

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

ENRIQUE NAVARRO,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

00-C-554-C

This is a proposed civil action for monetary relief, brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671 - 2680. Petitioner, who is presently confined at the Federal Correctional Institution in Oxford, Wisconsin, seeks leave to proceed without prepayment of fees and costs or providing security for such fees and costs, pursuant to 28 U.S.C. § 1915. From the affidavit of indigency accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. Petitioner has submitted the initial partial payment required under § 1915(b)(1).

In addressing any pro se litigant's complaint, the court must construe the complaint liberally, see Haines v. Kerner, 404 U.S. 519, 521 (1972). However, if the litigant is a prisoner,

the 1996 Prison Litigation Reform Act requires the court to deny leave to proceed if the prisoner has on three or more previous occasions had a suit dismissed for lack of legal merit (except under specific circumstances that do not exist here), or if the prisoner's complaint is legally frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks money damages from a defendant who is immune from such relief. Jurisdiction is present. See 28 U.S.C. § 1331.

In his complaint, petitioner makes the following allegations of fact.

ALLEGATIONS OF FACT

A. Parties

Petitioner Enrique Navarro is a citizen of the Republic of Columbia. At the present time, he is confined at the Federal Correctional Institution in Oxford, Wisconsin. Respondent United States of America is responsible for the care and custody of petitioner and his personal property during his term of incarceration.

B. Administrative Exhaustion

On July 13, 2000, petitioner received the final denial of the claim TRT-NCR-2000-00682.

C. Missing Property

While at the Federal Correctional Institution in Sandstone, Minnesota, petitioner was placed in the segregation housing unit. On November 7, 1999, the institution's staff took an inventory of petitioner's property. On February 1, 2000, staff told petitioner that he was going to be transferred to the Federal Correctional Institution in Pekin, Illinois. That same day, staff took another inventory of all of petitioner's personal property in preparation for petitioner's transfer. When staff completed the inventory, it became apparent that some of petitioner's property was missing. On February 17, 2000, petitioner arrived at the Federal Correctional Institution in Pekin, Illinois and the institution's staff conducted an inventory of his personal property. When petitioner compared the various property invoices, he could see that he was now missing additional items. Before or during petitioner's transfer, staff at FCI-Sandstone lost or destroyed some of petitioner's personal property. The Bureau of Prisons' staff generates the inventory sheets, which are in conflict as to petitioner's property.

According to an attachment to petitioner's complaint, the following items were lost or destroyed: 3 bottles of skin lotion; 3 bottles of shampoo; 3 thermal shirts; 3 pairs of thermal pants; 5 magazines; 4 sticks of deodorant; and 2 pairs of socks.

OPINION

The Federal Tort Claims Act, 28 U.S.C. §§ 2671 - 2680, provides in part that the United States “shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances.” 28 U.S.C. § 2674. Cognizable claims under the act include those that are: (1) against the United States, (2) for money damages; (3) for injury or loss of property, (4) caused by the negligent or wrongful act or omission of any employee of the Government (5) while acting within the scope of his office or employment, (6) under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. 28 U.S.C. § 1346(b)(1); Federal Deposit Ins. Corp. v. Meyer, 510 U.S. 471, 477 (claim against United States is cognizable under act if it alleges six elements outlined above). Petitioner has submitted a Final Denial of Claim from the Regional Counsel of the Federal Bureau of Prisons. I conclude that petitioner has exhausted his available administrative remedies with respect to this claim under the Federal Tort Claims Act. See 28 C.F.R. § 14.9 (“if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification”). I understand petitioner to be contending that prison officials at FCI-Sandstone breached a duty of care by failing to pack or transfer all of his property when he was transferred from FCI-Sandstone to FCI-Pekin. Reading petitioner's complaint liberally as I am required to do at this

stage, I find that petitioner's allegations are sufficient to state a claim under the Federal Tort Claims Act.

ORDER

IT IS ORDERED that

1. Petitioner Enrique Navarro's request for leave to proceed in forma pauperis against respondent United States on his Federal Tort Claims Act claim is GRANTED;

2. The unpaid balance of petitioner's filing fee is \$126.92; petitioner is obligated to pay this amount as described in 28 U.S.C. § 1915(b)(2);

3. Pursuant to Fed. R. Civ. P. 4(i), service of this complaint will be made promptly after petitioner submits to the clerk of court two (2) completed marshals service forms; and three (3) completed summonses, one for the United States Attorney for the Western District of Wisconsin, one for the Attorney General in Washington, D.C. and one for the court. Enclosed with a copy of this order is a set of the necessary forms. If petitioner fails to submit the completed marshals service and summons forms before November 14, 2000, his petition will be subject to dismissal for failure to prosecute.

In addition, petitioner should be aware of the requirement that he send the United States Attorney in this district a copy of every paper or document that he files with the court.

Once petitioner has learned the identity of the specific lawyer or lawyers in the United States Attorney's office who will be representing respondent, he should serve the lawyer directly. Petitioner should retain a copy of all documents for his own files. The court will disregard any papers or documents submitted by petitioner unless the court's copy shows that a copy has gone to respondent's attorney.

Entered this 3rd day of October, 2000.

BY THE COURT:

BARBARA B. CRABB
District Judge