

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**FILED**
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 27 2006

GREGORY C. LANGHAM
CLERK

Civil Action No. **06 - CV - 00806 - BNB**
(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

SHANE BURDEN,

Plaintiff,

v.

ATTORNEY GENRAL [sic], Under State Law Official Capacity, and
DOC DIRETOR [sic], Under State Law Official Capacity,

Defendants.

**ORDER DIRECTING CLERK TO COMMENCE CIVIL ACTION AND
DIRECTING PLAINTIFF TO SHOW CAUSE**

On April 19, 2006, Plaintiff Shane Burden submitted to the Court a *pro se* Prisoner Complaint Pursuant to 42 U.S.C. § 1983 and a Motion to File Without Payment and Supporting Financial Affidavit. The Clerk of the Court will be directed to commence a civil action. Even though Plaintiff failed to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, Plaintiff will be instructed to show cause why the Complaint and action should not be denied pursuant to 28 U.S.C. § 1915(g).

Mr. Burden is a prisoner. He seeks leave to proceed without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915. In relevant part, § 1915 provides:

In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section 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 serious physical injury.

28 U.S.C. § 1915(g).

Mr. Burden, on three or more prior occasions, has brought an action in this Court that was dismissed on the grounds that it is frivolous. *See Burden v. Joe Ortiz, et al.*, No. 05-cv-02652-ZLW (D. Colo. Mar. 10, 2006) (dismissed as legally frivolous); *Burden v. Bouchee, et al.*, No. 06-cv-00136-ZLW (D. Colo. Mar. 03, 2006) (dismissed as legally frivolous); *Burden v. Cox*, No. 06-cv-00145 (D. Colo. Feb. 22, 2006) (dismissed as legally frivolous).

Since Plaintiff failed to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, Mr. Burden does not assert whether he is in imminent danger of serious physical injury, as he is required to do in response to Question Two of the Prisoner's Motion form.

Therefore, the Court finds that Mr. Burden has initiated three or more actions that count as strikes pursuant to 28 U.S.C. § 1915(g) and that he provides no evidence that he is under imminent danger of serious physical injury. Pursuant to § 1915(g), he

is precluded from bringing the instant action *in forma pauperis*. Mr. Burden will be ordered to show cause why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g). Accordingly, it is

ORDERED that the Clerk of the Court commence a civil action in this matter. It is

FURTHER ORDERED that Mr. Burden show cause in writing **within thirty days from the date of this Order** why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915 because: (1) he has, on three or more prior occasions, while incarcerated or detained in any facility, brought an action in a court of the United States that was dismissed on the grounds that it is frivolous; and (2) he fails to establish that he is under imminent danger of serious physical injury. Any papers that Plaintiff files in response to this Order must include the civil action number on this Order. It is

FURTHER ORDERED that the Response shall be titled, "Response to Order to Show Cause," and shall be filed with the Clerk of the Court for the United States District Court for the District of Colorado at the Alfred A. Arraj U.S. Courthouse, 901 Nineteenth Street, Room A-105, Denver, Colorado 80294-3589. It is

FURTHER ORDERED that the Clerk of the Court send to Plaintiff a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that Plaintiff also submit to the Court a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 form. It is

FURTHER ORDERED that, if Plaintiff fails to submit a Prisoner's Motion and Affidavit and to show cause **within thirty days from the date of this Order**, the Complaint and the action will be dismissed without further notice and without prejudice.

DATED at Denver, Colorado, this 25th day of April, 2006.

BY THE COURT:



BOYD N. BOLAND
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO


CERTIFICATE OF MAILING

Civil Action No. **06 - CV - 00806** - BNB

Shane Burden
Prisoner No. 62763
Huerfano County Corr. Center
304 Ray Sandoval Street
Walsenburg, CO 81089

I hereby certify that I have mailed a copy of the **ORDER and two copies of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. §1915** to the above-named individuals on 4-27-06

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk