

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

TEK NGO,

Petitioner,

v.

UNITED STATES MARSHALS SERVICE,¹

Respondent.

ORDER

03-C-722-C

Petitioner Tek Ngo is a defendant in a criminal action pending in this court, United States v. Ngo, 03-CR-110-C. At the present time, he is being held at the Dane County jail on a detention order pending trial. Ngo has filed several pro se motions in his criminal case, despite the fact that the court has appointed counsel to represent him. In an order entered on December 18, 2003 in case no. 03-CR-110-C, the magistrate judge advised Ngo that with one exception, the court would take no action on his self-submitted motions. The exception is now the pleading in this action, a document the magistrate judge construed as a petition

¹Pursuant to 28 U.S.C. § 2243, the writ or order to show cause must be directed to the person having custody of the person detained. Petitioner has been committed to the custody of the United States Marshals Service for detention pending trial. Therefore, The United States Marshals Service is the respondent in this action and I have amended the caption to reflect that fact.

for a writ of habeas corpus pursuant to 28 U.S.C. § 2241.

In his December 18 order, the magistrate judge advised Ngo that although it was clear his petition had no legal merit, the magistrate judge would direct the clerk of court to open a civil case, in which Ngo would be allowed to proceed pro se and in forma pauperis.

The fee for filing a petition for a writ of habeas corpus is \$5. When the magistrate judge told petitioner that he would be allowed to proceed with his petition as a pauper, he did not state expressly on what basis he made the determination that petitioner was eligible for pauper status. Perhaps he relied on the fact that petitioner had been found to be financially eligible for appointed counsel in his criminal case. However, the criteria for determining the eligibility of a criminal defendant for appointed counsel is considerably different from the criteria used in determining the eligibility of a petitioner to avoid prepayment of a \$5 filing fee.

Before this court may determine whether petitioner qualifies for indigent status, it will be necessary for him to submit a certified copy of his trust fund account statement for the six month period immediately preceding the filing of his petition, or for the full period petitioner has been incarcerated in the last six months, if he has been incarcerated for less than six months.

In determining whether petitioner is indigent for the purpose of filing his petition, this court will calculate petitioner's average monthly deposits and his average monthly

balances for the time period mentioned above. If 20% of the greater of these two figures is \$5 or more, he will not be eligible for indigent status and will have to prepay all of the \$5 filing fee. If 20% of the greater of these two figures is less than \$5, he will be required to prepay whatever portion less than \$5 has been calculated.

Now that petitioner is aware of the formula this court uses in determining whether a prisoner is indigent for the purpose of paying a \$5 filing fee, he may be able to figure easily whether he qualifies for indigent status. If he knows that he will not qualify for indigent status, he may elect to submit a check or money order made payable to the clerk of court in the amount of \$5 in place of the six-month statement requested above. In any event, petitioner should act quickly. If, by January 9, 2004, petitioner does not submit either the \$5 payment or a trust fund account statement for the appropriate period, his file will be closed and no further action will be taken in this case.

Entered this 22nd day of December, 2003.

BY THE COURT:

BARBARA B. CRABB
District Judge