

United States Court of Appeals
for the Fifth Circuit



Certified as a true copy and issued
as the mandate on Feb 24, 2021

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

No. 20-50969

JAIME LUEVANO,

Plaintiff—Appellant,

versus

JUDGE LEE YEAKEL; GOVERNOR GREG ABBOTT; WARDEN
AMANDA CAMPBELL,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:20-CV-1069

CLERK'S OFFICE:

Under 5TH CIR. R. 42.3, the appeal is dismissed as of February 24, 2021, for want of prosecution. The appellant failed to timely pay the docketing fee.

LYLE W. CAYCE
Clerk of the United States Court
of Appeals for the Fifth Circuit

Renee McDonough


By: _____
Renee S. McDonough, Deputy Clerk

ENTERED AT THE DIRECTION OF THE COURT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT of TEXAS
SAN ANTONIO DIVISION

FILED

FEB 28 2011

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

JAIME LUEVANO,
TDCJ # 1655791

Petitioner,

v.

OFFICE OF INSPECTOR GENERAL,

Respondent,

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Civil Action
No. SA-11-CA-131-OG

DISMISSAL ORDER

Before the Court is petitioner Jaime Luevano's "writ of mandamus to compel the offices to investigate violations of Connally Unit." Petitioner seeks an investigation into prison conditions. Petitioner has filed a motion for leave to proceed in forma pauperis. Because petitioner seeks an investigation into prison conditions, the underlying action is not habeas in nature, so this case is subject to the filing fee provisions of the Prison Litigation Reform Act. *See In re Crittenden*, 143 F.3d 919, 920 (5th Cir. 1998).

Pursuant to 28 U.S.C. § 1915(g), a prisoner who has three or more prior federal civil actions dismissed as frivolous, malicious, or for failure to state a claim, may not proceed in forma pauperis (IFP) without a showing he is under imminent danger of serious physical injury. Petitioner has at least three previous federal actions dismissed for failure to state a claim or as frivolous. *See Luevano v. Casey*, No. 3:09-CV-583 (M.D. Penn. May 27, 2009) (dismissed for failure to state a claim); *Luevano v. Johnson*, No. 1:09-CV-71 (D.D.C. Jan. 13, 2009) (dismissed for failure to state a claim); *Luevano v. Boykin*, No. 5:08-CV-1844 (N.D. Ohio Oct. 31, 2008) (dismissed for failure to state a claim); *Luevano v. Richardson*, No. 1:08-CV-781 (D.N.M. Oct. 1, 2008) (dismissed for failure to state a claim); *Luevano v. Clinton*, No. 2:08-CV-1360 (E.D.N.Y. Apr. 4, 2008) (dismissed for as

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Clerk, U. S. District Court

By  Deputy

frivolous); *Luevano v. Board of Disciplinary Appeals*, No. 5:08-CV-107 (W.D. Tex. Mar. 20, 2008) (dismissed as frivolous); *Luevano v. Doe*, No. 1:07-CV-1025 (W.D. Tex. Jan. 18, 2008) (dismissed as frivolous); *Luevano v. Perry*, No. 1:07-CV-1026 (W.D. Tex. Jan. 18, 2008) (dismissed as frivolous); *Luevano v. United States President of America*, No. 08-CV-53 (D.D.C. Jan. 2, 2008) (dismissed for failure to state a claim).

Because petitioner has three prior civil actions that were dismissed for failure to state a claim or as frivolous, § 1915(g) prohibits him from proceeding IFP unless he is currently under imminent danger of serious physical injury. Petitioner has failed to show he is in imminent danger of serious physical injury.

Accordingly, petitioner is **DENIED** leave to proceed IFP. Petitioner asserts he cannot pay the filing fee in this case, and thus it would be futile for this Court to order petitioner to pay the filing fee. Therefore petitioner Luevano's petition for writ of mandamus is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(g) and for failure to prosecute pursuant to Fed. R. Civ. P. 41(b) for failure to pay the filing fee.

In *Luevano v. Connally Unit*, No. SA-10-CA-831-FB, this court pointed out that Luevano has had at least twelve previous cases dismissed pursuant to § 1915(g). See *Luevano v. U.S. District Court*, No. 3:10-CV-335 (N.D. Tex. 2010); *Luevano v. Criminal Court of Appeals*, 1:09-CV-942 (W.D. Tex. 2010); *Luevano v. Sanchez*, No. 3:09-CV-441 (W.D. Tex. 2009); *Luevano v. Wiles*, No. 2:09-CV-271 (N.D. Tex. 2009); *Luevano v. Henning*, No. 2:09-CV-12753 (E.D. Mich. 2009); *Luevano v. U.S. Postal Inspection Service*, No. 4:09-CV-2207 (S.D. Tex. 2009); *Luevano v. Texas Supreme Court*, No. 5:09-CV-434 (W.D. Tex. 2009); *Luevano v. Keller* No. 1:08-CV-929 (W.D. Tex. 2009); *Luevano v. Medrano*, 3:08-CV-426 (W.D. Tex. 2008); *Luevano v. Hawthorne*, No. 1:08-

CV-836 (W.D. Tex. 2008); *Luevano v. Trent*, No. 3:08-CV-506 (E.D. Va. 2008); *Luevano v. U.S. Rep. Congress*, No. 4:08-CV-489 (N.D. Okla. 2008).

In the Dismissal Order in No. SA-10-CA-831-FB entered October 26, 2010, this court warned Luevano that if he continues to file civil pleadings that do not show he is in imminent danger of serious physical injury in any future cases in which he does not submit the filing fee or in which he seeks leave to proceed in forma pauperis, sanctions may be imposed, including monetary sanctions and restrictions on his ability to file pleadings in this court. In the short time since that order was entered, in addition to the present case, Luevano has filed and pursued the following cases: *Luevano v. Henning*, No. 2:10-CV-14387 (E.D. Mich.) (filed November 2, 2010; dismissed February 14, 2011, for lack of subject matter jurisdiction); *Luevano v. Connally*, No. 3:10-CV-813 (E.D. Va.) (filed November 5, 2010; pending on order denying leave to proceed IFP because of § 1915(g)); *Luevano v. Barbosa*, No. 4:10-CV-4851 (S.D. Tex.) (filed November 10, 2010; dismissed December 7, 2010, pursuant to § 1915(g)); *Luevano v. Unknown Party*, No. 2:10-CV-2539 (D. Ariz.) (filed November 22, 2010; dismissed December 17, 2010); *Luevano v. State Bar of Texas*, No. 3:11-CV-33 (S.D. Ill.) (filed January 10, 2011; dismissed January 29, 2011, for failure to state a claim); *Luevano v. Texas State Courts*, No. 1:11-CV-118 (W.D. Tex.) (filed February 11, 2011; dismissed February 17, 2011, pursuant to § 1915(g)).

Luevano is already barred from proceeding IFP pursuant to § 1915(g), but he continues to abuse his filing privileges. Luevano has failed to heed this court's warning about continuing to file civil pleadings that do not show he is in imminent danger of serious physical injury in cases in which he does not submit the filing fee or in which he seeks leave to proceed in forma pauperis. Lesser sanctions would be ineffective.

Therefore, this court ORDERS Jaime Luevano is sanctioned \$100 and is barred from filing documents with the United States District Court for the Western District of Texas until this sanction is paid. The Clerk of Court is directed not to accept any attempted submissions inconsistent with this bar.

Additionally, this court ORDERS that in any future civil pleading Jaime Luevano files or attempts to file in any United States District Court to open a civil case, he must state that this court imposed a \$100 sanction, he must state that he is barred him from filing documents with the United States District Court for the Western District of Texas until this sanction is paid, and he must state whether he has paid the sanction.

Also, this court ORDERS that in any future civil pleading Jaime Luevano files or attempts to file in any United States District Court to open a civil case, he must set out in the pleading a complete history of his previous civil litigation in federal courts, identifying each case by name and cause number, stating the court in which each case was filed, and stating the result of each case.

Failure by Jamie Luevano to comply with these orders shall result in the imposition of additional sanctions.

The Clerk of Court shall send a copy of this Dismissal Order to the Pro Se Staff Attorney, Attn.: Keeper of the "Three Strikes List," U.S. District Court for the Eastern District of Texas for the Tyler Division, 211 West Ferguson, Tyler, Texas 75702

SIGNED: February 28, 2011.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT of TEXAS
SAN ANTONIO DIVISION

JAIME LUEVANO,
TDCJ # 1655791

Petitioner,

v.

OFFICE OF INSPECTOR GENERAL,

Respondent

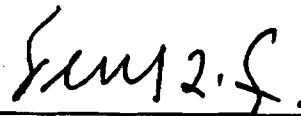
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Civil Action
No. SA-11-CA-131-OG

JUDGMENT

Pursuant to this Court's Dismissal Order, Jaime Luevano's petition for writ of mandamus is **DISMISSED WITHOUT PREJUDICE** pursuant to 28 U.S.C. § 1915(g) and for failure to prosecute pursuant to Fed. R. Civ. P. 41(b) for failure to pay the filing fee.

SIGNED: February 28, 2011.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

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Clerk, U. S. District Court

By


Deputy

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Case No: 6:12cv49

Filed: 03/05/12
Doc. #6

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

WACO DIVISION

**JAIME LUEVANO,
TDCJ # 1655791,
Petitioner,**

v.

**U. S. DISTRICT JUDGE OF
ABILENE, TX, et al.,
Respondents.**

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Civil No. W-12-CA-049

ORDER

Before the Court is Petitioner's Petition for a Writ of Mandamus (Doc. 1), Motion to Proceed *in forma pauperis* ("IFP") (Doc. 2), and "Motion for Conspiracy that Officials Conceal up a Murder Plot in Generally, etc." (Doc. 3). Petitioner, who is currently incarcerated at the Connally Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, is before the Court *pro se*.

In his mandamus petition, Petitioner seeks an order compelling a hearing and the appointment of a special master in connection with investigating a purported murder plot at the Connally Unit of the Texas Department of Criminal Justice ("TDCJ"). (Doc. 1). Petitioner states that his life remains in "danger cause of cowards to cover-up a murder plot in general." (*Id.*).

The Prisoner Litigation Reform Act of 1996 ("PLRA"), 28 U.S.C. §1915, provides the procedures for prisoners seeking to proceed IFP. The PLRA provides, in pertinent part, that "[i]n no event shall a prisoner bring a civil action or appeal a

judgment in a civil action or proceeding under [§ 1915] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Because the underlying nature of Petitioner's mandamus petition is a civil action, he is subject to the filing fee requirements of the PLRA. See *In re Jacobs*, 213 F.3d 289 n.1 (5th Cir. 2000); *In re Stone*, 118 F.3d 1032, 1033-34 (5th Cir. 1997).

Petitioner's litigation history reveals that he has filed over seventy cases in federal district courts throughout the United States, including thirty-three cases in courts within the Fifth Circuit. See United States Party/Case Index, <http://pacer.uspci.uscourts.gov> (March 2, 2012). Court records reflect that Petitioner is an abusive and vexatious litigant. Petitioner has filed numerous cases that were dismissed as frivolous, malicious, or for failure to state a claim for relief. See *Luevano v. Office of Inspector General*, No. SA-11-CA-131-OG (W.D. Tex. Feb. 28, 2011) (including a list of nine cases that are deemed a strike for purposes of § 1915(g)).

In *Luevano v. Office of Inspector General*, the Honorable Orlando L. Garcia of the San Antonio Division of this Court noted that Petitioner has continued to file pleadings without sufficient allegations he is under imminent danger of serious physical injury and that the three strikes provision of § 1915(g) has not curtailed

Petitioner from abusing the Court process. *Id.* at 3. Judge Garcia proceeded to sanction Petitioner as follows:

Therefore, this Court ORDERS Jaime Luevano is sanctioned \$100 and is barred from filing documents with the United States District Court for the Western District of Texas until this sanction is paid. The Clerk of Court is directed not to accept any attempted submissions inconsistent with this bar.

Additionally, this court ORDERS that in any future civil pleading Jaime Luevano files or attempts to file in any United States District Court to open a civil case, he must state that this Court imposed a \$100 sanction, he must state that he is barred [] from filing documents with the United States District Court for the Western District of Texas until this sanction is paid, and he must state whether he has paid the sanction.

Also, this Court Orders that in any future civil pleading Jaime Luevano files or attempts to file in any United States District Court to open a civil case, he must set out in the pleading a complete history of his previous civil litigation in federal courts, identifying each case by name and cause number, stating the court in which each case was filed, and stating the result of each case.

Failure by Jaime Luevano to comply with these orders shall result in the imposition of additional sanctions.

Id. at 4.

A review of the pleadings in this case reveals that Petitioner has failed to comply with the orders set forth in *Luevano v. Office of Inspector General*. Petitioner does not inform the Court that the San Antonio district court imposed a \$100 sanction or that he has paid the sanction. Petitioner also does not include a complete history of his previous civil litigation. Furthermore, having carefully considered Petitioner's writ, the Court finds that his allegations of a murder plot are

baseless, irrational, and wholly incredible. They do not show he is under imminent danger of serious physical injury as contemplated by the statute. See *Banos v. O'Guin*, 144 F.3d 883, 884-85 (5th Cir.1998); *Choyce v. Dominguez*, 160 F.3d 1068 (5th Cir.1998). See also *Gibbs v. Cross*, 160 F.3d 962, 967 (3d Cir. 1998) (citing *Denton v. Hernandez*, 504 U.S. 25, 33 (1992)) (recognizing that a district court may discredit "factual claims of imminent danger that are 'clearly baseless,' i.e., allegations that are fantastic or delusional and rise to the level of the 'irrational or wholly incredible'"). Accordingly, it is

ORDERED that Petitioner's motion to proceed IFP (Doc. 2) is hereby **DENIED**. It is further

ORDERED that Petitioner's mandamus petition is hereby **DISMISSED** without prejudice for failure to comply with the filing restrictions set forth by Judge Garcia in *Luevano v. Office of Inspector General* and pursuant to the three strikes provision of § 1915(g). It is further

ORDERED that Petitioner is hereby **SANCTIONED** \$100 for violating the various filing restrictions set forth in Judge Garcia's February 28, 2011, Order (including the failure to pay the \$100 sanction imposed by Judge Garcia before filing any documents in the Western District of Texas). Petitioner is **BARRED** from filing documents with the United States District Court for the Western District of Texas until showing proof that all sanctions have been paid. The Clerk of Court is directed not to accept any attempted submissions inconsistent with this bar. It is further

ORDERED that Petitioner must continue to comply with all of Judge Garcia's filing restrictions set forth in the February 28, 2011, Order before filing or seeking to file future civil pleadings in the United States District Court for the Western District of Texas or any other United States District Court. It is further

ORDERED that, in any future civil pleading Petitioner attempts to file in any United States District Court to open a case, Petitioner must state that this Court imposed a \$100 sanction and also include this case as part of the history of his previous civil litigation in federal court. **FAILURE BY PETITIONER TO COMPLY WITH THIS ORDER AND JUDGE GARCIA'S ORDER ENTERED ON FEBRUARY 28, 2011, SHALL RESULT IN THE IMPOSITION OF ADDITIONAL SANCTIONS AND FILING RESTRICTIONS.** It is further

ORDERED that any and all motions not previously ruled upon by the Court are **DENIED**. It is further

ORDERED that the Clerk of the Court is directed to e-mail a copy of this Order and the Judgment to the Pro Se Clerk for the United States District Court for the Eastern District of Texas.

SIGNED this 8th day of March, 2012.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

WACO DIVISION

**JAIME LUEVANO,
TDCJ # 1655791
Petitioner,**

v.

**U.S. DISTRICT JUDGE OF
ABILENE, TX, et al.,
Respondents.**

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CIVIL ACTION NO. W-12-CA-049

JUDGMENT

In accordance with the Order of this Court entered this date, the Court enters its Judgment as follows:

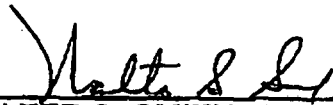
IT IS ORDERED, ADJUDGED AND DECREED that Petitioner's mandamus petition is hereby **DISMISSED** without prejudice: (1) for failure to comply with the filing restrictions set forth in the San Antonio district court's Order of February 28, 2011, in *Luevano v. Office of Inspector General*, No. SA-11-CA-131-OG (W. D. Tex. Feb. 28, 2011); and (2) pursuant to the three strikes provision of § 1915(g).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner is hereby **SANCTIONED** \$100 for violating the various filing restrictions set forth in the February 28, 2011, Order (including the failure to pay the \$100 sanction imposed by the San Antonio district court before filing any documents in the Western District of Texas). Petitioner is **BARRED** from filing documents with the United States District

Court for the Western District of Texas until showing proof that all sanctions have been paid. The Clerk of Court is directed not to accept any attempted submissions inconsistent with this bar.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any relief not specifically granted in the Judgment is DENIED.

SIGNED this 5 day of March, 2012.



WALTER S. SMITH, JR.
UNITED STATES DISTRICT JUDGE