A P P E N D I X

1. **Exhibit "A"** Judgment of the U.S. Court of Appeals for the Fifth Circuit

2. **Exhibit "B"** Petitioner's brief to the Fifth Circuit

3. **Exhibit "C"** Judgment of the District Court Houston Division

4. **Exhibit "D"** Judgment of the District Court Pecos Division

5. **Exhibit "E"** The Baha'i Faith, history and teachings

Exhibit – 'A'

Judgment of the U.S. Court of Appeals for the Fifth Circuit

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
May 1, 2019
Lyle W. Cayce
Clerk

No. 17-20738

SHAHRAM SHAKOURI,

Plaintiff–Appellant,

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; KELLI WARD; MELODEE BLALOCK; BOBBIE TURNER-PARKER,

Defendants–Appellees.

Appeal from the United States District Court
for the Southern District of Texas

Before OWEN, SOUTHWICK, and HIGGINSON, Circuit Judges.

PER CURIAM:

Shahram Shakouri appeals the district court's denial of his motion to remand and the dismissal of his claims. We affirm.

I

Shakouri sued eleven individuals associated with the Texas prison system, alleging that they violated his rights under the First, Thirteenth, and Fourteenth Amendments to the United States Constitution as well as the Texas Constitution and a Texas statute. Shakouri's claims are based on repercussions that he asserts he endured because of his religiously motivated decision not to participate in an unpaid prison work program. According to

Shakouri, those repercussions violated his First Amendment right to freedom of religion and his Fourteenth Amendment right to equal protection of the law, as well as his right to be free from retaliation for exercising his constitutional rights. Shakouri also alleges that the unpaid prison work program violates the Thirteenth Amendment.

Shakouri filed his complaint in Texas state court. Glen Whitfield, one of the named defendants, removed the case to the United States District Court for the Southern District of Texas. Shakouri filed a motion to remand the case, which was denied. The district court transferred Shakouri's claims against certain defendants to the Western District of Texas then dismissed all of Shakouri's claims against the remaining defendants. Shakouri appeals the district court orders denying his motion to remand and dismissing his case.

II

Shakouri contends that the district court erred when it denied his motion to remand because Whitfield's notice of removal was untimely under 28 U.S.C. § 1446(b)(1). Section 1446(b)(1) requires notices of removal to be filed within thirty days of "the date on which [the moving defendant] is formally served with process."[1] If a defendant is never properly served, the thirty-day limit for filing a notice of removal does not commence to run.[2] We apply Texas law to determine whether Whitfield was properly served.[3] The only evidence in the record of any service of process is a Citation for Personal Service addressed to the Attorney General of Texas, not Whitfield. Under Texas law, "[a] state

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[1] *Thompson v. Deutsche Bank Nat'l Tr. Co.*, 775 F.3d 298, 303 (5th Cir. 2014) (citing *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999)); 28 U.S.C. § 1446(b)(1).

[2] *Thompson*, 775 F.3d at 304.

[3] *Id.* (quoting *City of Clarksdale v. BellSouth Telecomms., Inc.*, 428 F.3d 206, 210 (5th Cir. 2005)).

employee is not served through service on the state attorney general."[4] Accordingly, there is no evidence that Whitfield was properly served and, consequently, no evidence that Whitfield's notice of removal was untimely under § 1446(b)(1).

Shakouri also contends that the defendants did not comply with § 1446(b)(2)(A), which requires "all defendants *who have been properly joined and served* [to] join in or consent to the removal of the action."[5] By its terms, § 1446(b)(2)(A) does not impose any requirements on defendants who were not properly served. As discussed, there is no evidence that any defendants were properly served. Accordingly, removal did not violate § 1446(b)(2)(A) even though no defendants joined Whitfield's notice of removal or filed consents to removal. The district court did not err when it denied Shakouri's motion to remand.

III

The district court dismissed Shakouri's First and Fourteenth Amendment claims as "malicious." The district court determined that it had the authority to do so under 28 U.S.C. § 1915(e)(2)(B)(i), which states, "Notwithstanding any filing fee . . . that may have been paid, the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous or malicious."[6] This court has not determined whether § 1915(e)(2)(B)(i), which is included in a section titled "Proceedings in forma pauperis,"[7] applies when the plaintiff is not proceeding *in forma pauperis*. However, even if § 1915(e)(2)(B)(i) does not apply when a plaintiff is not proceeding *in forma pauperis*, § 1915A(b)(1) requires courts to dismiss

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[4] *Matthews v. Lenoir*, 439 S.W.3d 489, 497 (Tex. App.—Houston [1st Dist.] 2014, pet. denied).

[5] 28 U.S.C. § 1446(b)(2)(A) (emphasis added).

[6] *Id.* § 1915(e)(2)(B)(i).

[7] *Id.* § 1915.

malicious claims brought by a prisoner against an employee of a governmental entity.[8] Accordingly, Shakouri's claims were subject to dismissal if they qualified as malicious.

We review a district court's determination that a claim was malicious for abuse of discretion.[9] We have repeatedly stated that a claim qualifies as malicious if it is virtually identical to and based on the same series of events as a claim previously brought by the plaintiff.[10] The district court dismissed Shakouri's First and Fourteenth Amendment claims as malicious because Shakouri had previously brought claims alleging that forcing him to participate in a prison work program without pay violated his rights to freedom of religion and equal protection of the law. The district court did not abuse its discretion when it dismissed those claims as malicious.[11]

In addition to requiring district courts to dismiss malicious claims, § 1915(e)(2)(B) and § 1915A(b)(1) require district courts to dismiss a cause of action that "fails to state a claim on which relief may be granted."[12] The district court dismissed Shakouri's retaliation and Thirteenth Amendment claims for failure to state a claim. We review the district court's exercise of its § 1915 authority to dismiss for failure to state a claim de novo.[13] Shakouri failed to state a claim for a violation of his Thirteenth Amendment rights because

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[8] *Id.* § 1915A(b)(1).

[9] *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997) (citing *Graves v. Hampton*, 1 F.3d 315, 317 (5th Cir. 1993)) (reviewing a § 1915(e) dismissal for abuse of discretion).

[10] *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988).

[11] *See Shakouri v. Raines*, No. 4:11-CV-126-RAJ, 2014 WL 12531365, at *4 (W.D. Tex. Jan. 27, 2014) (analyzing Shakouri's claim that a prison official "declined to respect [his] claimed subjective belief that it was against his religion to work without pay"); *Shakouri v. Raines*, 582 F. App'x 505, 506 (5th Cir. 2014) ("[Shakouri] alleged claims against various prison officials and employees for violating his rights to freedom of religion, equal protection, and access to courts and for retaliating against him for asserting his right to exercise his Baha'i faith.").

[12] 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1).

[13] *Legate v. Livingston*, 822 F.3d 207, 209 (5th Cir. 2016).

"inmates sentenced to incarceration cannot state a viable Thirteenth Amendment claim if the prison system requires them to work."[14] Shakouri's retaliation claim fails because it alleges that the defendants retaliated against Shakouri for exercising his constitutional right not to participate in the prison work program, but he has no such right.[15]

Having determined that the district court properly dismissed all of Shakouri's federal claims, the district court did not abuse its discretion in declining to exercise supplemental jurisdiction over Shakouri's state-law claims.[16]

* * *

AFFIRMED.

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[14] *Ali v. Johnson*, 259 F.3d 317, 317 (5th Cir. 2001).

[15] *See id.* (explaining that prisoners like Shakouri do not have a Thirteenth Amendment right not to participate in unpaid prison work programs); *Shakouri*, 2014 WL 12531365, at *4-5 (W.D. Tex) (explaining why requiring Shakouri to participate in the prison work program does not violate his First Amendment rights).

[16] *See* 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction . . . .").

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
May 1, 2019
Lyle W. Cayce
Clerk

No. 17-20738

D.C. Docket No. 4:17-CV-96

SHAHRAM SHAKOURI,

Plaintiff - Appellant

v.

LORIE DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION; KELLI WARD; MELODEE BLALOCK; BOBBIE TURNER-PARKER,

Defendants - Appellees

Appeal from the United States District Court for the Southern District of Texas

Before OWEN, SOUTHWICK, and HIGGINSON, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

Certified as a true copy and issued as the mandate on May 23, 2019

Attest: Lyle W. Cayce
Clerk, U.S. Court of Appeals, Fifth Circuit

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHAHRAM SHAKOURI, a/k/a SHARAM SHAKOURI,	§	
Plaintiff,	§	
v.	§	CIVIL ACTION No. H-17-0096
LORIE DAVIS, *et al.*,	§	
Defendants.	§	

ORDER OF DISMISSAL

Plaintiff, a state inmate proceeding *pro se*, filed this section 1983 lawsuit against prison officials Lorie Davis, Kelli Ward, Melodee Blalock, and Bobbie Turner-Parker[1] for their alleged violations of his constitutional rights. Although plaintiff is a "three strikes" inmate barred from proceeding *in forma pauperis* under section 1915(g), he is not proceeding *in forma pauperis* in this district court proceeding.

Having considered the pleadings, the record, matters of public record, and the applicable law, the Court **DISMISSES** this lawsuit as malicious and for failure to state a claim, as follows.

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[1]Plaintiff's claims against other defendants were severed and transferred to the Western District of Texas, Pecos Division. (Docket Entry No. 4.) The Pecos Division subsequently dismissed the claims pursuant to the "three strikes" provision of section 1915(g).

I. BACKGROUND AND CLAIMS

Plaintiff states that he is an adherent to the religious tenets of the Baha'i faith. He claims that his religion prohibits "slavery" and "industrial slavery," and that his being compelled to participate in the unpaid prison work program constitutes slavery in violation of his religious freedom rights.[2] He further claims that he was subjected to harassment and retaliation for his refusals to work. Plaintiff asserts that he was denied his First Amendment and state law protections. He seeks declaratory and injunctive relief and monetary compensation.

II. ANALYSIS

A. Standards for Dismissal

Pursuant to 28 U.S.C. § 1915(e), a federal district court is empowered to dismiss a *pro se* prisoner case if it finds that the action is "frivolous or malicious." In this context, "[a] complaint is frivolous if it lacks an arguable basis in law or fact." *Rogers v. Boatright*, 409 F.3d 403, 407 (5th Cir. 2013). "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory, such as if the complaint alleges the violation of a legal interest which clearly does not exist." *Id.* "A complaint lacks an arguable basis in fact if, after providing the plaintiff the opportunity to present additional facts when necessary, the facts alleged are clearly baseless." *Id.*

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[2]Plaintiff attaches as supporting exhibits to his complaint copies of pages from Baha'i texts and writings. In none of these texts is it stated that participation in prison work programs while incarcerated violates tenets of the Bahai'i faith. Rather, plaintiff's overarching claim is that his religion bans slavery, and that unpaid prison work programs are a form of slavery.

In addition to dismissal for frivolousness, a court may also dismiss the suit for failure to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). Tracking the same language as Rule 12(b)(6) of the Federal Rules of Civil Procedure, and applying the same standards, section 1915(e)(2)(B)(ii) provides for dismissal if, accepting plaintiff's factual allegations as true, it appears that no relief could be granted under any set of facts that could be proven consistent with the allegations. *Hale v. King*, 642 F.3d 492, 497–99 (5th Cir. 2011). Although a *pro se* litigant's pleadings must be read more liberally than those filed by an attorney, the complaint must nonetheless set forth sufficient facts to convince the court that the plaintiff has at least a colorable claim. *Bustos v. Martini Club, Inc.*, 599 F.3d 458, 465—66 (5th Cir. 2010).

B. Malicious Lawsuit

Plaintiff argues that his religion prohibits "slavery" and "industrial slavery," and that forced participation in the prison's unpaid work program constitutes slavery. He contends that because of these religious proscriptions, he should be exempt from the work program unless he is paid a reasonable wage for working. Plaintiff claims that being compelled to work violates his state and federal constitutional protections as well as protections afforded by state laws such as the Texas Religious Freedom and Restoration Act (TRFRA), TEX. CIV. PRAC. & REM. CODE ANN. § 110.001, *et seq*. He further contends that, because inmates of other religions are not required to work on religious holidays, his coerced participation in prison work programs denies him equal protection.

These claims for violation of religious freedom and equal protection were dismissed and/or resolved against plaintiff in *Shakouri v. Raines*, C.A. No. 11-CV-126-RAJ (W.D. Tex. Jan. 29, 2014). The district court's rulings were affirmed on appeal. *Shakouri v. Raines*, 582 F. App'x 505, 2014 WL 4825018 (5th Cir. 2015). Accordingly, plaintiff's re-urging of his federal claims regarding religious freedom, slavery, and equal protection in the instant petition must be dismissed as malicious. *See Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (holding that duplicative or repetitious litigation of virtually identical causes of action is subject to dismissal under section 1915 as malicious).

C. Religious Exercise Claims

Regardless, a careful review of plaintiff's twenty-five page typewritten complaint reveals no colorable claims raised against defendants Davis, Ward, Blalock, or Turner-Parker.

Plaintiff's lawsuit lodges only a few specific allegations against these four defendants as to their alleged violation of his religious freedom protections. At most, plaintiff complains that defendants Ward and Turner-Parker violated his religious freedom rights by denying his prison administrative grievances and disciplinary conviction appeals. However, prisoners have no constitutional right to a satisfactory resolution of their prison grievances, and no constitutional issue is presented. *Geiger v. Jowers*, 404 F.3d 371, 374 (5th Cir. 2005). A prisoner's dissatisfaction with prison officials' investigation and resolution of his grievances, and their failure to accept as true his version of events, does not give rise to an issue of

constitutional dimension. *See Mahogany v. Miller*, 252 F. App'x 593, 595 (5th Cir. 2007). In denying plaintiff's numerous grievances, defendants Ward and Turner-Parker did not compel plaintiff to participate in the work programs; to the contrary, Ward and Turner-Parker determined that plaintiff's grievances lacked procedural or substantive merit and that no further action was warranted through the grievance system.

Plaintiff's specific allegations against defendant Davis allege that Davis punished him for practicing his religion, again referring to his being compelled to participate in the prison work program and his disciplinary convictions for refusing to work. However, plaintiff alleges that these purportedly wrongful acts were undertaken by "Davis's subordinates," and not by Davis personally. These claims against Davis fail because they are based on the theory of *respondeat superior*. Under section 1983, supervisory officials cannot be held liable for the actions of subordinates under any theory of vicarious liability. *Thompkins v. Belt*, 828 F.2d 298, 303 (5th Cir. 1987). Plaintiff fails to allege facts showing Davis's direct involvement in the alleged deprivations on which this lawsuit is based. Accordingly, plaintiff's claims against Davis fail to state a colorable claim under section 1983.

Regardless, no violation of plaintiff's First Amendment religious exercise rights is shown. Plaintiff argues that slavery and involuntary servitude were abolished by the Thirteenth Amendment, and that his being compelled to work without pay by prison officials is a form of slavery or industrial slavery. It is well established that requiring inmates to work without pay does not constitute slavery. *Ali v. Johnson*, 259 F.3d 317, 318 (5th Cir. 2001).

Contrary to plaintiff's arguments, being compelled by prison officials to participate in unpaid prison work programs does not constitute slavery.

D. Retaliation and Harassment Claims

A cognizable retaliation claim requires the violation of a constitutional right coupled with retaliatory animus. *Woods v. Smith*, 60 F.3d 1161, 1166 (5th Cir. 1995). Thus, "[t]o state a valid claim for retaliation under section 1983, a prisoner must allege (1) a specific constitutional right, (2) the defendant's intent to retaliate against the prisoner for his or her exercise of that right, (3) a retaliatory adverse act, and (4) causation." *Jones v. Greninger*, 188 F.3d 322, 324–25 (5th Cir. 1999). While direct evidence of motivation is preferable, a prisoner may also "allege a chronology of events from which retaliation may plausibly be inferred." *Woods*, 60 F.3d at 1166.

"To assure that prisoners do not inappropriately insulate themselves from disciplinary actions by drawing the shield of retaliation around them, trial courts must carefully scrutinize these claims." *Id.* A prisoner asserting a claim of retaliation "must allege the violation of a specific constitutional right and be prepared to establish that but for the retaliatory motive" the punitive actions would not have occurred. *Id.*

In the instant case, plaintiff's sole specific allegation against defendant Blalock – that she conspired to punish, harass, or retaliate against him for his refusing to participate in the prison work program – fails to raise a colorable constitutional claim under section 1983. In order for plaintiff to prevail on a conspiracy claim under section 1983, he must establish the

existence of a conspiracy and a deprivation of his civil rights in furtherance of that conspiracy. *Hale v. Townley*, 45 F.3d 914, 920 (5th Cir. 1995). That is, plaintiff must state a factual basis for the conspiracy; mere allegations or conclusory statements are insufficient. *Thompson v. Johnson*, 348 F. App'x 919, 922 (5th Cir. 2009). Because plaintiff here enjoyed no constitutional right to refuse participation in the prison work program, he alleges no deprivation of his constitutional rights that gives rise to a viable conspiracy, retaliation, or harassment claim. Similarly, he does not establish a factual basis for retaliation, in that he does not show that, but for a retaliatory motive, defendants would not have brought disciplinary charges against him for his refusal to work.

E. Injunctive Relief

Plaintiff's request for a temporary injunction exempting his participation in the prison work program was denied by the federal district court in *Raines*. Moreover, because this Court is dismissing plaintiff's federal claims as malicious and for failure to state a colorable claim for relief under section 1983, injunctive relief is unwarranted.

F. Habeas Claims

Plaintiff's claims challenging the validity of his disciplinary convictions sound in habeas, not civil law, and must be pursued in a separate habeas lawsuit. To the extent plaintiff challenges his disciplinary convictions on grounds other than retaliation or

harassment, the claims must be dismissed without prejudice, subject to being raised in a habeas petition filed in a court of proper jurisdiction.[3]

G. State Law Claims

Federal courts are courts of limited jurisdiction. They adjudicate claims arising from violations of federal law including the U.S. Constitution, claims in which diversity of the parties is present, and pendant state law claims over which the court may exercise supplemental jurisdiction. Since the Court has concluded that plaintiff's federal claims are subject to dismissal, no federal question remains before the Court. Although this fact alone does not divest the court of jurisdiction, the general rule in this circuit is to dismiss state claims when the federal claims they supplement are dismissed. *Parker & Parsley Petroleum Co. v. Dresser Industries*, 972 F.2d 580, 585 (5th Cir. 1992).

Because the Court has concluded that all of the federal claims asserted in this action must be dismissed, the Court declines to exercise supplemental jurisdiction over any state law claims that plaintiff may be attempting to assert. *See* 28 U.S.C. § 1367(c)(3) (providing that a district court may decline to exercise supplemental jurisdiction over a claim if the court has

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[3]For instance, plaintiff alleges that his disciplinary hearings were "conducted in his absence in violation of TDCJ-ID disciplinary rules and procedures" and that he "was not afforded a hearing, assistance of a counsel substitute" or "allowed to present evidence or call witnesses." (Docket Entry No. 1-2, pp. 16–17.) Although plaintiff does not appear to seek monetary damages for any alleged wrongful disciplinary convictions, such claims would be barred at this time by *Heck v. Humphrey*, 512 U.S. 477, 481 (1994), and *Edwards v. Balisok*, 520 U.S. 641, 648 (1997).

dismissed all claims over which it has original jurisdiction). Accordingly, plaintiff's state law claims are dismissed without prejudice to being pursued in state court.

III. CONCLUSION

This lawsuit is **DISMISSED WITH PREJUDICE** as malicious and for failure to state a colorable claim for which relief can be granted under section 1983. Plaintiff's habeas challenges to his disciplinary convictions are **DISMISSED WITHOUT PREJUDICE,** subject to being raised in a properly-filed habeas petition. Any and all pending motions are **DISMISSED AS MOOT**.

This dismissal constitutes a "strike" for purposes of section 1915(g), and stands as plaintiff's fourth strike. *See Shakouri v. Raines*, C.A. No. 14-50137 (5th Cir. Sept. 30, 2014) (noting Shakouri had accumulated two strikes); *Shakouri v. Medrano*, C.A. No. 4:14-CV-00011-DF (W.D. Tex. April 4, 2016) (dismissing case as frivolous, constituting third strike).

SIGNED at Houston, Texas on the 5th day of September, 2017.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SHAHRAM SHAKOURI,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION No. H-17-0096
	§	
GLEN H. WHITFIELD, *et al.*,	§	
	§	
Defendants.	§	

ORDER

Plaintiff's motion for reconsideration of discovery (Docket Entry No. 22) is **DENIED AS MOOT**. The Court dismissed this case on September 5, 2017. The Court's docket shows that a copy of the dismissal order was mailed to plaintiff at his address of record that same date.

The Clerk of Court is **ORDERED** to send plaintiff a second copy of the Court's dismissal order (Docket Entry No. 21).

SIGNED at Houston, Texas on the 3rd day of October, 2017.

KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

Exhibit – 'D'

Judgment of the District Court (Pecos Division)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
PECOS DIVISION

SHARAM SHAKOURI	§	
	§	
vs.	§	NO: PE:17-CV-00003-RAJ
	§	
GLEN H. WHITFIELD, *et al.*	§	

ORDER OF DISMISSAL

I. Background

Plaintiff is a prisoner in the Texas Department of Criminal Justice, Criminal Institutions Divisions, and is currently confined at the Stevenson Unit in Cuero, Texas. [*See generally* docket]. He filed this 42 U.S.C. §1983 prisoner civil rights action on September 21, 2016, while in the Stringfellow Unit in Rosharon Texas.[1] [docket number 1-2]. On January 17, 2017, this action was transferred to this Court. [docket number 4].

In his original complaint, Plaintiff alleges, under §1983 and RLUIPA[2], that he is forced to work without pay and that Defendants have retaliated against him for refusing to work. [docket number 1-2]. For this alleged violation of his constitutional rights, Plaintiff seeks monetary damages. [docket number 1-8].

Plaintiff did not pay the $400.00 civil filing fee, nor has he sought leave to proceed *in forma pauperis* ("*ifp*"). Moreover, Plaintiff is a three strikes litigant as that term is defined in 28 U.S.C. §1915(g), and as such, he has lost the privilege of proceeding *ifp* unless he is "under imminent danger of serious physical injury." *See* 28 U.S.C. §1915(g).

II. Jurisdiction

The Court has federal question jurisdiction over this action. *See* 28 U.S.C. §1331.

III. Three strikes rule

Prisoner civil rights actions are subject to the provisions of the Prison Litigation Reform Act, including the three strikes rule, 28 U.S.C. §1915(g). The three strikes rule provides that a prisoner who has had, while incarcerated, three or more actions or appeals dismissed as

[1] At some point prior, he was housed in the Lynaugh Unit in Fort Stockton, Texas and is suing based, in part, on his time therein.

[2] Religious Land Use and Institutionalized Persons Act of 2000.

frivolous, malicious, or for failure to state a claim upon which relief can be granted is prohibited from bringing any more actions or appeals *in forma pauperis*. 28 U.S.C. §1915(g); *Banos v. O'Guin*, 144 F.3d 883, 884 (5th Cir. 1998); *Adepegba v. Hammons*, 103 F.3d 383, 388 (5th Cir. 1996). The three strikes rule provides an exception permitting prisoners who are under imminent danger of physical harm to proceed without prepayment of the filing fee. *Id.*

IV. Plaintiff's litigation history

Plaintiff has had at least three prior actions dismissed as frivolous, malicious, or for failure to state a claim upon which relief can be granted. Plaintiff has acquired the following strikes: *See Shakouri v. Medrano, et al.*, Case No. 4:14–cv–11–DF (W.D. Tex. Apr. 4, 2016); *Shakouri v. Raines, et al.*, Case No. 4:11–cv–126-RAJ (W.D. Tex. Jan. 27, 2014); and *Shakouri v. Raines, et al.*, Case No. 14-50137, 582 F. App'x 505 (5th Cir. Sept. 30, 2014).

This Court now finds that Plaintiff is a three strikes litigant and is barred from proceeding *ifp* in a prisoner civil rights action unless he is in "imminent danger of serious physical injury." *See* 28 U.S.C. §1915(g).

V. Analysis

In the instant lawsuit, Plaintiff claims that Defendants are forcing him to work without pay and retaliating against him for refusing to do so. [docket number 1-2]. Considering Plaintiff's allegations in the light most favorable to him, his claims fail to state that he is in imminent danger of serious physical harm. The courts have stated that in order to meet the imminent danger requirement of §1915(g), the threat must be "real and proximate." *Ciarpaglini v.Saini*, 352 F.3d 328, 330 (7th Cir. 2003). Allegations of past harm do not suffice; the harm must be imminent or occurring at the time the complaint is filed, and the complaint must refer to a "genuine emergency" where "time is pressing." *Heimermann v. Litscher*, 337 F.3d 781, 782 (7th Cir. 2003). In passing the statute, Congress intended a safety valve to prevent impending harms, not those which had already occurred. *Abdul–Akbar v. McKelvie*, 239 F.3d 307, 315 (3d Cir. 2001). Here, Plaintiff is complaining that, like every other able-bodied prisoner in the Texas Department of Criminal Justice, he has to work while imprisoned. Even if true, these actions do not suggest any imminent physical threat of danger to Plaintiff. There is no indication that Plaintiff is in any type of danger to excuse him from the §1915(g) three strikes bar.

VI. Conclusion

Plaintiff has lost the privilege of proceeding *in forma pauperis* and he has failed to demonstrate that he is in imminent danger of physical harm. Accordingly, this lawsuit is dismissed without prejudice, and all pending motions are denied as moot. Plaintiff may move to reinstate this action within twenty (20) days of the date of entry of this Order, but only if the full $400.00 filing fee is paid simultaneously with the motion to reinstate.

IT IS SO ORDERED.

Signed this 6th day of February, 2017.

Robert Junell
Senior United States District Judge