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No. 19-15465

ORIGINAL

D.C. 205-CV-00441-TLN-EFB

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

Vernon Wayne McNeal — PETITIONER
(Your Name)

vs.

Ervin et al., — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

Ninth circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Vernon Wayne McNeal
(Your Name)

P.O. Box 911-B3-114
(Address)

Imperial, CA 92251
(City, State, Zip Code)

(Phone Number)

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Van Leer
Leckie
Chatham

RELATED CASES

TABLE OF AUTHORITIES CITED

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

_____ The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 6
Amendment 8
Amendment 14
28 W.S.C. § 1915

STATEMENT OF THE CASE

On March 2, 2019 a Jury found Defendants Evert et al., not guilty of using excessive force on plaintiff. The jury was biased toward Plaintiff and the trial transcripts show this. See Transcript in Ninth Circuit. Ninth Circuit set Plaintiff request for transcripts at Government expense aside to hear Defendants late filed motion to revoke Plaintiff in forma pauperis status for 28 U.S.C. §1915(g) three strikes.

28 U.S.C. §1915(g) under the plain language of the statute the dismissal of a claim in a pending action cannot possibly trigger the so called three strikes bar. App A. 28 U.S.C. §1915(g) don't include a statute of limitation to file motion to revoke an indigent inmate in forma pauperis status once an inmate has acquired the three strike. There is a statute of limitation to file a complaint. But no statute of limitation for Defendants to file motion to revoke inmate in forma pauperis status.

In Defendants motion to revoke Plaintiff's in forma pauperis status they don't acknowledge when plaintiff first became barred from his in forma pauperis status because of three strikes. Plaintiff has been incarcerated for over 21 years with no income. The affidavit and certify copy of the trust account statement that was filed in the McNeal v. Evert et al., Lawsuit proved that, On July 30, 2019 Ninth Circuit granted Defendants motion to revoke Plaintiff in forma pauperis status and give Plaintiff 21 days to pay \$505.00. App B.

Ninth Circuit in order dated March 25, 2019, stated that Appellants forma pauperis status continue in this court under Fed. R. App. P. 24(a) and pursuant to 28 U.S.C. §1915(b)(1) and (2); ~~however, appellant must pay the full amount of the filing and docketing fees for this appeal when funds are available in appellant's account.~~ Congress did not create the PLRA to force an indigent inmate to pay fees the inmate don't have. The order state "when funds are available in appellant's account." The statutes or the order don't state nothing about dismissing a violation of United States Constitution because someone cannot pay a fee. The Constitution itself don't state nothing about dismissing a violation of the constitution for not paying fees to state a claim under the United States Constitution. ~~See Amendment 14.~~ See Amendment 14.

Plaintiff comply with the order and sent the Authorization Form back to the Ninth Circuit, App C. The authorization form don't state nothing about dismissing a constitutional violation because a indigent inmate can not pay the fees, see App A, section 1915(a)(1) in part "by a person who submit an affidavit that includes a statement of all assets such prisoner possesses that the person is unable to pay such fees or give security therefor." The Authorization form authorize prison officials to assess, collect and forward to the district court. The Authorization form ~~must~~ are give to indigent inmates to pay fees in monthly increments, See Authorization form in Ninth Circuit court,

Congress created the Prison Litigation Reform Act to eliminate frivolous, malicious or for failure to state a claim lawsuits, which plaintiff lawsuit is not "The requirements for achieving in forma pauperis status have been made more stringent by the PLRA. A prisoner seeking in forma pauperis status must now include in the required affidavit a statement of all assets such prisoner possesses and a certified copy of the trust fund account statement (or institutional equivalent), for the prisoner for the six month period immediately preceding the filing of the Complaint or notice of appeal," quoted from the Legislative History of the PLRA Act of 1996 Pub.L. NO. 104-134 110 Stat. 1321. App D, Judge Troy L. Nunley continue plaintiff's FPP after the Feb 25, 2019 Civil trial,

On Nov 21-2019 Ninth circuit dismiss plaintiff's lawsuit for a constitutional violation for failure to prosecute. See App E. This should not be the grounds Ninth Circuit use to dismiss Plaintiff lawsuit, failure to prosecute. Plaintiff have been fighting the McNeal v. Evert lawsuit since its inception in 2004 and it's now 2020. The Complaint, affidavit and prison account statement prove this. The Ninth circuit has fail to execute the United States Constitution to a indigent inmate lawsuit for a Eighth Amendment violation. The Ninth circuit do mention the Eighth Amendment violation in none of it orders to dismiss plaintiff's lawsuit. The Ninth Circuit have close their eyes to the Eighth Amendment violation and using a statute to erode and take away Plaintiff constitutional rights that's guarantee by the United States Constitution. Question is the McNeal v. Evert et al., lawsuit a strike now for a alleged failure to prosecute?

Reasons for Granting The WRIT

Vernon Wayne McNeal currently incarcerated in Centinela State Prison. In 2005 Plaintiff filed a 42 U.S.C. §1983 Complaint stating in complaint that his Eighth Amendment to the United States Constitution was violated by Defendants Evert, Ervin, Van Leer, Chatham and Leckie. *Hudson v. McMillian* 503 U.S. at 7-8, 112 S.Ct. 995 (1992) (Standard applies "Whenever prison officials stand accused of using excessive physical force in violation of the cruel and unusual punishment Clause")

To state a claim under 42 U.S.C. §1983 a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States and must show that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins* 487 U.S. 42, 48, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988). see also *Dominquez v. Corr. Med. Servs.* 555 F.3d 543, 549 (6th Cir. 2009) (Same). Because Section 1983 is not a source of substantive rights, but instead provides a method for vindicating federal rights. A section 1983 Plaintiff must first identify the specific Constitutional right allegedly infringed. *Albright v. Oliver* 510 U.S. 266, 271, 114 S.Ct. 807, 127 L.Ed.2d 114 (1994). (Citations omitted) quoting 2010 U.S. Dist. Lexis 48711 *Bulch v. Ohio Dep't of Rehab & Corr.* May 18, 2010.

Plaintiff's in forma pauperis was granted years ago for the ~~McNeal v. Evert et al.~~, now the *McNeal v. Ervin et al.*, due to Plaintiff's severe poverty. see also U.S.C. §1915(a)(1)(2)(e)(2)(A). App. A see 2017 U.S. Dist. Lexis 188997 *Chapman v. Dixon*. Oct 24, 2017. "In addition to federal jurisdiction standards applications to proceed

1 in forma pauperis are governed by 28 U.S.C. § 1915. The purpose of 28 U.S.C. § 1915
2 is to ensure that indigent litigants have meaningful access to the courts. *Adkins*
3 *v. W.I. Dupont de Nemours & Co.*, 335 U.S. 331, 342, 69 S.Ct. 85, 93 L.Ed. 43
4 (1948); *Neitzke v. Williams*, 490 U.S. 319, 324, 109 S.Ct. 1827, 104 L.Ed.
5 2d 338 (1989). To accomplish this end a court must evaluate the
6 litigant's indigence, but notwithstanding indigence, a court may
7 sua sponte dismiss a matter under 28 U.S.C. § 1915 if the litigation
8 is frivolous and malicious or fail to state a claim upon which relief
9 can be granted. The courts in *Neitzke*, at S.Ct. 1827, state that
10 the courts evaluate the litigant's indigence plus courts may sua
11 sponte dismiss under 28 U.S.C. § 1915 if the lawsuit is frivolous, and
12 malicious or fails to state a claim for relief can be granted. The Ninth
13 Circuit did not evaluate plaintiff indigence or dismiss sua sponte
14 for frivolous and malicious or fails to state a claim. Ninth
15 Circuit just dismiss a strong Eighth Amendment Violation
16 lawsuit without evaluating it.

17 Section 1915 allow a litigant to commence a civil or
18 Criminal action in Federal court without paying the administrative
19 cost of the lawsuit. *Deton v. Hernandez* 504 U.S. 25, 112 S.Ct.
20 1728, 118 L.Ed. 2d 340 (1992). The court's review of an in
21 forma pauperis application is normally based solely on the
22 affidavit of ~~the~~ indigence. See *Gibson v. R. G. Smith Co.*,
23 915 F.2d 260, 262-63 (6th Cir. 1990). The threshold
24 requirement which must be met in order to proceed in forma
25 pauperis is that the petitioner show, by affidavit the
26 inability to pay courts fee and costs. 28 U.S.C. § 1915(a). However
27 one need not be absolutely destitute to enjoy the benefit of

1 proceeding in forma pauperis. Adkins, 335 U.S. at 342. An
2 affidavit to proceed in forma pauperis is sufficient if it states
3 that the petitioner cannot because of poverty afford to pay
4 for the costs of litigation and still pay for the necessities of life. *id.*
5 at 339. See 28 U.S.C. § 1915 it Contradict Plaintiff affidavit and
6 Statement Showing my poverty. Gibson, State, "petitioner show, by
7 affidavit the inability to pay Courts fee and Costs. 28 U.S.C. § 1915(a)."
8 Plaintiff have ~~the~~ did this. Defendants never demonstrate in their motion to
9 revoke Plaintiff in forma pauperis that Plaintiff allegation of poverty was
10 untrue. Plaintiff has been incarcerated for over 21 years. Plaintiff Eighth
11 Amendment lawsuit is not frivolous, malicious or fails to state a claim
12 upon which relief may be granted. 28 U.S.C. § 1915(e) (2)(A) it Contradict
13 28 U.S.C. § 1915(g) because Plaintiff poverty is absolutely true. Plaintiff
14 lawsuit was dismiss under 28 U.S.C. § 1915(g).

15 Defendants timing and where they filed their motion to revoke
16 Plaintiff in forma pauperis status should be looked at. Congress, did not
17 include in 28 U.S.C. 1915 any statutes of limitation for Defendants
18 officers accused in a excessive use of force to file a late motion to
19 revoke Plaintiff in forma pauperis for allege three strikes. See O'Neal
20 v. Price, 531 F.3d 1146, 1153 (9th Cir. 2008). Once a prisoner has accumulated
21 three strikes he is prohibited by section 1915(g) from pursuing any other
22 in forma pauperis action in federal court unless he can show he is
23 facing imminent danger of serious physical injury. *Quoting Jones*
24 *v. Blahnik* Jan 17, 2019 U.S. Dist. Lexis 8643. Plaintiff question is
25 when should a Defendant file a motion to revoke a indigent inmate
26 in forma pauperis status. Once a inmate has accumulated the three
27 strikes? or within a span of time? Ninth Circuit state in O'Neal v.

28

1 Price "Once a prisoner has accumulated three strike he is prohibited
2 by Section 1915(g). what did the Ninth Circuit mean? Defendants did not
3 state the dates in there motion to revoke plaintiff in forma pauperis status
4 when plaintiff first loss his in forma pauperis status. There is a statute of
5 limitation that Plaintiff must follow to file the 1983 Complaint in the courts.
6 It should not be no difference for the Defendants in the McNeal v.
7 Evert et al. lawsuit not to have a statute of limitation to file their
8 motion to revoke plaintiff's in forma pauperis status in the courts. See
9 2019 U.S. Dist Lexis 70055 Van Buren v. Spoon May 2, 2019. District
10 courts are authorized to dismiss claims as frivolous if it is clear
11 from the face of a complaint filed in forma pauperis that the
12 claims asserted are barred by the applicable statute of
13 limitations. Moore v. McDonald 30 F.3d 616, 620 (5th cir. 1994); Gattrell,
14 Gawlor 981 F.2d 256 (5th cir. 1993). A district court may raise the
15 limitation period sua sponte. see Harris v. Hegmann 198 F.3d 153 (5th cir. 1999).
16 Defendants motion to revoke plaintiff's IFP status should have been
17 denied. see Marea Bey v. Williams; 2006 WL 463259 *1 (D.D.C. Feb
18 24, 2006). Under the plain language of the statute the dismissal of
19 a claim in a pending action cannot possibly trigger the so called three
20 strike bar). see Rodgers v. Deboe 950 F.supp. at 1026 (S.D. Cal. 1997).
21 The statute at issue here specifically identifies the events that require
22 the assessment and payment of fee: bringing a case, and filing an
23 appeal. Once these milestones have passed, fees do not attach to
24 later activities. Cf. Landgraf v. U.S. Film Prods., 511 U.S. 244,
25 275 n. 29, 128 L. Ed. 2d 229 (1994); Diaz v. Shallbetter, 984 F.2d
26 850 (7th cir. 1993). Therefore, because the PLRA does not, by its
27 express language or legislative intent, seek to prohibit the
28 prosecution of a pending civil action, especially one which has

1 already been determined to be nonfrivolous for purposes of section
2 1915 by virtue of an existing court order granting plaintiff in
3 forma pauperis status at the time of filing. see Franklin v.
4 Murphy, 745 F.2d 1221, 1226-27 (9th cir. 1984), the court declines
5 to apply section 1915(b) to plaintiff's case as he has already
6 brought his civil action, and has not yet had opportunity to file an
7 appeal. also see Rodgers at 950 F.supp. 1029, (Landgraf, 511 U.S. at
8 at 275 n.29, 114 S.Ct. at 1502 n.29 (emphasis added)).

9 Thus, just as a new rule concerning the filing of complaints
10 would not govern an action in which the complaint had already been
11 properly filed, new rules concerning the mandatory payment of filing
12 fees accompanying a properly filed complaint need not be applied here.
13 *id.* This Court is cognizant of the common-sense notion that the
14 applicability of new provisions ordinarily depends on the posture of the
15 ~~case~~ particular case. Accordingly, given the posture of this case, (i.e.,
16 plaintiff's filing fees have already been waived pursuant to the law as
17 it existed at the time his complaint was filed, service upon defendants
18 has already been ordered and completed, and dispositive motions
19 have already been filed and decided). Also see Garcia v. Silbert 141
20 F.3d at 1416. (Section 1915(g) governs bringing new actions or filing
21 new appeal - the events that trigger an obligation to pay a docket
22 fee rather than the disposition of existing cases). The McNeal v.
23 Evert et al., lawsuit is already a properly filed complaint, that's
24 already attached to a pending appeal and neither can never be
25 new.

26

1 Plaintiff Compl. was served on Defendants by a
2 U.S. Marshal service prove that Plaintiff complaint was not
3 frivolous, malicious or fail to state a claim. see Fed. R.
4 Civ. P. (4c). Rule 4(c) contradict §1915(g). Dismissing the
5 McNeal v. Ervin et al., lawsuit under 1915(g) would be
6 dismissing the Complaint, which already went through the
7 screening process. The screening process contradict §1915(g).
8 see Cruz v. Beto 105 U.S. 319, 322 (1972). Plaintiff have
9 proving sets of facts in the McNeal v. Ervin lawsuit. Also
10 see Eighth Amendment. Section 1915(g) contradict the
11 Eighth Amendment.

12 Section 1915(g) governs bringing new actions or filing
13 new appeals. Section §1915(g) in part ("brought a action
14 or appeal in a court of the United States that was dismissed
15 on the ground that it is frivolous malicious or fail to
16 state a claim upon which relief may be granted).
17 new appeals come when you file a new action that was
18 frivolous, malicious, or fails to state a claim. The McNeal v.
19 Ervin et al., is a pending case in the Courts that has
20 went to trial, and has never been counted as a strike
21 under §1915(g) which makes Defendants Revoke motion
22 contradictory. See, 511 U.S. at 275 n.29 (i.e., Plaintiff's filing
23 fees have already been waived pursuant to the law as it existed
24 at the time his complaint was filed, service upon defendants
25 has already been ordered and completed, and dispositive motion
26 have already been filed and decided). Landgraf, 511 U.S. at 275.

27 Defendants cite Cdean v. Tollefson 135 S.Ct 1759 (2015).
28 in there motion to revoke plaintiff in forma pauperis under 1915(g)

1 Plaintiff is appealing a Jury verdict which Sec. 1915(g) don't
2 mention nothing about appealing a jury verdict. See Transcripts
3 in Ninth circuit. This separate the McNeal v. Ervin Eighth
4 Amendment lawsuit from Coleman case. The McNeal v. Ervin
5 lawsuit was never dismiss under one of the §1915(g) enumerated
6 ground. See Coleman at 1763. ("In our view, the sixth circuit
7 majority correctly applied §1915(g). A prior dismissal on a statutorily
8 enumerated ground counts as a strike even if the dismissal is
9 the subject of an appeal. That, after all, is what the statute
10 literally says. The three strikes " provision applies where a prisoner
11 has on 3 or more prior occasions brought an action or appeal
12 that was dismissed on certain grounds. §1915(a) (emphasis
13 added).") The McNeal v. Ervin lawsuit is not a dismissal that's
14 the subject of an appeal. Defendants motion to revoke Plaintiff
15 IFP status under §1915(g) reopen Plaintiff allege five strikes.
16 The thing the U.S. Supreme Court need to know about Plaintiff
17 five alleged strikes is that they all came from the McNeal v. Fleming and
18 McNeal v. Ervin lawsuits because Plaintiff have filed lawsuits. Also Plaintiff
19 has filed another lawsuit in the District Court the McNeal v. Roberts, case
20 No. 2:18-cv-2998 AC PC. On April 18, 2019 Plaintiff was in another
21 imminent danger incident at CSP-SAC where the McNeal v. Roberts
22 lawsuit happen. I am waiting for the administrative remedies to
23 be completed. log No. SAC-C-19-03371. That is nine imminent
24 danger incidents Plaintiff has been involved in prison. The District court
25 screening requirement are blind to all of these imminent danger incident that
26 Plaintiff have been involved in but only keep tally on Plaintiff alleged
27 strikes for §1915(g). but not imminent dangers that's happening
28 to Plaintiff a lawsuits filer.

1 The McNeal v. Dalu, McNeal v. Ervin and McNeal v. Cano are
2 all lawsuits dealing with taken or messing with Plaintiff legal
3 material that's attached to two Federal lawsuits the McNeal v. Fleming
4 and McNeal v. Ervin that Defendants want to disappear under
5 §1915(g). See, The Civil Right Act 42 U.S.C. §1983.

6 Every person who, under color of state law subjects, or cause
7 to be subjected, any citizen of the United States to the deprivation
8 of any rights, privileges, or immunities secured by the Constitution
9 shall be liable to the party injured in an action at law, suit in
10 equity, or other proper proceeding for redress.

11 Also see the 14th Amendment. Defendants allege that
12 Plaintiff EFP status should be revoke because of three strikes.
13 Defendants and CDCR also have 3 strikes Dalu, Ervin and
14 Cano. lawsuits for taken Plaintiff legal material. I can
15 understand if it happen once but it has happen three time.
16 Plaintiff is being denied the immunities secured by the Constitution,
17 because I am a inmate and don't know the law like a attorney.
18 As I stated above District Court screening are turning a blind
19 eye to CDCR wrongs.

20 The McNeal v. Cobbs lawsuit, Ms. Cobbs partially granted
21 the 602. Ms. Cobbs is admitting that she partially or all the way
22 did something wrong and it violated Plaintiff's constitutional rights.
23 The District Court was suppose to "held pro se complaints less
24 strict standard than a motion drafted by a lawyer." See Conley v.
25 Gibson, 355 U.S. 41, 45-46 (1957). Instead District Court dismiss
26 McNeal v. Cobbs lawsuit without prejudice for failure to exhaust
27 administrative remedies. Dismiss without prejudice meaning
28 in theory that you can re-file your case after you pursue your

1 grievance. District court never stated this in Findings and
2 Recommendation, see Jones v. 549 U.S. 199, 214-17, 127 S. Ct. 910
3 (2007); Cruz v. Jordan, 80 F. Supp. 2d 109, 124 (S.D.N.Y.,
4 1999); Nieves v. Ortiz, 2007 WL 1791256, *6 (D.N.J., 6-19-07);
5 Maraglia v. Maloney, 499 F. Supp. 2d 93, 94-95 (D. Mass. 2007);
6 Lunney v. Brundton, 2007 WL 1544629, *10 n.4 (S.D.N.Y., May 29, 2007)
7 (same), objections overruled, 2007 WL 2050361 (S.D.N.Y. 7-18-07);
8 Snider v. Melendez, 199 F.3d 108, 111 (2d Cir. 1999); Green v.
9 Young, 454 F.3d 405, 408-09 (4th Cir. 2006) (same) Smith v.
10 Duke, 296 F. Supp. 2d 965, 965-66 (E.D. Ark. 2003);
11 Henry v. Med. Dep't at SCI-Dallas, 153 F. Supp. 2d 553, 556
12 (M.D. Pa. 2001).

13 The Monreal v. Dalu lawsuit courts granted Plaintiff
14 motion to proceed in forma pauperis dated 11-24-09. See Monreal
15 v. Dalu, Findings and Recommendation dated 1-27-10, page
16 one. Courts at the end of Findings and Recommendation
17 did not state that Plaintiff in forma pauperis in the
18 Dalu case is taken away. Courts in FSR dated 1-27-10
19 page three. Plaintiff disagree with Rhodes v. Robinson
20 version of retaliation the five basic elements. The U.S.
21 constitution First Amendment don't state within the prison
22 context a viable claim of the First Amendment retaliation
23 entails five basic element. This contradict the U.S.
24 Constitution. Now with Plaintiff alleged strikes reopen
25 and all three cases are together Dalu, Ervin and Camo
26 in the eyes of the U.S. Supreme Court. Retaliation is there
27 according to the U.S. Constitution. Plus Defendants Ervin, is
28 one of the Defendants that filed a motion to revoke

1 Plaintiff IFP Status, for a Eighth Amendment
2 violation.

3 The McNeal v. Cano lawsuit, Cano took legal
4 material because Plaintiff was filing suit on Gonzalez,
5 a officer that shot Plaintiff with a 40mm launcher see
6 McNeal v. Cano, orders court dismiss it. ALSO courts
7 dismiss the McNeal v. Gonzalez lawsuit for a officer
8 shooting a inmate with a 40mm launcher, see order.

9 President Trump, have shown the whole world there
10 are no five basic elements to retaliation. see First
11 Amendment. Retaliation can only work one way the
12 way the constitution states it, Dalu, Ervin and
13 Cano, retaliated against Plaintiff by taken legal material
14 that's attached to federal lawsuits and Plaintiff
15 Criminal case. The Dalu, Ervin and Cano cases should not
16 be strikes. It's all explained right there in Dalu, Ervin
17 and Cano documents attached to motion to revoke Plaintiff
18 IFP Status. The documents are showing what Defendants
19 did but the District Court is explaining it away. Courts
20 also in the McNeal v. Dalu Findings and Recommendation
21 don't state or show that Courts check case No. ~~5-05~~ 5-05-
22 441-GEB-EFB P. to see what other court filing plaintiff
23 was suppose to make in the case No. 5-05-441 like
24 District court did in case No. 2:02-cv-02524 to show that
25 Dalu was not withhold my legal material in a federal law-
26 suit. Also District court Findings and Recommendations
27 don't contain the policy and procedures for how long
28 a inmate can go without his legal material while

1 housed in ASU with deadlines in the courts,

2 The Monreal v. Ervin lawsuit was never dismiss or appeal as section ~~1915(g)~~
3 §1915(g) describes. see Coleman 135 S. Ct. at 1763. "Instead, the statute refers to
4 whether an action or appeal was dismissed §1915(g)." Plaintiff is appealing a
5 Jury verdict which section §1915 don't mention nothing about appealing a
6 jury verdict. which separate the Monreal v. Ervin Eighth Amendment lawsuit from
7 Coleman case. Monreal v. Ervin never fitted under the frivolous, malicious or
8 fails to state a claim because it was never dismiss under one of the section
9 §1915 enumerated grounds. see Coleman 135 S. Ct. at 1764. "Finally, the statute's
10 purpose favors our interpretation. The three strike provision was designed to filter out
11 the bad claim and facilitate consideration of the good." id. at 204; 127 S. Ct.
12 910. To refuse to count a prior dismissal because of a pending appeal would
13 produce a leaky filter. Courts interpretation that the three strikes provision was
14 designed to filter out the bad claims and facilitate consideration of the good.
15 Where do the Monreal v. Ervin lawsuit fit at under courts interpretation of the
16 three strikes provision? The Monreal v. Ervin lawsuit was never filter out
17 as a bad claim. see Monroe v. Pape 365 U.S. 167 (1961); Cooper v. Pate 378
18 U.S. 546 (1964). The U.S. congress passed section 42 U.S.C. §1983 specifically to
19 help African-Americans enforce constitutional rights. Defendants want to
20 get rid of plaintiff lawsuit under 1915(g) instead of proving there case at trial
21 with a jury that's not going to be bias toward plaintiff. Plaintiff's constitutional
22 violation is still present along with the injuries. see Jones v. Bock 549 U.S. 199;
23 222-23; 127 S. Ct. 910 (2007); Robinson v. Page 107 F.3d 747, 749 (7th Cir. 1999).
24 see section 1997e(e) Prohibits action for mental or emotional injury
25 without physical injury.

26 Section §1997e(e)

27 (A physical injury is an observable or diagnosable medical condition requiring
28 treatment by a medical care professional. It is not a sore muscle, an aching

1 back, a scratch, an abrasion, a bruise, etc., which last even up to two or three
2 weeks... It is more than the types and kinds of bruises and abrasion about
3 which the Plaintiff complains. Injuries treatable at home and with over the
4 counter drugs, heating pads, rest, etc., do not fall within the
5 parameters of 1997(e)(e).] Section 1997e(e) conflicted with §1915(g). Plaintiff
6 injuries falls under 1997e(e).

7 Plaintiff 42 U.S.C. §1983 stated demand for trial, see City of
8 Monterey v. Del Monte Dunes at Monterey, Ltd. 526 U.S. 687, 729, 119
9 S.Ct. 1624 (1999) (Scalia, J., Concurring); see Curtis v. Loether 415
10 U.S. 189, 94 S.Ct. 1005 (1974). (discussing scope of Seventh Amendment),
11 Marshall v. Knight 445 F.3d 965, 970 (7th Cir. 2006) (allowing
12 Plaintiff to amend complaint to add jury demand). under the
13 statute §1915(b)(4) state "In no event shall a prisoner be
14 prohibited from bringing a civil action or appealing a civil or
15 criminal judgment for the reason that the prisoner has no
16 assets and no means by which to pay the initial partial
17 filing fee." Defendants are going against §1915(b)(4) because
18 plaintiff don't have no assets and no means to pay fee, see
19 Taylor v. Delatorr, 281 F.3d 844, 850-51 (9th Cir. 2007). (a prisoner
20 who cannot pay the initial fee must be allowed to proceed
21 with his case and not merely be granted more time to pay) see
22 28 U.S.C. §1915(b)(4) contradict §1915(g). Also see Griffin v.
23 Illinois (1956) 351 U.S. 12, 19; People v. Hicks (2019) 40 Cal.
24 App. 5th 320; In Re Antazo (1970) 3 Cal. 3d 100, 103,
25 104, 113-114).

26 Defendants also cited Williams v. Parano, 775 F.3d 1182, 1187-
27 88 (9th Cir. 2015). In their motion to revoke Plaintiff's IFP status. See Williams.
28 775 F.3d at 1182. In that context we have held that a prisoner need only

1 make a plausible allegation that he is in imminent danger. *Andrews*, 493 F. 3d at
2 1055. More specifically it is sufficient for the prisoner to allege that he faces
3 an ongoing danger even if he is not directly exposed to the danger at the
4 precise time he filed the complaint. *Id.* at 1056. Thus a prisoner who
5 alleges that prison officials continue with a practice that has injured
6 him or others similarly situated in the past will satisfy the ongoing
7 danger standard. *Id.* at 1056-57. we now Adopt *Andrews* as the
8 standard for determining imminent danger on appeal as well we do so
9 having in mind that §1915(g) concerns only a threshold procedural question
10 whether the filing fee must be paid up front or later. *Id.* at 1055 and that
11 separate PLRA provision are directed at screening out meritless suits
12 early on. *Id.* (Citing 28 U.S.C. §1915(e)(2)(B), 1915 A (b)). As we explained
13 in *Andrews*, the limited office of §1915(g) in determining whether a prisoner
14 can proceed in forma pauperis counsels against an overly detailed inquiry
15 into the allegations that qualify for the exception. *Id.* This is even more so
16 when an inquiry must be conducted by a court of appeals, which unlike
17 a district court is ill-equipped to engage in satellite litigation and
18 adjudicate disputed factual matters. *Van Kenneil Gardin v. Rem's*, 282 F.3d
19 1178, 1183 (9th Cir. 2002). It is thus particularly important that the
20 inquiry ordinarily be conducted through analysis of the prisoner's
21 facial allegations and that these allegations be liberally construed. The
22 inquiry is in essence administrative and maybe conducted as such.

23 Plaintiff Complaint meet the imminent danger exception describe in *Williams*,
24 *Andrews*, because Defendants themselves have made Plaintiff a Candidate for
25 §1915(g) three strikes with five alleged strikes & accidents while fighting two
26 Eighth Amendment lawsuit in the courts, with two additional imminent
27 danger incidents that happen at CSP-SAC while plaintiff was out to court
28 in the *McNeal v. Fleming* and *McNeal v. Ervin* lawsuits. In the *McNeal v.*

1 Ervin, Lawsuit Plaintiff is accusing Defendants of using excessive force then
2 after the force Defendants chained Plaintiff to a holding cell door in tight
3 restraints and plaintiff passed out from his blood being restricted. Plaintiff
4 Eighth Amendment claims in the Complaint show imminent danger at the
5 time when I filed the Complaint and 1915(g) should allow my entire
6 Complaint to proceed I F P. Defendants have use 1915(g) wrong in plaintiff case.
7 See Andrews v. Cervantes 493 F. 3d 1047 (9th Cir. 2008) Quoting Ibrahim, 463
8 F. 3d at 5-8 (reversing, on all but one claim, the dismissal of a prisoner's compl,
9 that alleged a smorgasbord of wrongdoings by the defendants including due
10 process and first Amendment violations after concluding that one claim met
11 the imminent danger of serious physical injury standard).

12 In sum, if Andrews's Eighth Amendment claim alleged that he faced an
13 imminent danger at the time he filed the Complaint § 1915(g) allows his entire
14 lawsuit to proceed I F P even if Andrews otherwise met the three strikes
15 criteria.

16 So it's come back to the screening process in § 1915A. That didn't
17 liberally construe plaintiff's complaint in the Merced v. Ervin lawsuit
18 for imminent danger in 2005 and didn't conclude that none of the
19 claims in the Complaint met the imminent danger standard, § 1915A
20 contradict § 1915(g). Plaintiff is requesting from the United States
21 Supreme Courts that they look at all of Plaintiff's five alleged strikes
22 because of the § 1915A screening process.
23

Conclusion

1 Plaintiff pray that supreme court grant Plaintiff relief
2 in this matter. Section 31915(g) is not the appropriate means to
3 dismiss a Eighth Amendment violation to the united states
4 constitution by defendants Ervin, Leckie, Van Leer and Chatham
5 because Plaintiff can not pay the filing fee.

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7 Dated: Feb 13, 2020

8 Respectfully submitted
9 Vernon McNeal
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