

Appendix "A"

United States Court of Appeals For the First Circuit

No. 19-1428

JOHN ROBERT DEMOS,

Plaintiff - Appellant,

v.

WILLIAM P. BARR, United States Attorney General; DONALD J. TRUMP, President, United States; STATE OF WASHINGTON; UNITED STATES; CONGRESS OF THE UNITED STATES; MICHAEL POMPEO, Secretary of State; NOEL J. FRANCISCO, Acting Solicitor General; WASHINGTON, D.C.,

Defendants - Appellees.

NOTICE

Issued: May 14, 2019

Our records indicate that the attorney listed below has not registered for a CM/ECF account in this court. Any attorney who intends to file documents in this case, or wishes to continue receiving court issued documents, must register immediately with PACER for a CM/ECF account. For additional information, please go to our website, www.ca1.uscourts.gov, and select "E-Filing (Information)."

If you do not represent a party to this appeal and want to be removed from the service list, you may file a "Request for Removal from Service List." A copy of this form can be found on our website, www.ca1.uscourts.gov, under "Forms & Instructions."

After May 28, 2019, the clerk's office will no longer send paper copies of court issued documents to the following attorney, unless he registers for a CM/ECF account prior to that date.

Karl A. Racine

United States Court of Appeals For the First Circuit

No. 19-1428

JOHN ROBERT DEMOS,

Plaintiff - Appellant,

v.

WILLIAM P. BARR, United States Attorney General; DONALD J. TRUMP, President, United States; STATE OF WASHINGTON; UNITED STATES; CONGRESS OF THE UNITED STATES; MICHAEL POMPEO, Secretary of State; NOEL J. FRANCISCO, Acting Solicitor General; WASHINGTON, D.C.,

Defendants - Appellees.

ORDER OF COURT

Entered: June 3, 2019
Pursuant to 1st Cir. R. 27.0(d)

Appellant John Robert Demos was instructed, by order dated May 8, 2019, that because he has filed more than three lawsuits that have been dismissed as frivolous, he has "three strikes" against him, pursuant to 28 U.S.C. § 1915(g) and is thus ineligible to bring a civil appeal in forma pauperis unless is "under imminent danger of serious physical injury." Appellant has failed to comply with this order and has instead submitted a financial form for proceeding in forma pauperis.

Accordingly, this appeal will be dismissed pursuant to Fed. R. App. P. 3(b) for failure to prosecute on **June 17, 2019** unless, within that time, appellant has either paid the full \$505 filing fee in the district court and provided notice to this court, or demonstrated in writing that he falls under the exception to the "three strikes" provision to the Prison Litigation Reform Act.

By the Court:

Maria R. Hamilton, Clerk

cc:

John Robert Demos
Cynthia A. Young
Robert W. Ferguson
Karl A. Racine

United States Court of Appeals For the First Circuit

No. 19-1428

JOHN ROBERT DEMOS,

Plaintiff - Appellant,

v.

WILLIAM P. BARR, Attorney General; DONALD J. TRUMP, President, United States; STATE OF WASHINGTON; UNITED STATES; CONGRESS OF THE UNITED STATES OF AMERICA; MICHAEL POMPEO, Secretary of State; NOEL J. FRANCISCO, Acting Solicitor General,

Defendants.

CASE OPENING NOTICE

Issued: April 29, 2019

The above-captioned appeal was docketed in this court today pursuant to Rule 12 of the Federal Rules of Appellate Procedure. The above case number and caption (unless modified or amended as reflected in the heading of future court notices or orders) should be used on all papers subsequently submitted to this court. If any party disagrees with the clerk's office's designation of the parties on appeal, it must file a motion to amend the caption with any supporting documentation attached. Absent an order granting such a motion, the parties are directed to use the above caption on all pleadings related to this case.

Upon confirmation by the circuit clerk that the record is complete either because no hearing was held, no transcript is necessary, or the transcript is on file, the clerk's office will set the briefing schedule and forward a scheduling notice to the parties.

Unless the appellant was already determined to be in forma pauperis in the underlying district court action, or was determined to be financially unable to obtain an adequate defense in a criminal case, see Fed. R. App. P. 24(a)(3), a filing fee is due within seven days of filing the notice of appeal. An appellant not already determined to be indigent, who seeks to appeal in forma pauperis, must file a motion and financial affidavit in the district court in compliance with Fed. R. App. P. 24. For an appellant not already determined to be indigent, failure to pay the filing fee or file a motion seeking in forma pauperis status with the district court within fourteen days of the

date of this notice, may result in the appeal being dismissed for lack of prosecution. 1st Cir. R. 3.0(b).

An appearance form should be completed and returned immediately by any attorney who wishes to file pleadings in this court. 1st Cir. R. 12.0(a) and 46.0(a)(2). Any attorney who has not been admitted to practice before the First Circuit Court of Appeals must submit an application and fee for admission using the court's Case Management/Electronic Case Files ("CM/ECF") system prior to filing an appearance form. 1st Cir. R. 46.0(a). *Pro se* parties are not required to file an appearance form.

Dockets, opinions, rules, forms, attorney admission applications, the court calendar and general notices can be obtained from the court's website at www.ca1.uscourts.gov. Your attention is called specifically to the notice(s) listed below:

- Notice to Counsel and Pro Se Litigants
- Transcript Notice

If you wish to inquire about your case by telephone, please contact the case manager at the direct extension listed below.

Maria R. Hamilton, Clerk

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT
John Joseph Moakley
United States Courthouse
1 Courthouse Way, Suite 2500
Boston, MA 02210
Case Manager: Gloria - (617) 748-4214

United States Court of Appeals For the First Circuit

No. 19-1428

JOHN ROBERT DEMOS,

Plaintiff, Appellant,

v.

WILLIAM P. BARR, United States Attorney General; DONALD J. TRUMP, President, United States; STATE OF WASHINGTON; UNITED STATES; CONGRESS OF THE UNITED STATES; MICHAEL POMPEO, Secretary of State; NOEL J. FRANCISCO, Acting Solicitor General; WASHINGTON, D.C.,

Defendants, Appellees.

Before

Torruella, Thompson and Barron,
Circuit Judges.

JUDGMENT

Entered: August 7, 2019

By order entered June 3, 2019, appellant was warned that dismissal for lack of prosecution would occur if he failed either to prepay the filing fee or to identify a legitimate reason why the appeal should be allowed to proceed despite appellant's "three strikes." See 28 U.S.C. § 1915(g). Appellant having accomplished neither by the June 17, 2019, deadline set out in the order, the appeal is dismissed.

By the Court:

Maria R. Hamilton, Clerk

cc:

John Robert Demos, Cynthia A. Young, Robert W. Ferguson, Karl A. Racine

Appendix "B"

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN R. DEMOS,)
Plaintiff,) Civil Action No.
v.) 19-10195-IT
THE US ATTORNEY GENERAL, et al.)
Defendants.)
)

ORDER OF DISMISSAL

TALWANI, D.J.

For the reasons stated in the Memorandum and Order dated April 2, 2019, this action is dismissed in its entirety *sua sponte* pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction.

ROBERT M. FARRELL
CLERK OF COURT

Dated: 4/2/19

By /s/ Gail Marchione
Deputy Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOHN R. DEMOS,)
Plaintiff,) Civil Action No.
v.) 19-10195-IT
THE US ATTORNEY GENERAL, et al.)
Defendants.)

MEMORANDUM AND ORDER

TALWANI, D.J.

For the reasons stated below, this action is DISMISSED *sua sponte* pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction.

I. Background

John Robert Demos (“Demos”), an inmate incarcerated at the Washington State Penitentiary in Walla Walla, Washington, filed a *pro se* pleading titled Motion for Declaration of Constitutional Invalidity [#1]. Named as respondents are (1) the U.S. Attorney General, (2) the President of the United States, (3) the State of Washington, (4) Washington, D.C., (5) the U.S. Congress, (6) the U.S. Secretary of State, and (7) the U.S. Solicitor General. *Id.* at p. 1. Demos neither paid the filing fee nor filed a motion for leave to proceed *in forma pauperis*.¹

¹ The federal Judiciary's Public Access to Court Electronic Records (PACER) service reveals that Demos has filed hundreds of civil actions in this and other federal courts. This court and others have determined that Demos is a “three strikes litigant” under the Prison Litigation Reform Act (“PLRA”), 28 U.S.C. § 1915(g), and have denied him leave to proceed *in forma pauperis* unless he is “under imminent danger of serious physical injury.” See *Demos v. United States*, C.A. No. 16-12235-IT (D. Mass. Nov. 16, 2016); *Demos v. United States*, C.A. No. 08-11366-JLT (D. Mass. Aug. 13, 2008) (noting that other courts have found Demos to be a three

II. Discussion

A federal court is a court of limited jurisdiction and may adjudicate only those cases authorized by the Constitution and by Congress. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

Demos cites “5 Cranch 137, 425 U.S. 437, Article VI of the U.S. Constitution, 1889 Enabling Act, 335 U.S. 188, 530 U.S. 428, 506 U.S. 390” as authority for his action. He seeks to have this federal court determine, among other things, “whether Washington Territory was improperly and ‘unconstitutionally’ admitted into the Union” and “whether Canada & London still have ownership of, and over the Pacific Northwest.” Motion [#1] at p. 4. But this court cannot decide the legality of the process by which Washington was admitted to the Union because that determination would entail an impermissible encroachment upon the authority of the political branches of the Government. Demos’ claim is nonjusticiable because it raises a matter that is “commit[ted] ... to a coordinate political department,” “lack[s] ... judicially discoverable and manageable standards for resolving it,” and cannot be decided “without an initial policy determination of a kind clearly for nonjudicial discretion.” *Baker v. Carr*, 369 U.S. 186, 217 (1962).

Additionally, the court finds that Demos’ attempt to invoke the jurisdiction of this court falls short of the constitutional requirements for standing. “The party invoking federal jurisdiction bears the burden of establishing’ standing.” *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 411-12 (2013) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). Demos

strikes litigant and an abusive filer).

fails to allege any direct personal injury, actual or imminent, that he has suffered as a result of the issues raised in his motion.

III. Conclusion

Based upon the foregoing, it is hereby ORDERED that:

1. This action is dismissed in its entirety *sua sponte* pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction.
2. The Clerk shall terminate all pending motions and enter a separate order of dismissal.

So ordered.

/s/ Indira Talwani

Indira Talwani
United States District Judge

Dated: April 2, 2019

APPEAL

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:19-cv-10195-IT**

Demos v. The US Attorney General et al
Assigned to: Judge Indira Talwani
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 01/29/2019
Date Terminated: 04/02/2019
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

John R. Demos

represented by **John R. Demos**

#287455
MCI- IMU- E 40
Monroe Correctional Complex
Intensive Management Unit
PO BOX 7002-16700-177 th Drive S.E
Monroe, WA 98272
PRO SE

V.

~~THE UNITED STATES GOVERNMENT~~

Defendant

~~THE UNITED STATES GOVERNMENT~~

Defendant

The President of the USA

Defendant

The State of Washigton, DC

Defendant

The United States

Defendant

The U.S Congress

Defendant

~~THE UNITED STATES GOVERNMENT~~

Defendant

The U.S Solicitor General

Date Filed	#	Docket Text
01/29/2019	<u>1</u>	MOTION for declaration (no complaint) by John R. Demos. (Attachments: # <u>1</u> Affidavit In Support Motion for declaration)(Castilla, Francis) (Entered: 01/29/2019)
01/29/2019	<u>2</u>	MOTION to Appoint Counsel by John R. Demos.(Castilla, Francis) (Entered: 01/29/2019)
01/29/2019	<u>3</u>	General Order 09-1, dated January 6, 2009 regarding the E-Government Act and Personal Identifiers entered. (Castilla, Francis) (Entered: 01/29/2019)
01/30/2019	<u>4</u>	ELECTRONIC NOTICE of Case Assignment. Judge Indira Talwani assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge M. Page Kelley. (Finn, Mary) (Entered: 01/30/2019)
04/02/2019	<u>5</u>	Judge Indira Talwani: ORDER entered. MEMORANDUM AND ORDER. This action is dismissed in its entirety sua sponte pursuant to Fed. R. Civ. P. 12(h)(3) for lack of subject matter jurisdiction. The Clerk shall terminate all pending motions and enter a separate order of dismissal.(PSSA, 4) (Entered: 04/02/2019)
04/02/2019	<u>6</u>	Judge Indira Talwani: ORDER entered. ORDER DISMISSING CASE(PSSA, 4) (Entered: 04/02/2019)
04/25/2019	<u>7</u>	NOTICE OF APPEAL of ORDER DISMISSING CASE <u>6</u> . Filed by John R. Demos. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 5/15/2019. (Attachments: # <u>1</u> Notice of Appeal: Part II)(Kinsella, Devan) (Entered: 04/26/2019)