

FILED

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SEP 22 2022

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

ALFRED E. CARAFFA, AKA Alfred Erik
Caraffa,

Plaintiff-Appellant,

v.

JOE BIDEN, President of the United States;
et al.,

Defendants-Appellees.

No. 22-16137

D.C. No.
4:22-cv-00255-JGZ-PSOT
District of Arizona,
Tucson

ORDER

Before: BRESS and VANDYKE, Circuit Judges.

Appellant's motion to proceed in forma pauperis (Docket Entry No. 5) is denied for this appeal because appellant has had three or more prior actions or appeals dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted, and appellant has not alleged imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Within 21 days after the date of this order, appellant shall pay \$505.00 to the district court as the docketing and filing fees for this appeal and file proof of payment with this court. Failure to pay the fees will result in the automatic dismissal of the appeal by the Clerk for failure to prosecute, regardless of further filings. *See* 9th Cir. R. 42-1.

No motions for reconsideration, clarification, or modification of the denial of appellant's in forma pauperis status shall be entertained.

If the appeal is dismissed for failure to comply with this order, the court will not entertain any motion to reinstate the appeal that is not accompanied by proof of payment of the docketing and filing fees.

Briefing is suspended pending further order of this court. All pending motions will be addressed, if necessary, following resolution of this order.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

OCT 18 2022

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

ALFRED E. CARAFFA, AKA Alfred
Erik Caraffa,

Plaintiff - Appellant,

v.

JOE BIDEN, President of the United
States; et al.,

Defendants - Appellees.

No. 22-16137

D.C. No. 4:22-cv-00255-JGZ-PSOT
U.S. District Court for Arizona,
Tucson

ORDER

A review of the docket demonstrates that appellant has failed to respond to the September 22, 2022 order of this court.

Pursuant to Ninth Circuit Rule 42-1, this appeal is dismissed for failure to prosecute.

This order served on the district court shall, 21 days after the date of the order, act as the mandate of this court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Tina S. Price
Deputy Clerk
Ninth Circuit Rule 27-7

1
2
3
4
5
IN THE UNITED STATES DISTRICT COURT
6
FOR THE DISTRICT OF ARIZONA
7
8

9 Alfred E Caraffa,

NO. CV-22-00255-TUC-JGZ (P)

10 Plaintiff,

JUDGMENT IN A CIVIL CASE

11 v.

12 Joe Biden, et al.,

13 Defendants.

14
15 **Decision by Court.** This action came for consideration before the Court. The
16 issues have been considered and a decision has been rendered.

17 IT IS ORDERED AND ADJUDGED that pursuant to the Court's order filed June
18 7, 2022, Plaintiff to take nothing, and the complaint and action are dismissed without
19 prejudice, pursuant to 28 U.S.C. § 1915(g).

20
21 June 7, 2022

Debra D. Lucas
District Court Executive/Clerk of Court

22
23
24 By s/ M. Espinoza
25
26
27
28

Deputy Clerk

1

MDR

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Alfred E. Caraffa,

No. CV 22-00255-TUC-JGZ

10 Plaintiff,

11 v.

ORDER

12 President Joe Biden, et al.,

13 Defendants.

14
15 Plaintiff Alfred E. Caraffa is confined in the Arizona State Prison Complex-Tucson
16 and is representing herself.¹ On May 31, 2022, Plaintiff filed a civil rights
17 Complaint (Doc. 1) and a “Motion of Notice to the State of Arizona” (Doc. 2). The Court
18 will dismiss Plaintiff’s Complaint and this action, without prejudice, pursuant to 28 U.S.C.
19 § 1915(g), and will deny as moot Plaintiff’s Motion.

20 Plaintiff is a frequent litigator in this Court and because at least three of her prior
21 actions were dismissed for failing to state a claim upon which relief may be granted,² she
22 may not bring a civil action without complete prepayment of the \$350.00 filing fee and
23 \$52.00 administrative fee unless she is in imminent danger of serious physical injury. 28
24 U.S.C. § 1915(g).

25
26
27 ¹ Plaintiff uses feminine pronouns to refer to herself. The Court will do the same.

28 ² See *Caraffa v. Maricopa County Sheriff's Department*, CV 20-00013-PHX-MTL (ESW); *Caraffa v. Maricopa County Sheriff's Office*, CV 20-00227-PHX-MTL (ESW); and *Caraffa v. CHS*, CV 20-00256-PHX-MTL (ESW).

1 The “imminent danger” exception applies “if the complaint makes a plausible
 2 allegation that the prisoner faced ‘imminent danger of serious physical injury’ at the time
 3 of filing.” *Andrews v. Cervantes*, 493 F.3d 1047, 1055 (9th Cir. 2007) (quoting § 1915(g)).
 4 The “threat or prison condition [must be] real and proximate,” *Ciarpaglini v. Saini*, 352
 5 F.3d 328, 330 (7th Cir. 2003) (quoting *Lewis v. Sullivan*, 279 F.3d 526, 531 (7th Cir.
 6 2002)), and the allegations must be “specific or credible.” *Kinnell v. Graves*, 265 F.3d
 7 1125, 1128 (10th Cir. 2001). Moreover, although a court considering a motion to proceed
 8 in forma pauperis, “should not attempt to evaluate the seriousness of a plaintiff’s claims[,
 9 . . .] it has never been the rule that courts must blindly accept a prisoner’s allegations of
 10 imminent danger.” *Taylor v. Watkins*, 623 F.3d 483, 485 (7th Cir. 2010).

11 “[T]he availability of the [imminent danger] exception turns on the conditions a
 12 prisoner faced at the time the complaint was filed, not some earlier or later time.” *Andrews*,
 13 493 F.3d at 1053. Claims concerning an “imminent danger of serious physical injury”
 14 cannot be triggered solely by complaints of past abuse. *See Ashley v. Dilworth*, 147 F.3d
 15 715, 717 (8th Cir. 1998); *Luedtke v. Bertrand*, 32 F. Supp. 2d 1074, 1077 (E.D. Wis. 1999).

16 Plaintiff’s allegations in her 32-count Complaint do not plausibly suggest she is in
 17 imminent danger of serious physical injury.³ Thus, the Court will dismiss Plaintiff’s
 18 Complaint and this action, without prejudice, pursuant to § 1915(g). If Plaintiff wants to
 19 reassert these claims in the future, she must prepay the entire \$402.00 filing and
 20 administrative fees when she files her action. In light of the Court’s dismissal of the
 21 Complaint, the Court will deny as moot Plaintiff’s Motion.

22

23 ³ Only three of Plaintiff’s claims even marginally relate to a physical injury, but
 24 even claims these do not plausibly suggest Plaintiff is in imminent danger of serious
 25 physical injury. In Count Twenty-Four, Plaintiff alleges that between March 10 and May
 26 1, 2022, prison officials used “food as a form of punishment and retaliation” because meals
 27 were served between 12-18 hours apart and only two meals per day were served on
 28 Saturdays and Sundays. In Count Twenty-Seven, Plaintiff contends that between February
 28 and May 1, 2022, prison officials “created an unsafe and cruel envi[ron]ment” because
 they denied Plaintiff protective custody. In Count Twenty-Eight, Plaintiff asserts prison
 officials have used the “mental health treatment unit as a form of punishment” because,
 despite Plaintiff having an antisocial personality disorder, she has not received counseling
 and has only seen one doctor “for an ev[er]al[u]ation in almost 60 days of illegal housing”
 after she twice requested protective custody “as a[] transgender (kidnapped) prisoner.”

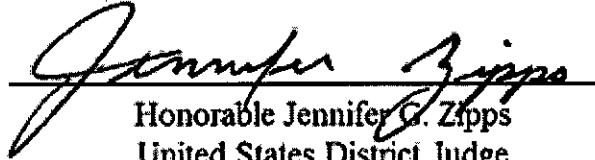
1 **IT IS ORDERED:**

2 (1) Plaintiff's Complaint (Doc. 1) and this action are **dismissed without**
3 **prejudice**, pursuant to 28 U.S.C. § 1915(g). If Plaintiff wishes to reassert these claims in
4 the future, she must prepay the entire \$402.00 filing and administrative fees when she files
5 her action.

6 (2) Plaintiff's Motion (Doc. 2) is **denied** as moot.

7 (3) The Clerk of Court must enter judgment accordingly and close this case.

8 Dated this 6th day of June, 2022.

9
10 
11 Honorable Jennifer G. Zipts
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**Additional material
from this filing is
available in the
Clerk's Office.**