

DAVID C. LETTIERI,

Plaintiff - Appellant,

v.

SANTANDER BANK N.A.,

Defendant - Appellee.

Before

Gelpí, Montecalvo and Rikelman,
Circuit Judges.

JUDGMENT

Entered: June 18, 2025

Appellant David Carmine Lettieri appeals the district court's order denying without prejudice his motion for leave to proceed in forma pauperis ("IFP"). This court previously entered an order to show cause that flagged timeliness concerns, see Fed. R. App. P. 4(a), as well as an order warning Lettieri that dismissal for lack of prosecution would occur if, by October 10, 2024, he failed either to pay the appellate filing fee in full, or to identify a legitimate reason why the appeal should be allowed to proceed without immediate payment of the full filing fee despite the applicability of the "three-strikes" provision at 28 U.S.C. § 1915(g). See Local Rule 3.0(b). We have considered relevant portions of the record and Lettieri's response to the show cause orders.

We assume, without deciding, that the appeal is otherwise appropriately before the court. See Caribbean Mgmt. Grp., Inc. v. Erikon LLC, 966 F.3d 35, 41 (1st Cir. 2020) (court may bypass statutory appellate jurisdiction concerns under appropriate circumstances). We dismiss the appeal because, despite the warning set out in the order described above, Lettieri has not paid the appellate filing fee in full and has not shown why the appeal should be permitted to proceed without payment of the full filing fee despite his "three-strikes" status. In accordance with the foregoing, the appeal is **DISMISSED**.

By the Court:

Anastasia Dubrovsky, Clerk

cc: David Carmine Lettieri

C
UNITED
JOHN JOSEPH
1 COURT
BOSTON

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID C LETTIERI,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 24-cv-10361-AK
)	
SANTANDER,)	
)	
Defendant.)	

ORDER

March 14, 2024

ANGEL KELLEY, D.J.

Plaintiff David Lettieri, who is self-represented, brings this action in which he alleges that the Defendant refused to give him \$105,000 from an account of which is the beneficiary. He indicates that he is confined at the Niagara County Jail in Lockport, New York. Lettieri also filed a motion for leave to proceed *in forma pauperis*. For the reasons stated below, the Court **DENIES** the *in forma pauperis* motion with prejudice and **ORDERS** Lettieri to pay the \$405 filing fee.¹

Under the Prison Litigation Reform Act ("PLRA"), a prisoner generally cannot proceed *in forma pauperis* if he has, on three or more prior occasions, filed an action or appeal that was dismissed on the ground that it was frivolous, was malicious, or failed to state a claim upon which relief may be granted. See 28 U.S.C. § 1915(g). Where a prisoner has "three strikes," he

¹ The fee for filing a non-habeas civil action consists of a \$350 statutory fee, see 28 U.S.C. § 1914(a), and a \$55 administrative fee, see District Court Miscellaneous Fee Schedule (issued in accordance with 28 U.S.C. § 1914(b)).

may only proceed *in forma pauperis* if he is “under imminent danger of serious physical injury” with regard to the misconduct alleged in the complaint. Id.; see also Pettus v. Morgenthau, 554 F.3d 293, 297 (2d Cir. 2009) (holding that “there must be a nexus between the imminent danger a three-strikes prisoner alleges to obtain IFP status and the legal claims asserted in his complaint”).

Lettieri has, while a prisoner, filed three or more actions in federal district courts that were dismissed for failure to state a claim upon which relief may be granted. See Lettieri v. Daniels, C.A. No. 23-00867, ECF No. 3 (W.D.N.Y. Nov. 16, 2023); Lettieri v. Reynolds, C.A. No. 23-00925, ECF No. 4 (W.D.N.Y. Nov. 17, 2023); Lettieri v. Northeast Ohio Corr. Ctr., C.A. No. 23-01690, ECF No. 5 (N.D. Ohio Nov. 22, 2023); Lettieri v. Federal Marshals, C.A. No. 23-01872, ECF No. 6 (N.D. Ohio Nov. 30, 2023); Lettieri v. New York State Troopers, C.A. No. 23-02077, ECF No. 4 (N.D. Ohio Nov. 21, 2023); Lettieri v. Northeast Ohio Corr. Ctr., C.A. No. 23-02172, ECF No. 4 (N.D. Ohio Dec. 11, 2023).

Because Lettieri has incurred three or more “strikes” and is not “under imminent danger of serious physical injury” vis-à-vis his claim that he is entitled to funds held by the defendant, the Court must deny his motion for leave to proceed *in forma pauperis*.

Accordingly, if Lettieri wishes to pursue this action, he must, within twenty-eight (28) days, pay the \$405 filing fee. Failure to do so will result in dismissal of this action without prejudice.

SO ORDERED.

Dated: March 14, 2024

/s/ Angel Kelley
Hon. Angel Kelley
United States District Judge