

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MATTHEW JAMES DURY,
Plaintiff,
v.
CIUFO,
Defendant.

CASE NO. 1:13-cv-00595-AWI-BAM (PC)
APPEAL NO. 21-16841
ORDER REGARDING *IN FORMA*
***PAUPERIS* STATUS ON APPEAL**

(ECF No. 33)

Plaintiff Matthew James Dury is a federal prisoner who proceeded pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).

On July 30, 2014, the assigned Magistrate Judge issued findings and recommendations that this action be dismissed based on Plaintiff’s failure to state any claims upon which relief may be granted. (ECF No. 17.) On September 5, 2014, the undersigned issued an order adopting the findings and recommendations in full and dismissing this action for failure to state a claim upon which relief may be granted. (ECF No. 18.) Judgment was entered accordingly the same date. (ECF No. 19.)

On March 2, 2021, Plaintiff filed a “Notice to Court.” (ECF No. 20.) Though filed as a “notice,” the Magistrate Judge construed this filing as a motion requesting that the Court immediately collect the encumbered balance from Plaintiff’s trust account, as well as review the recent ruling in Plaintiff’s criminal matter. The Magistrate Judge denied both requests for lack of jurisdiction. (ECF No. 21.)

1 Plaintiff filed a notice of appeal to the Ninth Circuit Court of Appeals on April 14, 2020.
2 (ECF No. 22.) On September 17, 2021, the Ninth Circuit vacated the Magistrate Judge’s March
3 3, 2020 order, because the parties had not consented to proceed before a Magistrate Judge, and
4 remanded for further proceedings. (ECF No. 25.) The Ninth Circuit issued its mandate on
5 October 12, 2021. (ECF No. 26.)

6 Pursuant to the Ninth Circuit’s remand order, the Court reviewed Plaintiff’s “Notice to
7 Court,” which the Court construed as a motion regarding filing fees. (ECF No. 20.) The motion
8 was denied on October 12, 2021, and the action remained closed. (ECF No. 27.)

9 On October 29, 2021, Plaintiff filed a motion regarding the Court’s October 12, 2021
10 order. (ECF No. 28.) Plaintiff also filed a notice of appeal on November 1, 2021, (ECF No. 29),
11 which was processed to the Ninth Circuit as Case No. 21-16841, (ECF No. 31). The Court
12 construed Plaintiff’s motion as a motion for reconsideration pursuant to Federal Rule of Civil
13 Procedure 60(b) and the motion was denied on November 16, 2021. (ECF No. 32.)

14 By notice entered November 18, 2021, the United States Court of Appeals for the Ninth
15 Circuit referred this matter to the District Court for the limited purpose of determining whether in
16 forma pauperis status should continue for this appeal or whether the appeal is frivolous or taken
17 in bad faith. See 28 U.S.C. § 1915(a)(3); see also Hooker v. American Airlines, 302 F.3d 1091,
18 1092 (9th Cir. 2002) (revocation of in forma pauperis status is appropriate where the district court
19 finds the appeal to be frivolous).

20 Permitting litigants to proceed in forma pauperis is a privilege, not a right. Franklin v.
21 Murphy, 745 F.2d 1221, 1231 (9th Cir. 1984); Williams v. Field, 394 F.2d 329, 332 (9th Cir.
22 1968), cert. denied, 393 U.S. 891 (1968); Williams v. Marshall, 795 F.Supp. 978, 978–79 (N.D.
23 Cal. 1992). A federal court may dismiss a claim filed in forma pauperis before service if it is
24 satisfied that the action is frivolous or malicious. 28 U.S.C. § 1915(e)(2); see Sully v. Lungren,
25 842 F. Supp. 1230, 1231 (N.D. Cal. 1994). If a plaintiff with in forma pauperis status brings a
26 case without arguable substance in law and fact, the court may declare the case frivolous.
27 Franklin, 745 F.2d at 1227.

28 Upon review of Plaintiff’s November 1, 2021 notice of appeal, the Court finds that the

1 appeal is frivolous and not taken in good faith. Plaintiff argues that the Court's October 12, 2021
2 order is in violation of United States Law, specifically the RICO Act, 18 U.S.C. § 1963, and
3 accuses the undersigned of being a domestic terrorist aiding in the rape and torture of Plaintiff by
4 Bureau of Prisons staff. (See ECF No. 29, p. 1.) Plaintiff also alleges that he "will personally
5 cause the Arrest of Anthony Ishii for 'Crimes Against Humanity' along with all BOP Officials
6 involved." (Id. at 2.) The notice of appeal continues in this fashion, and the undersigned declines
7 to summarize the remaining frivolous allegations contained therein.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The appeal is declared frivolous and not taken in good faith;
- 10 2. Pursuant to 28 U.S.C. § 1915(a)(3), Plaintiff is not entitled to proceed *in forma pauperis*
11 in Appeal No. 21-16841, filed November 1, 2021;
- 12 3. Pursuant to Federal Rule of Appellate Procedure 24(a)(4), this order serves as notice to the
13 parties and the United States Court of Appeals for the Ninth Circuit of the finding that
14 Plaintiff is not entitled to proceed *in forma pauperis* for this appeal; and
- 15 4. The Clerk of the Court is directed to serve a copy of this order on the parties and the
16 United States Court of Appeals for the Ninth Circuit.

17
18 IT IS SO ORDERED.

19 Dated: November 20, 2021


20
21
22
23
24
25
26
27
28
SENIOR DISTRICT JUDGE