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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RICKY GRAY,
Plaintiff,
v.
J. LEWIS, et al.,
Defendants.

Case No. [16-cv-02863-PJH](#)

ORDER TO SHOW CAUSE

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. Plaintiff has also filed an application to proceed in forma pauperis.

The Prison Litigation Reform Act of 1995 (“PLRA”), provides that a prisoner may not bring a civil action or appeal a civil judgment under 28 U.S.C. § 1915 “if the prisoner has, on three 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 serious physical injury.” 28 U.S.C. § 1915(g). The phrase “fails to state a claim on which relief may be granted,” as used in § 1915(g), “parallels the language of Federal Rule of Civil Procedure 12(b)(6).” *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005) (internal quotation marks omitted). A case is “frivolous” within the meaning of § 1915(g) if “it is of little weight or importance: having no basis in law or fact.” *Id.* (internal quotation marks omitted). The court may count as strikes dismissals of district court cases as well as dismissals of appeals. See *Rodriguez v. Cook*, 169 F.3d 1176, 1178 (9th Cir. 1999) (prisoner does not get three frivolous claims and three frivolous appeals before being barred by § 1915(g)). A

1 dismissal under § 1915(g) means that a prisoner cannot proceed with his action as a
2 pauper under § 1915(g), but he still may pursue his claim if he pays the full filing fee at
3 the outset of the action.

4 It appears that plaintiff has at least three strikes pursuant to § 1915(g):

- 5 i. *Gray v. Gomez*, No. 96-5106 (E.D. Cal. April 9, 1996), dismissed as
6 frivolous.
- 7 ii. *Gray v. Doyle*, No. 02-2667 (C.D. Cal. April 9, 2002), dismissed as
8 frivolous.
- 9 iii. *Gray v. Palmer*, No. 04-8354 (C.D. Cal. Nov. 4, 2004), dismissed for
10 failure to state a claim.¹
- 11 iv. *Gray v. Cogdell*, No. 09-2624 (N.D. Cal. Oct. 21, 2009), dismissed
12 for failure to state a claim, affirmed on appeal in *Gray v. Cogdell*, No.
13 09-17454 (9th Cir. Dec. 27, 2010).

14 Plaintiff shall show cause by **June 29, 2016**, why this case should not be deemed
15 three strikes barred and the application to proceed in forma pauperis denied. Failure to
16 reply will result in dismissal.

17 **IT IS SO ORDERED.**

18 Dated: June 3, 2016



19 **PHYLLIS J. HAMILTON**
20 United States District Judge

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28 ¹ The Ninth Circuit revoked plaintiff's in forma pauperis status on appeal after finding that he had three strikes relying on the first three cases discussed above. *Gray v. Zargoza*, No. 10-55983 (9th Cir. Sep. 14, 2010).

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2 NORTHERN DISTRICT OF CALIFORNIA

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8

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CERTIFICATE OF SERVICE


9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk,
10 U.S. District Court, Northern District of California.

11 That on June 3, 2016, I SERVED a true and correct copy(ies) of the attached, by
12 placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter
13 listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an
14 inter-office delivery receptacle located in the Clerk's office.
15

16 Ricky Gray ID: C-32622
17 2-A3-04
18 Corcoran State Prison
19 P. O. Box 715071 -2-A3-04
20 Represa, CA 95671

21 Dated: June 3, 2016

22 Susan Y. Soong
23 Clerk, United States District Court

24 
25 By: _____
26 Nichole Peric, Deputy Clerk to the
27 Honorable PHYLLIS J. HAMILTON
28