

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

SOUVANNASENG BORIBOUNE,
ANTHONY CALIPH STEVENS'EL,
DONDRAS L. HOUSE and EFRAIN
CAMPOS,

Petitioners,

v.

GERALD BERGE, PETER HUIBREGSTE,
VIKI SEBASTION, ELLEN K. RAY and
KELLY COON, as does their individual
capacities,

Respondents.

ORDER

04-C-0015-C

Judgment was entered in this case on June 2, 2005, denying petitioners' request for leave to proceed in forma pauperis on their claims of constitutional violations and recording three strikes against petitioners Souvannaseng Boriboune, Anthony Caliph Stevens'El and Efrain Campos. Now these same petitioners have filed a notice of appeal. Because the notice is not accompanied by three payments of \$255 to cover the cost of the appeal, I construe the notice to include each petitioner's request for leave to proceed in forma pauperis on appeal.

Because petitioners have accumulated three strikes, so long as they are incarcerated they cannot file any new lawsuit or an appeal without prepaying the filing fee unless they can show that they are in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). Petitioners have not made the required showing of imminent danger of a serious physical injury in this case. Therefore, they cannot take advantage of the initial partial payment provision of § 1915. They each owe the \$255 fee in full immediately.

Petitioners may delay payment of the \$255 fee under one circumstance: if they challenge in the court of appeals within thirty days of the date they receive this order the decision to deny their request for leave to proceed in forma pauperis on appeal because of their § 1915(g) status. Fed. R. App. P. 24(a)(5). If the court of appeals decides that it was improper to issue a three strikes against petitioners, then the matter will be remanded to this court for a determination whether petitioners' appeal is taken in good faith. If the court of appeals determines that this court was correct in finding that § 1915(g) bars them from taking their appeal in forma pauperis, the \$255 filing fee payments will be due in full immediately. Whatever the scenario, petitioners are responsible for insuring that the required sum is remitted to this court at the appropriate time.

ORDER

IT IS ORDERED that the requests of petitioners Souvannaseng Boriboune, Anthony

Caliph Stevens'El and Efrain Campos for leave to proceed in forma pauperis on appeal is DENIED because three strikes have been recorded against petitioners under 28 U.S.C. § 1915(g). Petitioners have thirty days from the date of this order in which to file in the Court of Appeals for the Seventh Circuit a motion to proceed on appeal in forma pauperis pursuant to Fed. R. App. P. 24(a)(5). The motion must include the affidavit prescribed by Rule 24(a)(1) and a copy of this order and the order of June 1, 2005, recording three strikes against them.

Entered this 9th day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge