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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

James Lynn O’Hines,  
Plaintiff,  
vs.  
Capt. Ruiz, et al.,  
Defendants.

No. CV 10-1370-PHX-JAT (MEA)

**ORDER**

Plaintiff James Lynn O’Hines,<sup>1</sup> who is confined in the Arizona State Prison Complex-Eyman, has filed a *pro se* Complaint. Plaintiff has not paid the filing fee or filed an Application to Proceed *In Forma Pauperis*.

**I. “Three Strikes Provision” 28 U.S.C. § 1915(g).**

The Prison Litigation Reform Act of 1995 (PLRA), enacted on April 26, 1996, provides that a prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* under 28 U.S.C. § 1915 “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

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<sup>1</sup> Plaintiff has also filed cases under the names James Lynn Hines, Jackson Malloy, and Yellow Fox.

1 serious physical injury.” 28 U.S.C. § 1915(g). Because § 1915(g) is a procedural rule that  
2 does not raise retroactivity concerns, cases that were dismissed before the effective date of  
3 § 1915(g), i.e., April 26, 1996, may be counted as qualifying dismissals or “strikes.” Tierney  
4 v. Kupers, 128 F.3d 1310, 1311-12 (9th Cir.1997). A prisoner barred from proceeding *in*  
5 *forma pauperis* pursuant to § 1915(g) may proceed under the fee provisions of 28 U.S.C.  
6 §§ 1911-14 applicable to everyone else. Adepegba v. Hammons, 103 F.3d 383, 388 (5th  
7 Cir.1996).

8 More than three of the prior actions Plaintiff has filed in federal courts have been  
9 dismissed as frivolous, malicious, or as failing to state a claim. See Hines v. City of San  
10 Diego Police Dep’t, CIV 00-969 K (LAB) (S.D. Cal. June 21, 1999); Malloy v. Kowolski,  
11 CIV 00-1186 W (LAB) (S.D. Cal. June 30, 2000); Hines v. Hisson, CIV 00-1177 JM (NLS)  
12 (S.D. Cal. July 14, 2000); Malloy v. Corcoran Prison, CIV 00-5660 REC (DLB) (E.D. Cal.  
13 Sept. 25, 2000); Hines v. Jaffe, CIV 00-2078 W (CGA) (S.D. Cal. Nov. 7, 2000); Malloy v.  
14 Galaza, CIV 00-5674 AWI (HGB) (E.D. Cal. Dec. 13, 2000); Malloy v. Corcoran Prison,  
15 CIV 99-6647 REC (SMS) (E.D. Cal. Dec. 15, 2000); Hines v. Deddah & Associates, CIV  
16 05-3412-JAT (VAM) (D. Ariz. June 29, 2006); Hines v. Westside Faith Temple Penticostals,  
17 CIV 06-061-JAT (VAM) (D. Ariz. Oct. 25, 2006).

18 Accordingly, Plaintiff may not bring a civil action without complete pre-payment of  
19 the \$350.00 filing fee unless he is in imminent danger of serious physical injury. 28 U.S.C.  
20 § 1915(g).

## 21 **II. Failure to Allege Imminent Danger of Serious Physical Injury**

22 Plaintiff does not allege that he is in imminent danger of serious physical injury as  
23 required by 28 U.S.C. § 1915(g) in order for Plaintiff to bring this action without complete  
24 pre-payment of the \$350.00 filing fee. Accordingly, the Complaint and this action will be  
25 dismissed without prejudice pursuant to 28 U.S.C. § 1915(g) for failure to pre-pay the  
26 \$350.00 filing fee. If Plaintiff wishes to reassert these claims in the future, he must pre-pay  
27 the entire \$350.00 filing fee when he files his action.

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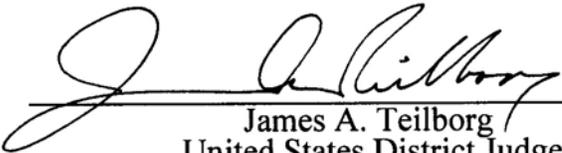
1 **IT IS ORDERED:**

2 (1) Plaintiff's Complaint (Doc. #1) and this action are **dismissed** pursuant to 28  
3 U.S.C. § 1915(g) without prejudice to Plaintiff filing a complaint in a new case accompanied  
4 by the full \$350.00 filing fee.

5 (2) The Clerk of Court must enter judgment and close this case.

6 DATED this 1<sup>st</sup> day of July, 2010.

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James A. Teilborg  
United States District Judge