

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

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ARMANDO RODRIGUEZ,

Petitioner,

ORDER

v.

10-cv-355-bbc

JUDY SMITH, Warden,  
Oshkosh Correctional Institution,

Respondent.

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The Court of Appeals for the Seventh Circuit has forwarded to this court Armando Rodriguez's request for a certificate of appealability. Dkt. #15. I have already determined in a previous orders in this case that petitioner is not entitled to a certificate. See Order, September 7, 2010, dkt. #11 at 4. Accordingly, I construe petitioner's request as a notice of appeal.

Because petitioner has not paid the \$455 appellate filing fee, I presume that he seeks leave to proceed in forma pauperis on appeal. However, I am unable to determine whether he should be allowed to proceed in forma pauperis because he has not submitted an affidavit of indigency. (Although petitioner paid the five dollar filing fee in this court, he did submit a six month trust fund account for the six months preceding the filing of his complaint.)

Petitioner may have until November 26, 2010 in which either to pay \$455 to the clerk of this court as his appellate filing and docketing fee or to file his motion for leave to proceed *in*

*forma pauperis* on appeal to include a certified copy of his trust fund account beginning June 25, 2010 (the date his the statement on record in this court ends) and ending October 25, 2010.. If petitioner fails to do one of these things by this deadline, I will assume he does not want to proceed with his appeal.

### ORDER

IT IS ORDERED that

1. Petitioner Armando Rodriguez's request for a certificate of appealability, dkt. #15, is construed as a notice of appeal.

2. Petitioner has until November 26, 2010, in which to either pay \$455 to the clerk of this court as his appellate filing and docketing fee or to file his motion for leave to proceed in forma pauperis on appeal to include a certified copy of his trust fund account beginning June 25, 2010 and ending October 25, 2010.

Entered this 26th day of October, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge