 2002).

Intent need not be alleged by direct averment. It may be shown by circumstantial evidence, including a government's differential treatment of comparable conduct and substantive departures unexplainable on neutral grounds. *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977); *Pacific Shores Props., Pacific Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142 (9th Cir. 2013).

The differential-treatment allegations the Report recited are circumstantial allegations of exactly that kind.

Discriminatory purpose requires that the County acted "because of, not merely in spite of" the religious character of the burial. *Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979). The County applies a single safe-and-sanitary standard to cemetery burial, cremation, and animal burial on private property, yet treats religious human burial less favorably than all three. The animal-burial comparator is governed by the same sanitary regime, which forecloses public health as the neutral ground for the differential treatment of human religious burial. With the neutral explanation foreclosed, the differential treatment is itself the substantive departure unexplainable on neutral grounds from which discriminatory purpose may be inferred. *Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977). Accepted as true and construed in Plaintiff's favor, the allegations the Report recited support the plausible inference of discriminatory purpose the Report found unpleaded.

OBJECTION 5: PROPERTY INTEREST

The Report recites that a Fourteenth Amendment "procedural due process claim has two elements: deprivation of a constitutionally protected liberty or property interest and denial of adequate procedural protection." R&R 11:20–22 (PageID #344) (quoting *Shelley v. County of San Joaquin*, 996 F. Supp. 2d 921, 926 (E.D. Cal. 2014)). It recites the three *Mathews v. Eldridge* factors that govern what process is due. R&R 11:27 – 12:5 (PageID #344–345) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334–35 (1976)).

The Report applied neither. It disposed of the claim at the first element, on a finding that Plaintiff "has not alleged facts sufficient to establish that he has a property interest in the human remains sufficient to support a due process claim." R&R 13:6–8 (PageID #346). It did not reach the adequacy of process, and it did not apply the Mathews factors it had recited.

The Report's own recited authority establishes the property interest it denied. California "recognize[s] a quasi-property right to [] possession [of relative's remains] ... for the limited purpose of determining who shall have its custody for burial." R&R 12:9–11 (PageID #345) (quoting Shelley, 996 F. Supp. 2d at 927, citing Sinai Temple v. Kaplan, 54 Cal. App. 3d 1103, 1110 (1976)). California Health and Safety Code section 7100 grants the next of kin "the right to control the disposition of the remains of a deceased person, the location and conditions of interment." Cal. Health & Safety Code § 7100(a); R&R 12:16–21 (PageID #345).

The single proposition the Report used to override that interest is a sentence from Chaudhry v. City of Los Angeles: "California law creates a right to possession of a body for burial, but it does not create a right to burial on whatever terms the family desires." R&R 13:4–6 (PageID #346) (quoting Chaudhry, 573 F. App'x 628, 632 (9th Cir. 2014)). That sentence does not carry the holding, for three independent reasons.

First, it addresses the scope of the right, not its existence. That a right does not extend to burial on "whatever terms the family desires" does not establish that no protected interest exists; it limits what the interest entitles its holder to. The Report used a statement about the boundaries of the right to deny the threshold element of the right's existence.

Second, it does not reach this case. The registrar's denial of the death certificate and permit bars Plaintiff from taking custody of his father's remains at all. He is denied not burial on terms of his choosing, but the

possession of the remains for custody and burial. That possession is the precise quasi-property right the Report's own authority recognizes.

Chaudhry's limitation presupposes a family that holds the remains and seeks particular burial terms; the County's denial operates a step earlier, depriving Plaintiff of the custody the right protects.

Third, Chaudhry is an unpublished memorandum disposition and is not precedent. 9th Cir. R. 36-3(a). On its face it states that it "is not appropriate for publication and is not precedent." The Report rested its decisive proposition on a disposition that is not binding authority.

OBJECTION 6: SUBSTANTIAL BURDEN NOT REACHED

A claim under RLUIPA's land-use provision has a substantial-burden element: once the scheme's individualized-assessment trigger is met, the claimant must allege that the government's action imposes a substantial burden on religious exercise, whereupon the burden shifts to the government to show the action is the least restrictive means of furthering a compelling interest. 42 U.S.C. § 2000cc(a)(1); *Holt v. Hobbs*, 574 U.S. 352, 364–65 (2015). A substantial burden exists where government action imposes "a significantly great restriction or onus" on religious exercise, *San Jose Christian Coll. v. City of Morgan Hill*, 360 F.3d 1024, 1034 (9th Cir. 2004), and where it places the adherent to the choice between religious exercise and a criminal sanction, *Warsoldier v. Woodford*, 418 F.3d 989, 995–96 (9th Cir. 2005).

The Complaint pleads that element. Section 7054(a) makes the disposition of human remains "in any place, except in a cemetery" a misdemeanor, Cal. Health & Safety Code § 7054(a), so the County's refusal to issue the permit section 103055(a) directs leaves Plaintiff to choose between his

religious obligation and a criminal sanction, the Warsoldier burden on the face of the pleading. The Complaint further pleads that the only alternative the County identified, licensure as a commercial cemetery, is not available to a private family burial and would impose a substantial cost.

The Report did not reach this element. Its RLUIPA analysis disposed of the claim at the individualized-assessment trigger and recommended dismissal without analyzing whether a substantial burden was pleaded. R&R 7:10–11 (PageID #340). A claim may not be dismissed on an element the Report did not address; whether a substantial burden is pleaded is, on de novo review, decided on the allegations accepted as true, not foreclosed by silence. Plaintiff requests that the Court reach the element and find it adequately pleaded.

OBJECTION 7: MUNICIPAL LIABILITY NOT REACHED

A claim against the County under 42 U.S.C. § 1983 requires that the constitutional injury result from an official policy, a longstanding custom, or the decision of a final policymaker. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–94 (1978); *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–83 (1986). The Report contains no separately delineated municipal-liability analysis; the premise is embedded in its dismissal of the Section 1983 counts against the County. R&R 5–11 (PageID #338–344). On de novo review the question is whether the Complaint pleads policy, custom, or final-policymaker action. The Complaint pleads each.

Final-policymaker action: Defendant [REDACTED] of the Department of Public Health, signed the written denial on County letterhead, stating the County's official position on private-property burial permits. A single decision by an official with final policymaking authority

is itself municipal action. *Pembaur v. City of Cincinnati*, 475 U.S. 469, 480–83 (1986); Doc. 4, PageID #116.

Longstanding custom, on Defendants' own sworn admission: Defendant ██████ declared under penalty of perjury that during ██████ tenure the office received "five or fewer requests" to bury a whole body on private property and that "[i]n each of those instances, the County has not issued the permit." Decl. of ██████ in Opp. to Mot. for Prelim. Inj. ¶ 7 (Doc. 14-2). A uniform pattern of categorical denial, sworn by the County's Chief Deputy Registrar and submitted as the County's own position, is the longstanding custom Monell describes. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690–94 (1978).

Documented policy: the County's denial letter recites that "there is no individualized assessment on the part of the County" and "no discretion being made whether or not to issue you, in particular, a burial permit," Doc. 4, PageID #116, a categorical practice applied uniformly to Plaintiff's request. Each ground is pleaded on facts already in the record; the claim should not be dismissed on a premise the Report did not separately analyze.

OBJECTION 8: SUPPLEMENTAL JURISDICTION

The Court declined supplemental jurisdiction over Claims Five, Six, and Seven under 28 U.S.C. § 1367(c)(3) solely because it had dismissed the federal claims. R&R 13:11–13, 22–23 (PageID #346). Should any federal claim survive de novo review, the basis for declining supplemental jurisdiction is removed. Plaintiff requests that those claims be retained.

CONCLUSION

The Court's prior denial of preliminary relief rested on the ex parte posture of that application and on the timing of its filing. Order Denying TRO 2-3 (Doc. 7, PageID #153-154) (applying the rule that ex parte relief requires a showing the movant was without fault in creating the asserted urgency).

The Court did not reach the merits of any claim, and the standard governing a Rule 12(b)(6) motion is distinct from the one governing emergency injunctive relief. The interest these claims protect remains concrete. Edwin Baxter's remains have been held in County custody since June 6, 2025, under a written County notice contemplating their cremation and interment as "Indigent/Abandonment." Baxter Decl. Ex. J (Doc. 4, PageID #118). Dismissal with prejudice forecloses any adjudication of that interest.

The Report recommended dismissal with prejudice and without leave to amend. R&R 13:24 - 14:9 (PageID #346-347). The defect the Report identified is not a defect in the Complaint but in the standard applied to it. A complaint dismissed for failure to satisfy a burden of proof it did not bear is not incurable; it is unadjudicated. Should the Court find any pleading deficiency on de novo review, leave to amend is warranted, because the Report identified no defect it found could not be cured. *Lopez v. Smith*, 203 F.3d 1122, 1127, 1131 (9th Cir. 2000) (en banc); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (per curiam).

For the foregoing reasons, Plaintiff respectfully requests that the Court, on de novo review of the portions of the Report and Recommendation to

which these objections are directed, decline to adopt those portions and enter the following relief:

1. Deny Defendants' motion to dismiss the claim under the Religious Land Use and Institutionalized Persons Act;
2. Deny the motion to dismiss the First Amendment free exercise claim;
3. Deny the motion to dismiss the equal protection claim;
4. Deny the motion to dismiss the procedural due process claim;
5. In the alternative as to any claim the Court does not sustain, grant leave to amend rather than dismiss with prejudice;
6. Retain supplemental jurisdiction over the state-law claims should any federal claim survive; and
7. Grant such other and further relief as the Court deems just and proper.

Dated: June 4, 2026

Respectfully submitted,

/s/ Jerry Baxter

Jerry Baxter, Pro Se

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