

APPENDIX "A"

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 20 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ANTOINE DESHAWN BARNES,

Plaintiff-Appellant,

v.

T.V. NATIONWIDE NETWORK; et al.,

Defendants-Appellees.

No. 21-56388

D.C. No. 2:21-cv-08336-PA-KES
Central District of California,
Los Angeles

ORDER

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

The district court denied appellant leave to proceed in forma pauperis because it found the action was frivolous. On January 3, 2022, this court ordered appellant to explain in writing why this appeal should not be dismissed as frivolous. *See* 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

Upon a review of the record, the responses to the court's January 3, 2022 order, and the briefs received, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 7) and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2).

All other pending motions are denied as moot.

No further filings will be entertained in this closed case.

DISMISSED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

INMATE # <u>G-07169</u>	CASE NUMBER
ANTOINE DESHAWN BARNES,	<u>2:21-cv-08336-PA-KES</u>
PLAINTIFF(S)	
v.	
KAMALA D. HARRIS, et al.,	<u>ORDER RE REQUEST TO PROCEED WITHOUT PREPAYMENT OF FILING FEES</u>
DEFENDANT(S)	

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is hereby **GRANTED**.

IT IS FURTHER ORDERED that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of \$350.00. An initial partial filing fee of \$ _____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).

Date

United States Magistrate Judge

IT IS RECOMMENDED that the Request to Proceed Without Prepayment of Filing Fees be **DENIED** for the following reason(s):

- Inadequate showing of indigency.
- Failure to authorize disbursements from prison trust account to pay the filing fees.
- Failure to provide certified copy of trust fund statement for the last six (6) months.
- District Court lacks jurisdiction.
- Other _____

Comments:

See attachment.

- Frivolous, malicious, or fails to state a claim upon which relief may be granted.
- Seeks monetary relief from a defendant immune from such relief.
- Leave to amend would be futile.
- This denial may constitute a strike under the "Three Strikes" provision governing the filing of prisoner suits. *See O'Neal v. Price*, 531 F.3d 1146, 1153 (9th Cir. 2008).

October 26, 2021

Date

Hon. Karen E. Scott

United States Magistrate Judge

IT IS ORDERED that the Request to Proceed Without Prepayment of Filing Fees is:

- GRANTED.** **IT IS FURTHER ORDERED** that, in accordance with 28 U.S.C. § 1915, the prisoner-plaintiff owes the Court the total filing fee of \$350.00. An initial partial filing fee of \$ _____ must be paid within thirty (30) days of the date this order is filed. Failure to remit the initial partial filing fee may result in dismissal of the case. Thereafter, monthly payments shall be forwarded to the Court in accordance with 28 U.S.C. § 1915(b)(2).
- DENIED.** Plaintiff SHALL PAY THE FILING FEES IN FULL within 30 days or this case will be dismissed.
- DENIED**, and this case is hereby **DISMISSED** immediately.
- DENIED, with leave to amend within 30 days.** Plaintiff may re-submit the IFP application and Complaint to this Court, if submitted with the Certified Trust Account Statement and Disbursement Authorization. Plaintiff shall utilize the same case number. If plaintiff fails to submit the required documents within 30 days, this case shall be **DISMISSED**.

October 26, 2021

Date

United States District Judge

**ATTACHMENT TO RECOMMENDATION TO DENY
IN FORMA PAUPERIS (“IFP”) APPLICATION**

Antoine Deshawn Barnes v. Kamala D. Harris, et al.

Case # 2:21-cv-08336-PA-KES

Pro se Plaintiff Antoine Deshawn Barnes filed the instant civil rights complaint against President Joe Biden, Vice President Kamala Harris, Governor Gavin Newsom, a reporter for “KTVV2 News,” and “T.V. Nationwide Network.” (“Complaint” at Dkt. 1.) Plaintiff requests leave to proceed in forma pauperis (“IFP”). (Dkt. 2.)

In accordance with the Prison Litigation Reform Act (“PLRA”), the Court has screened Plaintiff’s Complaint before ordering service on the defendants. 28 U.S.C. §§ 1915(e)(2) and 1915A. The Court finds that: (a) Plaintiff may not proceed IFP because he has three strikes under the PLRA, and (b) the Complaint fails to state a claim on which relief might be granted. The IFP application should be denied, and the Complaint should be dismissed without leave to amend because granting such leave would be futile.

I. THREE STRIKES.

As noted above, the PLRA requires federal courts to screen civil rights complaints filed by prisoners to determine if the action: (1) is frivolous or malicious, (2) fails to state a claim on which relief may be granted, or (3) seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). If a prisoner has filed 3 or more prior actions or appeals that were dismissed on one of these grounds—i.e., if he has three “strikes”—then he is barred from filing further civil actions or appeals IFP unless he can show that he is in “imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

The Complaint admits that Plaintiff has filed three prior lawsuits. (Compl. at 2.) Public records indicate that Plaintiff has filed far more than that. See generally Public Access to Court Electronic Records, <https://pacer.uscourts.gov/> (last accessed Oct. 4, 2021). Plaintiff has filed at least four cases that were dismissed for reasons that count as a “strike” under the PLRA:

1. Barnes v. Supreme Court Judges, No. 1:21-cv-01078-DAD-BAM (E.D. Cal. Sept. 20, 2021) (dismissing Eighth Amendment claim based on denial of early parole under California Proposition 57 for failure to state a claim);
2. Barnes v. Director, Cal. Dept. of Corr. & Rehab., 2:20-cv-00861-TLN-DB (E.D. Cal. Oct. 29, 2020) (dismissing claims alleging that miscalculations of time credits violated state law for failure to state a claim);
3. Barnes v. Santa Clara Cnty. Dist. Atty. Office, No. 4:20-cv-02113-YGR-PC (N.D. Cal. July 14, 2020) (dismissing claim that prosecuting attorney and judge conspired to set excessive bail based on judicial and prosecutorial immunity)¹;

¹ A dismissal based on immunity counts as a strike where it is “so clear on the face of the complaint that [the] dismissal may qualify as a strike for failure to state a claim.” Harris v. Harris, 935 F.3d 670, 675-76 (9th Cir. 2019) (finding dismissal of claims against medical

and

4. Barnes v. Hanford Superior Court Judge, No. 1:20-cv-00390-AWI-SAB (E.D. Cal. June 4, 2020) (dismissing claims against judge and prosecuting attorneys and alleging, inter alia, that Speaker Pelosi sent Plaintiff an email about the impeachment of former President Trump).²

Although Plaintiff at one point asserts that his “life is in grave[] danger” (Compl. at 3), he does not allege any facts showing that he is in imminent danger of serious physical injury under § 1915(g). Accordingly, the IFP application should be denied.

II. FAILURE TO STATE A CLAIM.

The Complaint alleges that Plaintiff’s privacy rights are being violated “by the whole T.V. nationwide network who is sexually harassing [and] sexually assaulting [him] every day” because “through [the] T.V. in [his prison] cell ... the whole world can clearly see [him] naked....” (Compl. at 3.)³ He seeks \$800 million in damages. (Id. at 3, 6.)

professionals based on quasi-judicial immunity did not count as a strike, but contrasting this with Mills v. Fischer, 645 F.3d 176, 177 (2d Cir. 2011), where the Second Circuit held that “a dismissal for judicial immunity was a strike”); see also Simmons v. Wuerth, No. 19-cv-01107, 2019 U.S. Dist. LEXIS 153400 at *5 n.1, 2019 WL 4259754 at *2 n.1 (E.D. Cal. Sept. 9, 2019) (finding dismissal based on immunity counted as a strike, citing Harris, because it was “clear from the face of Plaintiff’s complaint that he was bringing suit against individuals that were entitled to absolute immunity”), report and recommendation adopted, 2020 U.S. Dist. LEXIS 58495, 2020 WL 1621368 (E.D. Cal. Apr. 2, 2020). But see Ray v. Hosey, No. 20-cv-01076, 2021 U.S. Dist. LEXIS 28711, 2021 WL 568159 at *4 (E.D. Cal. Feb. 16, 2021) (citing Harris for the proposition that the “Ninth Circuit has ruled a dismissal due to judicial immunity is not the equivalent of a failure to state a claim and, on its own as here, would not be a qualifying reason to count the dismissal as a strike.”).

² This case was technically dismissed for lack of prosecution after Plaintiff failed to timely file a second amended complaint. Because the initial complaint and first amended complaint were dismissed for failure to state a claim, this dismissal still counts as a strike under the PLRA. See Harris v. Mangum, 863 F.3d 1133, 1142 (9th Cir. 2017) (“The dismissal of each of Harris’s prior actions ‘rang the PLRA bells of ... failure to state a claim’.... His failure to file an amended complaint did not negate the determination already made by the court that the complaint that he had filed, and on which he effectively elected to stand, failed to state a claim.”).

³ The Complaint alleges that Plaintiff attempted to commit suicide and was placed in “EOP mental health delivery system due to depression, anxiety, [and] paranoia.” (Compl. at 3.)

These allegations fail to state a claim. A “court may dismiss as frivolous, claims that are clearly baseless, fanciful, fantastic, or delusional.” Gottschalk v. City & Cty. of San Francisco, 964 F. Supp. 2d 1147, 1158 (N.D. Cal. 2013) (citing Denton v. Hernandez, 504 U.S. 25, 32-33 (1992)); see also Ashcroft v. Iqbal, 556 U.S. 662, 696 (2009) (Souter, J., dissenting) (noting that courts do not have to assume the truth of “allegations that are sufficiently fantastic to defy reality as we know it: claims about little green men, or the plaintiff’s recent trip to Pluto, or experiences in time travel”); see, e.g., Waddell v. City of Orange Police, No. 19-cv-1163-MWF-AS, 2019 U.S. Dist. LEXIS 224357 at *8-9, 2019 WL 7494904 at *3 (C.D. Cal. Nov. 22, 2019), report and recommendation adopted, 2020 U.S. Dist. LEXIS 3762, 2020 WL 70837 (C.D. Cal. Jan. 6, 2020) (dismissing claims alleging that the CIA drugged plaintiff and stole documents from her hotel rooms).