

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

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MANUEL RAUL REYO PENA GARCIA MONTERO,

Petitioner,

v.

WILLIAM JEFFERSON CLINTON,  
frm Pres's ALL AMERICAN PREZ, et.,

Respondents.

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ORDER

04-C-561-C

Petitioner Manuel Raul Reyo Pena Garcia Montero, a prisoner at the United States Penitentiary in Leavenworth, Kansas, has filed a proposed complaint and a request for leave to proceed in forma pauperis. The request will be denied, because petitioner does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g).

Section 1915(g) reads as follows:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

As long ago as April 10, 2003, the District Court for the Northern District of Texas advised petitioner that he had “struck out” and could not proceed in forma pauperis with his newest in a line of at least twenty lawsuits. See Montero v. Clinton, 03-CV-395-G. The judge listed three of petitioner’s previous legally frivolous actions as 1) Montero v. Clinton, 03-CV-527 (N.D. Ill.)(Order dated Mar.4, 2003); 2) Montero v. Clinton, 03-CV-512 (JG) (E.D.N.Y.) (Mem. and Order dated Feb. 12, 2003); and 3) Montero v. Clinton, 02-CV-2686 (N.D. Ga.) (Judgment dated Nov. 27, 2002).

Moreover, petitioner's complaint does not contain facts from which an inference may be drawn that he is under imminent danger of serious physical injury. Indeed, there are no facts alleged in petitioner’s complaint from which the court can determine what petitioner’s complaint is. Accordingly, petitioner’s complaint is not a complaint requiring application of the exception to § 1915(g).

Because petitioner is disqualified from proceeding in forma pauperis under § 1915(g), he may choose to pursue this case as a paying litigant. If he chooses this route, he must submit a check or money order made payable to the clerk of court in the amount of \$150 and he must do so no later than August 25, 2004. If he does this, however, petitioner should be aware that the court then will be required to screen his complaint under 28 U.S.C. § 1915A, and dismiss his case if the complaint is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant who is immune

from such relief.

If petitioner does not pay the \$150 filing fee by August 25, 2004, I will consider that he does not want to pursue this action. In that event, the clerk of court is directed to close this file. However, even if the file is closed, petitioner will still owe the \$150 filing fee and he must pay it as soon as he has the means to do so. Newlin v. Helman, 123 F.3d 429, 436-437 (7th Cir. 1997). Petitioner did not submit a trust fund account statement with his complaint. However, given the number of previous actions he has filed, it is likely that 100% of any income he presently has is being used to pay the filing fees in those cases. Therefore, unless he is successful in obtaining the money from some other source, I will be required to advise the warden of the U.S. Penitentiary in Leavenworth, Kansas of petitioner's obligation to pay the fee so that if and when funds do exist in petitioner's account, the fee can be collected and sent to the court in accordance with 28 U.S.C. § 1915(b)(2).

#### ORDER

IT IS ORDERED that petitioner's request for leave to proceed in forma pauperis is DENIED because petitioner is ineligible for in forma pauperis status under 28 U.S.C. § 1915(g).

Further, IT IS ORDERED that petitioner may have until August 25, 2004, in which

to submit a check or money order made payable to the clerk of court in the amount of \$150. If, by August 25, 2004, petitioner fails to pay the fee, the clerk of court is directed to close this file and notify the warden of the U.S. Penitentiary in Leavenworth, Kansas, to begin collecting the fee pursuant to 28 U.S.C. § 1915(b)(2) if and when petitioner has the means to pay it.

Entered this 11th day of August, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge