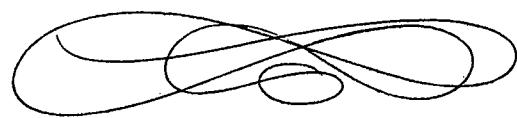


Appendix A



UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

June 7, 2023

Christopher M. Wolpert
Clerk of Court

ANDREW VALLES,

Plaintiff - Appellant,

v.

ATTORNEY GENERAL OF THE
UNITED STATES; ATTORNEY
GENERAL OF THE STATE OF
CALIFORNIA; ATTORNEY GENERAL
OF THE STATE OF UTAH,

Defendants - Appellees.

No. 23-4066
(D.C. No. 2:22-CV-00595-JNP)
(D. Utah)

ORDER

This matter is before the court *sua sponte*. In an order issued May 10, 2023, the court set a May 31, 2023 deadline for Appellant to either pay the \$505.00 appellate filing fee to the district court, or show cause in writing why he should not be required to prepay the entire appellate filing fee as required by 28 U.S.C. § 1915(g). To date, Appellant has neither paid the appellate filing fee nor filed a response to the court's order.

Accordingly, this appeal is DISMISSED pursuant to Tenth Circuit Rules 3.3(B) and 42.1. A copy of this order shall stand as and for the mandate of this court.

Entered for the Court,



CHRISTOPHER M. WOLPERT, Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Byron White United States Courthouse
1823 Stout Street
Denver, Colorado 80257
(303) 844-3157
Clerk@ca10.uscourts.gov

Christopher M. Wolpert
Clerk of Court

Jane K. Castro
Chief Deputy Clerk

June 7, 2023

Gary P. Serdar
United States District Court for the District of Utah
351 South West Temple
Salt Lake City, UT 84101

Andrew Valles
#86990-054
BJ6191
Correctional Institution
P.O. Box 441
Chino, CA 91708

RE: 23-4066, Valles v. Attorney General, et al
Dist/Ag docket: 2:22-CV-00595-JNP

Dear Clerk and Appellant:

Please be advised that the court issued an order today dismissing this case.

In addition, pursuant to Federal Rule of Appellate Procedure 41, the Tenth Circuit's mandate issued today, and the court's judgment takes effect. With the issuance of this letter, jurisdiction is transferred back to the lower court.

Please contact this office if you have questions.

Sincerely,



Christopher M. Wolpert
Clerk of Court

CMW/sls

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

May 10, 2023

Christopher M. Wolpert
Clerk of Court

ANDREW VALLES,

Plaintiff - Appellant,

v.

ATTORNEY GENERAL OF THE
UNITED STATES, et al.,

Defendants - Appellees.

No. 23-4066
(D.C. No. 2:22-CV-00595-JNP)
(D. Utah)

ORDER

This matter is before the court *sua sponte*. The filing fee in this civil appeal has not been paid. Under the Prison Litigation Reform Act of 1995 (the “PLRA”), prisoners filing appeals in civil cases must pay the full amount of the filing fee. *See* 28 U.S.C. § 1915(b)(1). Prisoners may be granted leave to proceed without full prepayment of the filing fee, but they remain responsible for the entire payment. *Id.* A court’s authority to allow a prisoner litigant to proceed without payment of the filing fee in advance is limited by the following statutory restriction:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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).

It appears that, before filing this appeal, Appellant Andrew Valles filed three or more civil actions or appeals, while incarcerated, each of which was dismissed on grounds that it was frivolous, malicious, or failed to state a claim on which relief could be granted. *See (1) Valles v. United States, et al.*, No. 20-CV-9242, 2021 WL 76428 at *3–4 (S.D.N.Y. Jan. 6, 2021) (dismissing prisoner civil rights complaint as frivolous and failing to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), (iii)); **(2) & (3) Valles v. Cal. Dep’t Corr. & Rehab., et al.**, No. 2:20-CV-01905 (E.D. Cal. July 15, 2021), (adopting in full magistrate judge’s findings and recommendation to dismiss prisoner civil rights complaint for failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. § 1915A(b)(1)); *appeal dismissed* No. 21-16290 (9th Cir. Mar. 18, 2022) (denying motion to proceed IFP and dismissing appeal as frivolous pursuant to 28 U.S.C. § 1915(e)(2)). As a result, it appears that Valles has accumulated at least three “prior occasions” pursuant to 28 U.S.C. § 1915(g). *See Smith v. Veterans Admin.*, 636 F.3d 1306 (10th Cir. 2011); *Hafed v. Fed. Bureau of Prisons*, 635 F.3d 1172 (10th Cir. 2011); *Jennings v. Natrona Cnty. Det. Ctr. Med. Facility*, 175 F.3d 775, 780 (10th Cir. 1999), *overruled on other grounds by* *Coleman v. Tollefson*, 575 U.S. 532, 539 (2015).

In this appeal, Valles is challenging the district court’s December 20, 2022 order vacating a prior finding of eligibility to proceed without prepayment of the filing fees after noting that Valles has accumulated three “strikes” under § 1915(g) and was not eligible for that relief. The underlying case is a prisoner civil rights case. Therefore, it

appears that the prepayment requirement imposed by 28 U.S.C. § 1915(g) applies to this appeal as well.

On or before May 31, 2023, Valles must either (A) prepay the appellate filing fees of \$505.00 to the district court; or (B) show cause in writing why he should not be required to prepay the entire filing fee as required by 28 U.S.C. § 1915(g). Failure to timely respond to this order may result in the dismissal of this appeal without further notice. 10th Cir. R. 3.3(B) & 42.1. Regular proceedings in this appeal, including briefing on the merits, are suspended pending further order of this court.

Lastly, Valles should note that in addition to his failure to prepay the appellate filing fees, the court has identified at least one potential jurisdictional deficiency with this appeal. The notice of appeal appears to have been filed well after the filing deadline expired. Fed. R. App. P. 4(a)(1)(B). Even if this appeal proceeds beyond the filing fees issue, the appeal may be subject to summary dismissal for lack of appellate jurisdiction. 10th Cir. R. 27.3(B). The court will address the jurisdictional question by separate order if warranted.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

by: Lara Smith
Counsel to the Clerk

THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

ANDREW VALLES, Plaintiff, v. UNITED STATES ATT'Y GEN. et al., Defendants.	ORDER Case No. 2:22-cv-00595-JNP District Judge Jill N. Parrish
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Plaintiff, Andrew Valles, a federal inmate in California, applied to proceed *in forma pauperis* (IFP), *see* 28 U.S.C.S. § 1915 (2022), with his civil-rights complaint, *see* 42 *id.* § 1983. The Court initially granted his application, (ECF No. 1), but now vacates those orders, (ECF Nos. 6, 8), and denies the application.

The *in forma pauperis* statute authorizes a court to let an indigent prisoner file a complaint in federal court without prepaying the filing fee. 28 U.S.C.S. § 1915 (2022). But it also restricts those who have repeatedly filed complaints that are frivolous or fail to state a valid claim. The relevant portion of the statute provides:

In no event shall a prisoner bring a civil action . . . under this section 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 . . .

Id. § 1915(g). “These fee provisions are intended ‘to reduce frivolous prisoner litigation by making all prisoners seeking to bring lawsuits or appeals feel the deterrent effect created by

liability for filing fees.”” *Cosby v. Meadors*, 351 F.2d 1324, 1327 (10th Cir. 2003) (*quoting In re Smith*, 114 F.3d 1247, 1249 (D.C. Cir. 1997)).

Plaintiff has filed at least three actions that have been dismissed as frivolous or failing to state a claim. *See Valles v. United States Att'y Gen.*, No. 3:22-CV-1375-TWR-MDD (S.D. Cal. Nov. 18, 2022) (denying “Plaintiff’s Motion to Proceed IFP . . . as barred by 28 U.S.C. § 1915(g)”). Section 1915(g) applies here because Plaintiff was a prisoner when filing this case and has filed three or more prior cases or appeals in federal court that were dismissed as frivolous or failing to state a claim. The language of section 1915(g) is mandatory. Thus, a federal prisoner, such as Plaintiff, who falls within the three-strikes provision must prepay the entire filing fee before his claims may proceed.

ORDER

Plaintiff is ineligible to proceed without prepaying the filing fee here because he has, as an inmate, filed three or more cases or appeals in federal court which have been dismissed as frivolous or failing to state a claim.

IT IS THEREFORE ORDERED that:

(1) The orders granting Plaintiff’s application to proceed IFP are **VACATED**, (ECF Nos. 6, 8), and the IFP application is now **DENIED**, (ECF No. 1).

(2) Plaintiff’s complaint will be dismissed without further notice unless he pays the entire \$350 filing fee within thirty days.

(3) Plaintiff’s Motion for (Revision of) Order on Request to Proceed Without Prepayment of Filing Fees/In Forma Pauperis is **DENIED**. (ECF No. 9.) Plaintiff’s argument here is that he falls under the exception to § 1915(g) in that he “is in under imminent danger of serious physical

injury" because of the requirement (that he attacks in his Complaint) that he register as a sex offender, which he alleges makes him a target of physical violence by other inmates. (ECF No. 9.) This argument was rejected by the United States District Court for the Southern District of California in denying Plaintiff's IFP application in that case. *See Valles v. United States Att'y Gen.*, No. 3:22-CV-1375-TWR-MDD (S.D. Cal. Nov. 18, 2022) ("Because no fair reading of his Complaint [challenging the constitutionality of the sex offender registration statute, 18 U.S.C.S. § 2250 (2022)] suggests any imminent danger fairly traceable to the unlawful conduct he alleges . . . Valles does not qualify for an exception under section 1915(g) and must pay the filing fee . . . to proceed with this action.").

DATED December 19, 2022.

BY THE COURT:



JUDGE JILL N. PARRISH
United States District Court

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