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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TAHEE ABD' RASHEED,

Plaintiff,

No. CIV S-10-0021 KJM P

vs.

THE UNITED STATES,

Defendant.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se. His complaint states that he is suing the United States and an unnamed congressman for violations of his rights under numerous constitutional amendments. See Compl. ¶ 4 (Docket No. 1). He also alleges that he has been stripped of his citizenship. Id.

Plaintiff has neither paid the filing fee of \$350.00 or applied to proceed in forma pauperis. Ordinarily, when a prisoner has filed a lawsuit pro se but has not paid the filing fee or submitted an application for in forma pauperis status, the court directs the Clerk of Court to forward an application to the prisoner and allows time for the application to be returned. Here, however, plaintiff is barred from proceeding in forma pauperis under the “Three Strikes” provision of the Prison Litigation Reform Act, 28 U.S.C. § 1915(g). That statute empowers a court to deny in forma pauperis status to a litigant who has had three actions “dismissed on the

1 grounds that [they are] frivolous, malicious, or fail[] to state a claim upon which relief may be
2 granted.” 28 U.S.C. § 1915(g). An action meets this standard if it is “based on an indisputably
3 meritless legal theory” or its “factual contentions are clearly baseless. Examples of the former
4 class are claims against which it is clear that the defendants are immune from suit and claims of
5 infringement of a legal interest which clearly does not exist.” Neitzke v. Williams, 490 U.S.
6 319, 327 (1989) (internal citation omitted).

7 In an order entered September 11, 2009, in a case filed by plaintiff in the Fresno
8 Division, a District Judge in this court found that plaintiff had previously filed three or more
9 actions that had been dismissed as frivolous, malicious or as failing to state a claim. See Civil
10 Action No. 1:09cv1490, Docket No. 3 at 1. Pursuant to 28 U.S.C. § 1915(g), the judge ruled that
11 plaintiff was ineligible to proceed in forma pauperis in that action. Id. at 2.

12 The prior finding that plaintiff is barred from proceeding in forma pauperis
13 applies with equal force here, “unless [plaintiff] is under imminent danger of serious physical
14 injury.” 28 U.S.C. § 1915(g). Although plaintiff vaguely alleges that he has received inadequate
15 medical treatment, he does not state what medical condition he has or what type of treatment he
16 requires. He has made no showing that he is under imminent danger of serious physical injury.
17 Therefore he may not proceed in forma pauperis and must pay the entire filing fee of \$350.00.
18 The court will allow plaintiff thirty days in which to pay the fee. Failure to pay the fee in full
19 will result in dismissal of this action without prejudice.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. Pursuant to 28 U.S.C. § 1915(g), plaintiff is ineligible to proceed in forma
22 pauperis in this action.

23 2. Plaintiff shall pay the \$350.00 filing fee in full within thirty days of the entry
24 of this order. Failure to pay the fee will result in dismissal of this action without prejudice.

25 DATED: April 30, 2010.

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U.S. MAGISTRATE JUDGE