

W.D.N.Y.
23-cv-788
Vilardo, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of August, two thousand twenty-four.

Present:

Raymond J. Lohier, Jr.,
Joseph F. Bianco,
Alison J. Nathan,
Circuit Judges.

David C. Lettieri,

Plaintiff-Appellant,

v.

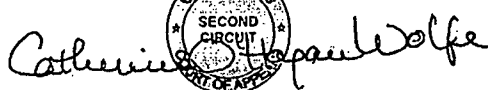

23-8042 (L),
24-1489 (Con)

Department of Justice, Maeve E. Huggins,

Defendants-Appellees.

Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED. The 23-8042(L) appeal is DISMISSED as untimely. *Bowles v. Russell*, 551 U.S. 205, 214 (2007); 28 U.S.C. § 2107. The 24-1489(Con) appeal is DISMISSED because it “lacks an arguable basis either in law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *see also* 28 U.S.C. § 1915(e).

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court

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ProSe

U.S. DISTRICT COURT
U.S. District Court, Western District of New York (Buffalo)
CIVIL DOCKET FOR CASE #: 1:23-cv-00788-LJV

Lettieri v. Department of Justice
Assigned to: Hon. Lawrence J. Vilardo
Demand: \$1,000,000,000
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 08/04/2023
Date Terminated: 08/22/2023
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: U.S. Government Defendant

Plaintiff**David C. Lettieri**

represented by **David C. Lettieri**
NORTHEAST OHIO CORRECTIONAL
CENTER
2240 Hubbard Road
Youngstown, OH 44505
PRO SE

V.

Defendant**Department of Justice****Defendant****Maeve E. Huggins**

Date Filed	#	Docket Text
08/04/2023	<u>1</u>	COMPLAINT against Department of Justice, filed by David C. Lettieri. (CGJ) (Entered: 08/07/2023)
08/04/2023	<u>2</u>	MOTION for Leave to Proceed in forma pauperis by David C. Lettieri. (CGJ) (Entered: 08/07/2023)
08/07/2023		Remark: Plaintiff has been mailed a pro se packet including a privacy notice, consent to proceed before a Magistrate Judge, and a civil case timeline. (CGJ) (Entered: 08/07/2023)
08/22/2023	3	TEXT ORDER denying Docket Item <u>2</u> , Motion for leave to proceed <i>in forma pauperis</i> . The <i>pro se</i> plaintiff, David C. Lettieri, is currently incarcerated at the Northeast Ohio Correctional Center. He has filed a complaint asserting claims under 42 U.S.C. § 1983, Docket Item <u>1</u> , and a motion to proceed <i>in forma pauperis</i> ("IFP")—that is, without prepaying costs, Docket Item <u>2</u> . Lettieri has attempted to commence more than 30 civil cases in this Court and has been advised in numerous prior orders that a motion to proceed IFP must include (1) a sworn affidavit establishing that he is unable to pay the

		<p>\$350.00 filing fee; (2) a certification of his inmate trust fund account; and (3) a signed authorization permitting the institution in which he is confined to pay the \$350.00 filing fee from his trust fund account. 28 U.S.C. § 1915(a)-(b). In this case, Lettieri has not submitted the required authorization. Lettieri has thirty days from entry of this order to submit either (1) the filing and administrative fees, or (2) the signed authorization. The Clerk of the Court is directed to administratively terminate this action, without filing the complaint or assessing a filing fee, and to send a form IFP motion to the plaintiff. Lettieri will be granted leave to reopen this case, without further order, upon submission of either (1) the \$350.00 filing fee and the \$52.00 administrative fee (\$402.00 total), or (2) the required authorization. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore denies leave to appeal as a poor person. <i>Coppedge v. United States</i>, 369 U.S. 438, 444-45 (1962). Further, Lettieri is cautioned that if he continues to file complaints with insufficient IFP applications, he may be subject to sanctions. SO ORDERED. Issued by Hon. Lawrence J. Vilardo on 8/22/2023. (DJ)</p> <p>Clerk to Follow up by mailing this order and a form IFP motion, including an authorization form, to the plaintiff. (Entered: 08/22/2023)</p>
08/22/2023		Clerk mailed 3 Text Order, IFP motion and authorization form to plaintiff (CGJ) (Entered: 08/22/2023)
08/22/2023	<u>4</u>	<p>JUDGMENT in favor of Department of Justice, Maeve E. Huggins against David C. Lettieri. Signed by Mary C. Loewenguth, Clerk of Court on 8/22/2023. (CGJ)</p> <p>This was mailed to: Plaintiff. (Entered: 08/22/2023)</p>
09/25/2023	<u>5</u>	Letter from David C. Lettieri, dated 9/18/2023, to whom it may concern. (CGJ) (Entered: 09/25/2023)
12/15/2023	<u>6</u>	MOTION for Leave to Proceed in forma pauperis by David C. Lettieri.(CGJ) (Entered: 12/15/2023)
12/15/2023	<u>7</u>	Letter from David C. Lettieri, to Court. (CGJ) (Entered: 12/15/2023)
12/15/2023	<u>8</u>	NOTICE OF APPEAL as to 3 Text Order, by David C. Lettieri. Fee Status: Due (CGJ) (Entered: 12/15/2023)
12/15/2023	<u>9</u>	CLERKS CERTIFICATE filed and electronically sent to Court of Appeals (Attachments: # <u>1</u> Index)(CGJ) (Entered: 12/15/2023)
05/13/2024	10	<p>TEXT ORDER denying Docket Item <u>6</u> , motion for leave to proceed <i>in forma pauperis</i> ("IFP").</p> <p>On 8/4/2023, the <i>pro se</i> plaintiff, David C. Lettieri, filed a complaint, Docket Item <u>1</u> , and a motion to proceed IFP, Docket Item <u>2</u> . On 8/22/2023, this Court denied Lettieri's motion to proceed IFP and administratively closed the case because Lettieri had not submitted the required authorization form. Docket Item 3 ; <i>see</i> Docket Item <u>2</u> ; 28 U.S.C. § 1915(b). The Court gave Lettieri 30 days to either (1) pay the filing and administrative fees, or (2) file a signed authorization. <i>See</i> Docket Item 3 . Instead of paying the fees or filing an authorization, on 12/15/2023, Lettieri filed another incomplete IFP motion, Docket Item <u>6</u> , and appealed the administrative closure order, <i>see</i> Docket Item <u>8</u> .</p> <p>Lettieri's filing history shows that he is well aware of the requirement that he file a</p>

		<p>signed authorization to proceed IFP. <i>See In re: David C. Lettieri</i>, Case No. 23-mc-32, Docket Item 11 at 2 (W.D.N.Y. Dec. 4, 2023). And since commencing this action, Lettieri has accrued three strikes, barring him from proceeding IFP absent a showing that he is in imminent danger of serious physical injury. <i>See Lettieri v. Vilardo</i>, Case No. 23-cv-6563, Docket Item 3 (W.D.N.Y. Oct. 10, 2023) (Wolford, C.J.) (denying Lettieri's motion to proceed IFP under the three strikes rule); <i>see also</i> 28 U.S.C. § 1915(g). Moreover, Lettieri's litigation tactics have resulted in orders barring him from filing <i>pro se</i> both new civil actions, <i>In re: David C. Lettieri</i>, Case No. 23-mc-32, Docket Item 18 at 5 (W.D.N.Y. Jan. 19, 2024), and any motions in his already-pending cases, <i>id.</i>, Docket Item 26 at 4 (W.D.N.Y. Apr. 5, 2024). Therefore, although the Court has the discretion to give Lettieri a third opportunity to file a complete IFP motion, it declines to do so based on his history of vexatious litigation.</p> <p>For those reasons, Lettieri's renewed motion to proceed IFP, Docket Item <u>6</u> , is DENIED. <i>See</i> Fed. R. Civ. P. 62.1. If Lettieri fails to pay the filing and administrative fees within 30 days of the date of this order, this case will be dismissed without prejudice and closed without further order of the Court. The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore denies leave to appeal as a poor person. <i>Coppedge v. United States</i>, 369 U.S. 438, 444-45 (1962). SO ORDERED. Issued by Hon. Lawrence J. Vilardo on 5/13/2024. (DJ)</p> <p>This was mailed to: the plaintiff at Niagara County Jail, Box 496 Lockport, NY 14094. (Entered: 05/13/2024)</p>
05/28/2024	<u>11</u>	NOTICE OF APPEAL as to 10 Text Order by David C. Lettieri. Fee Status: Due (CGJ) (Entered: 05/28/2024)
05/28/2024	<u>12</u>	CLERKS CERTIFICATE filed and electronically sent to Court of Appeals (Attachments: # <u>1</u> Index) (CGJ) (Entered: 05/28/2024)
10/22/2024	<u>13</u>	MANDATE of USCA as to <u>11</u> Notice of Appeal filed by David C. Lettieri, <u>8</u> Notice of Appeal filed by David C. Lettieri. Appellant, pro se, moves for leave to proceed in forma pauperis. Upon due consideration, it is hereby ORDERED that the motion is DENIED. The 23-8042(L) appeal is DISMISSED as untimely. <i>Bowles v. Russell</i> , 551 U.S. 205, 214 (2007); 28 U.S.C. § 2107. The 24-1489(Con) appeal is DISMISSED because it "lacks an arguable basis either in law or in fact." (JLV) (Entered: 10/22/2024)

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Judgment in a Civil Case

United States District Court
WESTERN DISTRICT OF NEW YORK

DAVID C. LETTIERI

JUDGMENT IN A CIVIL CASE
CASE NUMBER: 23-CV-788

v.

DEPARTMENT OF JUSTICE, ET AL

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the case is administratively terminated.

Date: August 22, 2023

MARY C. LOEWENGUTH
CLERK OF COURT

By: s/ Colin
Deputy Clerk