

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

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STEPHEN WENDELL JONES,

Petitioner,

v.

SECRETARY M. FRANK, WDOC,  
in his official capacity;  
WARDEN R. SCHNEITER, WSPF;  
G. BOUGHTON, a Security Director;  
B. KOOL, a Unit Manager;  
P. HUIBREGTSE, Under Warden;  
WSPF PROGRAMS/SOCIAL SERVICES DEPARTMENTS SUPERVISORS,  
WSPF ECHO UNIT TEAM; and  
DOES 1-18, in their official and individual capacities,,

Respondents.

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Petitioner, Stephen Wendell Jones, a prisoner, has filed a proposed complaint for money damages and a request for leave to proceed in forma pauperis. Because he is a prisoner, he is subject to the Prison Litigation Reform Act. Under the law, all prisoners must pay the full filing fee, but they may pay the fee in installments if they are indigent and otherwise meet the requirements of the statute. 28 U.S.C. § 1915. One limitation on the exemption from prepayment is found in 28 U.S.C. § 1915(g):

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.

This provision applies to petitioner because on at least three prior occasions, he has been denied leave to proceed in forma pauperis in the Eastern and Western Districts of Wisconsin in lawsuits deemed to be legally frivolous. See Jones v. Bablitch, 89-C-890-C (W.D. Wis. Nov. 13, 1989); Jones v. McCaughtry, 92-C-502 (W.D. Wis. July 21, 1992); and Jones v. McCaughtry, 96-C-310 (E.D. Wis. Mar. 22, 1996). Therefore, he does not qualify for in forma pauperis status under 28 U.S.C. § 1915(g) unless his complaint concerns a matter suggesting he is “under imminent danger of serious physical injury.”

In his complaint, petitioner alleges that he is being forced to work and otherwise congregate with gang members who have threatened to kill him and very recently tried to assault him because he is a “snitch.” This is sufficient to satisfy the requirements of § 1915(g). Ciarpaglini v. Saini, 352 F.3d 328, 330-31 (7th Cir.2003) (“Being placed near inmates on one's enemies list, despite pleas for transfer to a different location after being beaten by those enemies, meets [the imminent danger] standard.”) (citing Ashley v. Dilworth, 147 F.3d 715 (8th Cir.1998)). Although the “imminent danger” limitation is a significant barrier to proceeding in forma pauperis, a prisoner need not prove he is on the

verge of death. Ciarpaglini, 352 F.3d at 331 (“imminent danger” requirement satisfied by allegations that prisoner had “[c]ontinuing headaches” or “mouth infection”). It may turn out that petitioner is not in the danger he believes he is, but the court of appeals has admonished district courts not to treat § 1915(g) as “a vehicle for determining the merits of a claim.” Id.

The only other hurdle for petitioner is to show that he qualifies financially to proceed as a pauper. From the affidavit of indigency and trust fund account statement accompanying petitioner's proposed complaint, I conclude that petitioner is unable to prepay the full fees and costs of instituting this lawsuit. However, because petitioner is a prisoner, he will have to make an initial partial payment of the filing fee in the amount of \$1.57 and the remainder of the fee in monthly installments even if his request for leave to proceed is denied. If petitioner does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that petitioner is free to ask prison authorities to pay all of his filing fee from his release account. The only amount petitioner must pay at this time is the \$1.57 initial partial payment. Before prison officials take any portion of that amount from petitioner's release account, they may first take from petitioner's regular account whatever amount up to the full amount petitioner owes.

I make one more observation before concluding. I note that petitioner has styled his

complaint as a motion for a preliminary injunction. This court requires that a party seeking emergency injunctive relief follow specific procedures for obtaining such relief. Those procedures are described in a document titled Procedure To Be Followed On Motions For Injunctive Relief, a copy of which is included with this order. Plaintiff should pay particular attention to those parts of the procedure that require him to submit proposed findings of fact in support of his motion and point to admissible evidence in the record to support each factual proposition. The court will not consider a motion for a preliminary injunction unless these procedures are followed.

#### ORDER

IT IS ORDERED that petitioner is assessed \$1.57 as an initial partial payment of the \$350 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$1.57 on or before April 12, 2007. If, by April 12, 2007, petitioner fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily. In that event, the clerk of court is

directed to close this file without prejudice to petitioner's filing his case at a later date.

Entered this 22d day of March, 2007.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge