Appendix-A-

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

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FINAL JUDGMENT

November 19, 2020

Before: DAVID F. HAMILTON, Circuit Judge
MICHAEL B. BRENNAN, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge

No. 19-3244	FADEEL SHUHAIBER, Plaintiff - Appellant v. ILLINOIS DEPARTMENT OF CORRECTIONS, Defendant - Appellee
Originating Case Information:	
District Court No: 1:18-cv-03289 Northern District of Illinois, Eastern Division District Judge Edmond E. Chang	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

19-3244

FadeelShuhaiber
#A209957429
MCHENRY COUNTY JAIL
2200 N. Seminary Avenue
Woodstock, IL 60098-0000

In the

United States Court of Appeals

For the Seventh Circuit

No. 19-3244

FADEEL SHUHAIBER,

Plaintiff-Appellant,

v.

ILLINOIS DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:18-cv-03289 — **Edmond E. Chang**, *Judge.*

SUBMITTED SEPTEMBER 17, 2020* —
DECIDED NOVEMBER 19, 2020

Before HAMILTON, BRENNAN, and SCUDDER, *Circuit Judges.*

SCUDDER, *Circuit Judge.* Fadeel Shuhaiber is confined to a wheelchair. Following the district court's dismissal of claims

*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

he brought against the Illinois Department of Corrections under the Americans with Disabilities Act and Rehabilitation Act, Shuhaiber appealed and, based on his impoverished status, sought permission to proceed on appeal without prepaying the requisite filing fee. By the time he filed the appeal, Shuhaiber, a native of the United Arab Emirates, had been transferred to the custody of the Department of Homeland Security for removal from the United States. The change in custody matters because Shuhaiber, as a frequent filer of federal lawsuits, had accumulated more than three strikes under the Prison Litigation Reform Act for filing frivolous lawsuits, and therefore would have had to prepay the filing fee to appeal the district court's dismissal of his claims. Doubting that Shuhaiber was still a "prisoner," the district court granted his motion to proceed *in forma pauperis*.

We agree and hold, in alignment with all other circuits to have addressed the question, that the appellate filing-fee bar does not apply where, as here, the appellant is being held by immigration authorities and thus no longer is a "prisoner" within the meaning of the PLRA. That conclusion does not lead very far for Shuhaiber, however, as the district court was also right to dismiss his claims, leaving us to affirm.

I

Shuhaiber's complaint focused on events during his stay at the Stateville Northern Reception and Classification Center in Joliet, Illinois. He alleged that the institution failed to accommodate his disability by confining him to a cell unsuited to an inmate confined to a wheelchair. Not only was the cell too small to maneuver easily within, but, as Shuhaiber contended, he struggled to get into his lower bunk and use the table. He likewise complained of being transported to

physical therapy appointments in vans that were not ADA-compliant, leaving him to depend on an officer to lift him into the vehicles.

Invoking Federal Rule of Civil Procedure 12(b)(6), the Department of Corrections moved to dismiss Shuhaiber's complaint. The district court granted the motion and dismissed the complaint without prejudice, determining that Shuhaiber failed to allege that he was deprived of access to facilities or services or that anything about the Department's vans caused him to miss medical appointments. In so ruling, the district court gave Shuhaiber a month within which to file an amended complaint clarifying and more fully advancing his allegations.

During the ensuing 30 days, Shuhaiber finished serving his sentence and was transferred to the custody of the Department of Homeland Security pending ongoing removal proceedings. This changed circumstance resulted in the district court giving Shuhaiber another month within which to file an amended complaint. After that new deadline passed, Shuhaiber sought another extension of time while simultaneously indicating he wanted to appeal the court's prior dismissal order.

We dismissed Shuhaiber's appeal for non-payment of fees. Order, *Shuhaiber v. Ill. Dep't of Corr.*, No. 19-2344 (7th Cir. Oct. 4, 2019). The district court reacted by then entering a final order dismissing Shuhaiber's case with prejudice on the basis that he had failed to respond to the prior order allowing an amended complaint. Shuhaiber appealed from that final order. Recognizing that Shuhaiber was no longer a prisoner serving a criminal sentence, the district court granted his request to proceed *in forma pauperis*.

II

We begin by addressing whether Shuhaiber's *in forma pauperis* status on appeal is proper. The Prison Litigation Reform Act, which everyone calls the PLRA, places several restrictions on prisoners' access to federal civil litigation. Relevant here is the PLRA's "three strikes" provision, which prevents prisoners from appealing a judgment in a civil action without the prepayment of the filing fee if they have accumulated three or more strikes and do not allege circumstances in which they face an imminent danger of physical harm. 28 U.S.C. § 1915(g); see *Kalinowski v. Bond*, 358 F.3d 978, 978 (7th Cir. 2004) ("[T]he ... three-strikes rule[] appl[ies] to prisoners only.").

The question is whether Shuhaiber, upon leaving the custody of the Department of Corrections and being detained by DHS (by which time he had accumulated five "strikes"), remained a "prisoner" within the meaning of the PLRA. Congress has answered the question by defining a "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of *criminal* law or the terms and conditions of parole, probation, pretrial release, or diversionary program." 28 U.S.C. § 1915(h) (emphasis added). The analysis from here is straightforward, for once Shuhaiber entered DHS's custody on the immigration detainer he ceased being confined for any violation of criminal law—indeed, he had finished serving his Illinois sentence. What is more, "[immigration] removal proceedings are civil, not criminal," in nature. *Gutierrez-Berdin v. Holder*, 618 F.3d 647, 652 (7th Cir. 2010) (citing *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050–51 (1984)).

Like the three other circuits to have considered the question, we too now conclude that a person held only on an immigration detainer is not a "prisoner" within the meaning of the PLRA and therefore is not subject to its filing fee requirements. See *Agyeman v. INS*, 296 F.3d 871, 885–86 (9th Cir. 2002) (analyzing PLRA's definition of prisoner and nature of deportation proceedings and reaching the same conclusion); *LaFontant v. INS*, 135 F.3d 158, 165 (D.C. Cir. 1998) (employing same reasoning and reaching the same conclusion); *Ojo v. INS*, 106 F.3d 680, 682–83 (5th Cir. 1997) (same).

The upshot is that allowing Shuhaiber to proceed *in forma pauperis* does not violate the PLRA.

III

On the merits, the district court was right to dismiss with prejudice Shuhaiber's claims under the ADA and Rehabilitation Act. To state a claim under the ADA or Rehabilitation Act, Shuhaiber had to allege facts plausibly suggesting that he is a qualified person with a disability and "was denied the benefits of the services, programs, or activities" of the Center because of his disability. *Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015) (citation and quotation marks omitted). He failed to do so. Although alleging difficulties with his cell, the showers, and the vans, Shuhaiber did not say anything about his particular circumstances or accommodations that kept him from accessing the Center's facilities or services on the same basis as other inmates. See *id.* at 592–93; *Jaros v. Ill. Dep't of Corr.*, 684 F.3d 667, 672 (7th Cir. 2012). And, while invited by the district court to amend his complaint to add allegations about missing medical appointments because of the inadequacy of the Center's vans, Shuhaiber never did so. See *Wagoner*, 778 F.3d at 593 (concluding that the inconvenience of

transport in a noncompliant van does not amount to denial of services).

Further, Shuhaiber is mistaken with his contention that the district court held him to a fact pleading requirement at odds with Federal Rule of Civil Procedure 8(a). Nothing in the district court's orders even hints at a requirement that Shuhaiber plead facts corresponding to the elements of his ADA and Rehabilitation Act claims and theory of proof. See *Chapman v. Yellow Cab Coop.*, 875 F.3d 846, 848 (7th Cir. 2017) ("To the extent the district court demanded that complaints plead facts—not only facts that bear on the statutory elements of a claim, but also facts that bear on judicially established standards—it was mistaken.").

To be sure, Federal Rule of Civil Procedure 12(e) allows district courts to ask a plaintiff to provide "details that enable the defendants to respond intelligently and the court to handle the litigation effectively." *Id.* at 849. If a plaintiff does not comply with a reasonable order for such details, a district court may dismiss the complaint with prejudice. *Id.* That is all that happened here, and, in the end, the district court committed no error in dismissing Shuhaiber's case with prejudice.

Finally, it is too late for Shuhaiber to use his appellate briefs to submit documents purporting to demonstrate that he missed three physical therapy appointments (out of thirty-eight) due to the lack of an ADA-compliant van. See *id.* These facts, if true, were known to Shuhaiber all along, and he should have included them in an amended complaint. The time has come and gone for him to do so, however.

For these reasons, we AFFIRM.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Fadeel Shuhaiber (Y-23584),	)	
	)	
Plaintiff,	)	
	)	Case No. 18 C 3289
v.	)	
	)	Judge Edmond E. Chang
Ill. Dep't of Corr.,	)	
	)	
Defendant.	)	

ORDER

Fadeel Shuhaiber, now a prisoner at Lawrence Correctional Center, alleges that he was discriminated against based on his disability discrimination when he was housed at Stateville NRC, a receiving facility for the Illinois Department of Corrections. Pending is Defendant's motion to dismiss the complaint. R. 18.

I. Background

Shuhaiber, who uses a wheelchair for mobility, was housed at Stateville NRC from August 7, 2017, to July 27, 2018. *See* Pl.'s Resp., R. 22, at 2; Compl., R. 8 at 10. During this time, he was housed in a cell that allegedly did not comply with the dimensions required by the Americans with Disabilities Act and the Rehabilitation Act. Compl. at 10. Shuhaiber contends that the cell in which he was housed was "very small" and that he could not use a table in the cell because it had a bench. *Id.* Because it was difficult for him to use the table, he had to eat or write in his bed. *Id.* at 11. Shuhaiber alleges that the cell had bunk beds, and it was difficult to get into the lower bunk "and sometimes I ha[d] to lower my head or hit my shoulder trying to get to bed." *Id.* at 10. Other inmates would step on his bed in order to get up or down from the top bunk "and usually ha[d] no medical problems to be housed in a medical cell." *Id.*

Shuhaiber also complains about the positioning of the sink and toilet in the cell. *Id.* at 11. It appears that the sink's location made it difficult to transfer into his bunk (although he apparently was able to do so). *Id.* He also alleges that because of the cramped quarters, he had to go in reverse in his wheelchair to enter or exit the cell. *Id.* It also was difficult for both inmates to move around in the cell at the same time. *Id.*

With regard to the shower, Shuhaiber states that it lacked a "fixed chair for safe transfer," the water button was too high for him to easily reach, and the showers were too small for his wheelchair to fit inside. *Id.*)

Next, Shuhaiber contends that when he was sent from Stateville NRC to the main prison for physical therapy or visits, he often was not transported in an accessible van, but in a standard van. *Id.* When he used the standard van, officers would carry him from the wheelchair into the van. *Id.* The body of the complaint does not assert that Shuhaiber missed any appointments due to use of the standard van, but Shuhaiber generally refers to "missed appointments" in the relief section of the complaint. *Id.* at 12.

II. Standard of Review

A motion under Rule 12(b)(6) challenges the sufficiency of the complaint. *See Hallinan v. Fraternal Order of Police of Chi. Lodge No. 7*, 570 F.3d 811, 820 (7th Cir. 2009). Under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citation omitted). Under federal notice pleading standards, a plaintiff's "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Put differently, a "complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 570). "In reviewing the sufficiency of a complaint under the plausibility standard, [courts] accept the well-pleaded facts in the complaint as true." *Alam v. Miller Brewing Co.*, 709 F.3d 662, 665-66 (7th Cir. 2013). Courts also construe *pro se* complaints liberally. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam). That said, the allegations that are entitled to the assumption of truth are those that are factual, rather than mere legal conclusions. *Iqbal*, 556 U.S. at 678-79.

III. Analysis

In moving to dismiss, Defendant argues that Shuhaiber has not alleged any facts suggesting that he was deprived of any services, programs, or activities because of his disability. Def.'s Mem., R. 18-1, at 4. Shuhaiber contends in his response that he was deprived "from accessing cells and showers that are ADA accessible." Pl.'s Resp., R. 22, at 1-2.

Shuhaiber is attempting to proceed with claims under Title II of the ADA, 42 U.S.C. §§ 12131–12165, and the Rehabilitation Act of 1973, 29 U.S.C. § 794. The relief available under these statutes is co-extensive. *See Jaros v. Ill. Dep't of Corr.*, 684 F.3d 667, 671 (7th Cir. 2012) (citing 29 U.S.C. § 794A, 42 U.S.C. § 12117). The difference

is that the Rehabilitation Act applies when the relevant state agency (here, the Illinois Department of Corrections) accepts federal funding, which it does. *Id.* To state a claim under either statute, Shuhaiber must adequately allege that: (1) he is a qualified individual with a disability; (2) who was denied the benefits of a public entity's services, programs, or activities; and (3) the exclusion, denial of benefits, or discrimination was by reason of a disability. 42 U.S.C. § 12132; *see Wagoner v. Lemmon*, 778 F.3d 586, 592 (7th Cir. 2015). Failure to make reasonable accommodations can amount to a denial of access to programs or activities. *Jaros*, 684 F.3d at 672 ("Refusing to make reasonable accommodations is tantamount to denying access; although the Rehabilitation Act does not expressly require accommodation, the Supreme Court has located a duty to accommodate in the statute generally.").

Defendant's motion targets only the second requirement: Shuhaiber has not adequately alleged that he was denied access to any programs or services, but rather that he was merely inconvenienced. In so arguing, the defense relies on *Wagoner*, 778 F.3d at 592-93. In that opinion, the Seventh Circuit held that a prisoner's claims about the condition of his wheelchair and his improper transportation in an ill-equipped van were "a poor fit" for the ADA and the Rehabilitation Act because he did not allege that these failures "denied him access to any services or programs." Rather, he alleged only that he was "inconvenienced with longer waits and humiliation," such as having to crawl off the regular van. *Id.* at 593.

Defendant argues that the reasoning of *Wagoner* is directly applicable to Shuhaiber's claim that he was carried onto the regular van for his trips between NRC and Stateville. Def.'s Mem. at 4. Defendant further contends that this reasoning extends to the complaints about the size of Shuhaiber's cell, again because he does not allege that he was denied access to his cell or his bed due to his disability. *Id.* at 4-5. Same goes for the showers: again, Defendant argues that Shuhaiber does not allege that he was denied access to the showers, but rather that the layout made use of the showers more difficult for him. *Id.* at 5-6.

In response, Shuhaiber focuses on his general contention that the prison was not "ADA compliant." *See* Pl.'s Resp. at 2. But he does not elaborate on how the alleged lack of compliance denied or hindered his access to programs, services, or facilities at the prison. Shuhaiber's response actually says that he was able to use the shower and the bed. *See* Pl.'s Resp. at 1. Similarly, while Shuhaiber referred to "missed appointments" in the relief section of his complaint, neither the body of the complaint nor the response contain any specific allegations about missed appointments or visitations for lack of an accessible van. Rather, in his response, Shuhaiber says only that he should not have been forced to get out of his wheelchair and use a regular seat on the van. *Id.* at 2.

On the claim about the van, Defendant is right: Shuhaiber's allegations are similar to those made by the unsuccessful inmate in *Wagoner*. Yes, Shuhaiber was inconvenienced by having to be carried onto a regular van, but he does not allege that his access to physical therapy or visitation was prevented or limited by this inconvenience. If it is Shuhaiber's contention that he did miss physical therapy or visitation appointments due to the lack of an accessible van, then he must make that clear with specific factual allegations in an amended complaint (bearing in mind that he must have a reasonable basis to make that allegation and that he eventually will have to prove that he missed appointments).

This is true too of the complaints about the cell and the showers. Shuhaiber only labels the cell and the showers as not ADA-compliant; but the prison itself "is not a program or activity." *Jaros*, 684 F.3d at 672. Rather, "[p]ublic entities, such as correctional facilities, must 'take reasonable measures to remove architectural and other barriers' that deny access" to programs, activities, or services. *Clemons v. Dart*, 168 F.Supp.3d 1060, 1066 (N.D. Ill. 2016) (quoting *Tennessee v. Lane*, 541 U.S. 509, 531 (2004) (citing 42 U.S.C. § 12131(2))). It is true that showers and meals available to inmates qualify as programs and activities under the statute, *see Jaros*, 684 F.3d at 672, and accessible beds might qualify as well, *see Simmons v. Godinez*, No. 16 C 4501, 2017 WL 3568408, at *6 (N.D. Ill. Aug. 16, 2017). It is also true that a complete denial of services is not required to state a claim. *See Jones v. Olson*, No. 14-cv-3068, 2016 WL 1060831, at *5-*6 (C.D. Ill. March 17, 2016) (refusing to vacate jury verdict in favor of prisoner who was allowed access to the library, but whose access was hindered due to prohibition on using nearby bathroom). As explained in *Jones*, the relevant statutes provide that inmates with disabilities must be allowed to access programs and services "on the same basis as other inmates." *Id.* at *5 (citing *Jaros*, 684 F.3d at 672.) The regulations to these statutes prohibit the provision of a service to a disabled individual "that is not *equal* to that afforded others." *Id.* (citing 28 C.F.R. § 35.130(ii); 29 C.F.R. § 32.4(b)(ii)-(iii)).

On that substantive standard, the current complaint does not adequately allege a denial of equal access to services based on cell size or access to showers. Shuhaiber was able to access the bed in his cell despite the cramped quarters. With regard to the showers, Shuhaiber targets the lack of a "fixed chair for safe transfer" and the height of the water button made it difficult to access. *See* Pl.'s Compl. at 11. But those facts are not the equivalent of alleging that he was unable to shower as often—that is, on an equal basis—as non-disabled prisoners. *See Harper v. Dart*, No. 14 C 1237, 2015 WL 6407577, at *4 (N.D. Ill. Oct. 21, 2015) (allegation that inmate had "great difficulty" showering, using the toilet, and getting into bed was insufficient to state an ADA claim because it did not explain how the plaintiff was denied equal access).

For these reasons, Defendant's motion to dismiss is granted, but for now the dismissal is without prejudice. If Shuhaiber believes that he can fix the problems

explained in this Order, then may submit a proposed amended complaint by May 28, 2019. If no amended complaint is submitted, then the dismissal will convert to a dismissal with prejudice and final judgment will be entered. The status hearing of May 7, 2019 is reset to June 14, 2019, at 8:30 a.m. (to track the case only, no appearance is required).

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: April 29, 2019

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse
Room 2722 - 219 S. Dearborn Street
Chicago, Illinois 60604

Office of the Clerk
Phone: (312) 435-5850
www.ca7.uscourts.gov

ORDER

January 21, 2020

By the Court:

No. 19-3244	FADEEL SHUHAIBER, Plaintiff - Appellant v. ILLINOIS DEPARTMENT OF CORRECTIONS, Defendant - Appellee
Originating Case Information:	
District Court No: 1:18-cv-03289 Northern District of Illinois, Eastern Division District Judge Edmond E. Chang	

On January 14, 2020, the district court granted the appellant leave to proceed in forma pauperis on appeal. In order to permit the appeal to proceed, it is requested that the district court assess an initial partial filing fee for the appeal and to notify this court when the partial fee has been collected. *See* 28 U.S.C. § 1915(b)(1).

EXECUTIVE ORDERS

Executive Order on Combating Anti-Semitism

— LAW & JUSTICE

Issued on: **December 11, 2019**

★ ★ ★

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. My Administration is committed to combating the rise of anti-Semitism and anti-Semitic incidents in the United States and around the world. Anti-Semitic incidents have increased since 2013, and students, in particular, continue to face anti Semitic harassment in schools and on university and college campuses.

Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. 2000d et seq., prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving Federal financial assistance. While Title VI does not cover discrimination based on religion, individuals who face discrimination on the basis of race, color, or national origin do not lose protection under Title VI for also being a member of a group that shares common religious practices. Discrimination against Jews may give rise to a Title VI violation when the discrimination is based on an individual's race, color, or national origin.

It shall be the policy of the executive branch to enforce Title VI against prohibited forms of discrimination rooted in anti-Semitism as vigorously as against all other forms of discrimination prohibited by Title VI.

Sec. 2. Ensuring Robust Enforcement of Title VI. (a) In enforcing Title VI, and identifying evidence of discrimination based on race, color, or national origin, all executive departments and agencies

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
December 11, 2019.

Appendix -D-

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Fadeel Shuhaiber (A-209957429),	)	
	)	
Plaintiff,	)	
	)	Case No. 20 C 50403
v.	)	
	)	Hon. Philip G. Reinhard
Bill Prim, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* [5] is denied for lack of a sufficient showing of indigence. If plaintiff wants to proceed with this case, he must pre-pay the $400.00 filing fee by February 3, 2021. Failure to do so will result in summary dismissal of this case. The court defers screening of plaintiff's complaint [1] pending payment of the filing fee.

STATEMENT

Plaintiff Fadeel Shuhaiber, an immigration detainee held at the McHenry County Jail, brings this *pro se* civil rights action under 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* Plaintiff alleges that jail officials violated his rights by forcing him to clean areas of the jail despite his physical limitations. By order of October 23, 2020, the court directed plaintiff to submit a properly completed *in forma pauperis* ("IFP") application or pay the full $400.00 filing fee if he wanted to proceed with this case.

Now before the court is plaintiff's IFP application, in which he states that he has received $3,600 in gifts (presumably, deposits to his trust fund account, although plaintiff does not so specify) and $1,200 in "[u]nemployment, public assistance or welfare" in the past year. (*See* [5] at pg. 1.) In the last six months, plaintiff received average monthly deposits of $403.34 to his trust fund account. (*Id.* at pg. 2.)

Plaintiff also attached a copy of his trust fund statement from the McHenry County Jail, which shows that plaintiff consistently receives a $150 deposit to his trust fund account about every two weeks, going back to January 31, 2020. (*See id.* at pgs. 3-7.) Plaintiff also received a $1,200 deposit identified as "mail credit" on September 24, 2020. (*Id.* at pg. 6.) This may be the public assistance to which plaintiff is referring, although it is unclear.

As of September 25, 2020, plaintiff had a trust fund balance of $1,350.95. (*Id.*) He made a "third-party release" in the amount of $930 on Sept. 30, 2020, and another in the amount of $110 on October 8, 2020. (*Id.*) The trust fund statement does not indicate to whom these payments were made or for what purpose. As of November 10, 2020, plaintiff had only $8.06 on hand. (*Id.* at pg. 2.) Other than the large withdrawals outlined above, plaintiff appears to have spent most of his funds on telephone time and various "order debits," possibly commissary purchases, although this is unclear.

As stated in this court's prior order, plaintiff, as an immigration detainee, does not fall within the Prison Litigation Reform Act's definition of "prisoner." *See* 28 U.S.C. § 1915(h) (defining "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or

adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."); *see also Shuhaiber v. Ill. Dep't of Corr.*, --- F.3d ---, 2020 WL 6791228, at *2 (7th Cir. Nov. 19, 2020). This means that plaintiff is eligible to proceed IFP despite the fact that he has "struck out" under the PLRA. *See id.*

However, simply because plaintiff is eligible to proceed IFP does not mean that he is entitled to do so. A civil litigant ordinarily must pay a statutory filing fee to bring an action in federal court. 28 U.S.C. § 1914. If the litigant is indigent, federal law allows the court to authorize commencement of a federal action without prepayment of the court's fees upon submission of an affidavit including a statement of assets showing that the person is unable to pay the filing fee. 28 U.S.C. § 1915(a)(1).

A party need not be entirely destitute to obtain the benefit of proceeding IFP. *Wolf v. Comm'r of Soc. Sec.*, No. 3:20-CV-50055, 2020 WL 1675673, at *3 (N.D. Ill. Apr. 6, 2020) (Kennelly, J.) (citing *Atkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)). Rather, an applicant must demonstrate that due to his poverty, he cannot afford to pay for the costs of litigation and still provide for himself an any dependents. *Id.*

Plaintiff, while not a prisoner as defined by the PLRA, is in government custody, and his basic necessities are provided by the state. His application does not list any dependents, nor does he list any outstanding financial obligations other than fees owed to this court. By his own account, plaintiff has received at least $4,800 in the last year. Plaintiff's complaints about having to clean the facility date back until at least August, meaning that he could have saved to pay the filing fee from the significant deposits outlined in this order. Under these circumstances, plaintiff is not eligible to proceed IFP.

For these reasons, plaintiff's application for leave to proceed IFP is denied and plaintiff must pre-pay the $400.00 filing fee if he wants to proceed with this case. Payment should be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and must clearly identify plaintiff's name and the case number assigned to this case.

Because plaintiff is responsible for paying the filing fee in this case and in *Shuhaiber v. Prim*, No. 20 C 50454, the court will give plaintiff 60 days to pay the fee. Failure to do so by the date set forth above will result in summary dismissal of this matter.

Date: 12/04/2020

ENTER:

Philip G. Reinhard

United States District Court Judge

Appendix - E-

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS WESTERN DIVISION

Fadeel Shuhaiber (A-209957429),	)	
	)	
Plaintiff,	)	
	)	Case No. 20 C 50454
v.	)	
	)	Hon. Philip G. Reinhard
Bill Prim, et al.,	)	
	)	
Defendants.	)	

ORDER

Plaintiff's application for leave to proceed *in forma pauperis* and his motion for fee waiver [3, 4] are denied for lack of a sufficient showing of indigence. If plaintiff wants to proceed with this case, he must pre-pay the $400.00 filing fee by February 3, 2021. Failure to do so will result in summary dismissal of this case. The court defers screening of plaintiff's complaint [1] pending payment of the filing fee.

STATEMENT

Plaintiff Fadeel Shuhaiber, an immigration detainee held at the McHenry County Jail, brings this *pro se* civil rights action under 42 U.S.C. § 1983 and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*. Plaintiff complains that beginning on October 28, 2020, he was forced to spend twelve days in a cell without a bed and without dayroom time.

Plaintiff has filed a motion for fee waiver and an application for leave to proceed *in forma pauperis* ("IFP"). The application for leave to proceed IFP is not on this court's required form. Rather, it appears plaintiff has typed a version of a prior form used by the court. Additionally, the application is inconsistent with an application filed Nov. 16, 2020 by plaintiff in another case, *Shuhaiber v. Prim*, No. 20 C 50403. In that case, he disclosed receipt of $1,200 in "[u]nemployment, public assistance or welfare" in the past year, but he made no such disclosure in this case. (*See* [3] at pg. 2.) Additionally, the trust fund statement attached to the application is incomplete, as the five-page statement is missing the even pages. (*See id.* at pgs. 5-7.)

Plaintiff's application therefore paints an incomplete picture of plaintiff's finances. However, as the application in *Shuhaiber v. Prim*, No. 20 C 50403, is complete and was filed just three days before the application in this case, the court will consider the information in that application rather than order plaintiff to file a properly completed application. However, plaintiff is warned that intentional misrepresentations on IFP applications warrant dismissal. *See Robertson v. French*, 949 F.3d 347, 352 (7th Cir. 2020).

The application in *Shuhaiber v. Prim*, No. 20 C 50403, [5] at pg. 1, states that plaintiff

received $3,600 in gifts (presumably, deposits to his trust fund account) and $1,200 in "[u]nemployment, public assistance or welfare" in the past year.

Plaintiff also attached to that application a complete copy of his trust fund statement from the McHenry County Jail, which shows that plaintiff consistently receives a $150 deposit to his trust fund account about every two weeks, going back to January 31, 2020. Plaintiff also received a $1,200 deposit identified as "mail credit" on September 24, 2020. This may be the public assistance listed in that application, although it is unclear.

As of September 25, 2020, plaintiff had a trust fund balance of $ 1,350.95. He made a "third-party release" in the amount of $930 on Sept. 30, 2020, and another in the amount of $110 on October 8, 2020. The trust fund statement does not indicate to whom these payments were made or for what purpose.

As of November 12, 2020, plaintiff had only $3.06 on hand, although he had received average monthly deposits of $403.34 in the past six months. ([3] at pg. 4.) Other than the large withdrawals outlined above, plaintiff appears to have spent most of his funds on telephone time and various "order debits," possibly commissary purchases, although this is unclear.

Plaintiff also has filed a motion for fee waiver, in which he requests that the court waive the initial filing fee because he is not subject to the Prison Litigation Reform Act ("PLRA"). ([4].) It is true that plaintiff, as an immigration detainee, does not fall within the PLRA's definition of "prisoner." *See* 28 U.S.C. § 1915(h) (defining "prisoner" as "any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program."); *see also Shuhaiber v. Ill. Dep't of Corr.*, --- F.3d ---, 2020 WL 6791228, at *2 (7th Cir. Nov. 19, 2020). This means that plaintiff is eligible to proceed IFP despite the fact that he has "struck out" under the PLRA. *See id.*

However, simply because plaintiff is eligible to proceed IFP does not mean that he is entitled to do so. A civil litigant ordinarily must pay a statutory filing fee to bring an action in federal court. 28 U.S.C. § 1914. If the litigant is indigent, federal law allows the court to authorize commencement of a federal action without prepayment of the court's fees upon submission of an affidavit including a statement of assets showing that the person is unable to pay the filing fee. 28 U.S.C. § 1915(a)(1).

A party need not be entirely destitute to obtain the benefit of proceeding IFP. *Wolf v. Comm'r of Soc. Sec.*, No. 3:20-CV-50055, 2020 WL 1675673, at *3 (N.D. Ill. Apr. 6, 2020) (Kennelly, J.) (citing *Atkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)). Rather, an applicant must demonstrate that due to his poverty, he cannot afford to pay for the costs of litigation and still provide for himself an any dependents. *Id.*

Plaintiff, while not a prisoner as defined by the PLRA, is in government custody, and his basic necessities are provided by the state. His applications do not list any dependents, and the only financial obligation listed in *Shuhaiber v. Prim*, No. 20 C 50403, is fees owed to this court.

By his own account, plaintiff has received at least $4,800 in the last year. Although the issue of which he complains in this case, a cell change in late October, arose relatively recently, plaintiff receives consistent deposits of $150 every other week. He has the means to pay the filing fee. Under these circumstances, plaintiff is not eligible to proceed IFP.

For these reasons, plaintiff's application for leave to proceed IFP and his motion for fee waiver are denied. Plaintiff must pre-pay the $400.00 filing fee if he wants to proceed with this case. Payment should be sent to the Clerk of Court, United States District Court, 219 South Dearborn Street, Chicago, Illinois 60604, attn: Cashier's Desk, 20th Floor, and must clearly identify plaintiff's name and the case number assigned to this case.

Because plaintiff is responsible for paying the filing fee in this case and in *Shuhaiber v. Prim*, No. 20 C 50403, the court will give plaintiff 60 days to pay the fee. Failure to do so by the date set forth above will result in summary dismissal of this matter.

Date: 12/04/2020

ENTER:

Philip G. Reinhard

United States District Court Judge