

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 29 2025

FOR THE NINTH CIRCUIT

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

ELOY MASCORRO,

Plaintiff - Appellant,

v.

COUNTY OF SAN DIEGO; SAN DIEGO  
COUNTY SHERIFF'S  
DEPARTMENT; SAN DIEGO  
SHERIFF; SHERIFF DEPUTIES; JAIL  
STAFF; C.L.E.R.B.,

Defendants - Appellees.

No. 23-4226

D.C. No.

3:21-cv-02012-RSH-DDL

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Robert Steven Huie, District Judge, Presiding

Submitted April 22, 2025\*\*

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

Eloy Mascorro appeals pro se from the district court's order dismissing his  
42 U.S.C. § 1983 action alleging constitutional violations. We have jurisdiction

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to serve under Federal Rule of Civil Procedure 4(m). *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511 (9th Cir. 2001). We vacate and remand.

The district court dismissed Mascorro’s action because Mascorro had not shown good cause for his failure to serve defendants. Specifically, the district court considered whether Mascorro’s second attempt to serve defendants on April 17, 2023, was adequate and determined that Mascorro failed to show good cause for his failure to serve. However, the record indicates that Mascorro attempted to serve the County of San Diego over a year earlier, on March 18, 2022, but the U.S. Marshal failed to effect service because it erroneously believed that the County of San Diego was not named as a defendant in this action. Because Mascorro was entitled to rely on the U.S. Marshal for service and demonstrated that he provided the necessary information, we vacate the dismissal order and remand for further proceedings. *See Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990) (holding that “plaintiff should not be penalized by having his . . . action dismissed for failure to effect service where the U.S. Marshal . . . has failed to perform the duties required”). On remand, the district court should forward a copy of Form 285 filed on March 18, 2022, a copy of the summons, and a copy of the complaint to the U.S. Marshal for service on the County of San Diego.

We do not consider Mascorro’s contention that the district court erred by not

allowing him to access the courthouse in person because that issue is outside the scope of this appeal.

We do not consider matters raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Mascorro's motion to proceed in forma pauperis (Docket Entry No. 6) is denied as unnecessary because Mascorro's in forma pauperis status from the district court carries over to this appeal. All other pending motions and requests are denied.

**VACATED and REMANDED.**