

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

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NATIVIDAD SILVA,

Plaintiff,

v.

L.C. WARD, MS. BAKER and COUNSELOR JAMES,

Defendants.

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OPINION AND ORDER

16-cv-185-wmc

Plaintiff Natividad Silva is a federal inmate incarcerated by the Bureau of Prisons at the Federal Medical Center in Rochester, Minnesota. Silva filed this proposed civil action under *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1974), alleging that while incarcerated at the Federal Correctional Institution in Oxford, Wisconsin, he was transferred because of his race to a filthy, unsanitary and smelly unit. Silva seeks leave to proceed with his complaint *in forma pauperis*, without prepayment of the filing fee. For reasons set forth briefly below, that request will be denied.

Because he is incarcerated, Silva's complaint is governed by the Prison Litigation Reform Act, which imposes certain conditions on the privilege of proceeding *in forma pauperis*. In particular, under the "three-strikes rule" found at 28 U.S.C. § 1915(g), a prisoner is not allowed to bring a civil action *in forma pauperis* in federal court, if three or more of his civil actions or appeals have already been dismissed while imprisoned as frivolous, malicious, or for failure to state a claim upon which relief may be granted. The sole exception to the three-strikes rule is if the plaintiff's pleadings show that he is in imminent danger of serious physical injury. *See* 28 U.S.C. § 1915(g).

Here, court records confirm that Silva has filed at least three previous civil actions while imprisoned that were dismissed as frivolous or for failure to state a claim. *See Silva v. United States*, No. CIV. 13-479 ADM/AJB, 2013 WL 2483679, at \*1 (D. Minn. June 10, 2013) (holding that Silva had stricken out under § 1915(g)); *Silva v. Cruz*, No. 3:10-CV-0906-G, 2010 WL 2300391, at \*2 (N.D. Tex. May 18, 2010), report and recommendation adopted, No. 3:10-CV-0906-G, 2010 WL 2300388 (N.D. Tex. June 4, 2010) (same); *Silva v. Bureau of Prisons*, No. 3:10-CV-0168-D, 2010 WL 809600, at \*2 (N.D. Tex. Mar. 8, 2010) (same); *Silva v. Fed. Corr. Inst.*, No. 3:07-CV-1081-K, unpub. order and judgment (N.D. Tex. July 23, 2007) (same). Consequently, Silva may not proceed with this action without the prepayment of fees under 28 U.S.C. § 1915(g), unless he shows that he is subject to imminent danger of serious physical injury.

In order to meet the imminent danger requirement of 28 U.S.C. § 1915(g), the “threat or prison condition [must be] real and proximate.” *Ciarpaglini v. Saini*, 352 F.3d 328, 330 (7th Cir. 2003) (citing *Lewis v. Sullivan*, 279 F.3d 526, 529 (7th Cir. 2002)). Allegations of past harm do not suffice; the harm must be imminent or occurring at the time the complaint is filed. *Ciarpaglini*, 352 F.3d at 330 (citing *Heimermann v. Litscher*, 337 F.3d 781 (7th Cir. 2003)).

Here, Silva’s allegations do not support a finding that he is in imminent danger. Although he alleges that his unit at Oxford was filthy, he does not allege that the conditions presented any risk of physical harm to him. More significantly, Silva is no longer incarcerated at Oxford. He is now housed in Rochester, Minnesota, and he has not alleged that his *current* housing situation poses any imminent risk of bodily harm.

Since Silva has not shown that he is in imminent danger, he may not proceed with this action without prepayment of the full \$400 filing fee under § 1915(g).

ORDER

IT IS ORDERED that plaintiff Natividad Silva is DENIED leave to proceed *in forma pauperis* under 28 U.S.C. § 1915(g). Plaintiff may have until **June 28, 2016**, to pay the \$400 filing fee to proceed with this action. After plaintiff pays the \$400 fee, his complaint will be screened pursuant to 28 U.S.C. § 1915A. If plaintiff fails to pay the \$400 fee by the above deadline, his complaint will be dismissed.

Entered this 7th day of June, 2016.

BY THE COURT:

/s/

WILLIAM M. CONLEY  
District Judge