

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. **07 - CV - 01495-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.)

ANDRE L. TWITTY,

Plaintiff,

v.

ZITA L. WEINSHIENK, Senior U. S. District Judge,  
MARY BECK BRISCOE, Circuit Judge,  
CARLOS F. LUCERO, Circuit Judge,  
MICHAEL R. MURPHY, Circuit Judge,  
BOYD N. BOLAND, U. S. Magistrate Judge,  
GREGORY C. LANGHAM, U. S. District Court Clerk,  
ELIZABETH A. SHUMAKER, Circuit Court Clerk, and  
ALL UNKNOWN CLERKS AND STAFF ATTORNEYS OF THE [sic] EACH COURTS,  
individual capacity,

Defendants.

FILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 16 2007

GREGORY C. LANGHAM  
CLERK

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**ORDER DIRECTING PLAINTIFF TO CURE DEFICIENCY AND TO SHOW CAUSE**

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Plaintiff Andre J. Twitty is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the United States Penitentiary, Administrative Maximum, in Florence, Colorado. He initiated the instant action by submitting *pro se* a complaint and an application for leave to proceed pursuant to 28 U.S.C. § 1915 (2006). As part of the Court's review pursuant to D.C.COLO.LCivR 8.2, the Court has determined that the submitted documents are deficient as described in this order. Notwithstanding the deficiencies, the clerk of the Court will be directed to commence a civil action. Mr. Twitty will be directed to cure the following if he wishes to

pursue his claims. Any papers that Mr. Twitty files in response to this order must include the civil action number on this order.

**28 U.S.C. § 1915 Motion and Affidavit:**

- (1)  is not submitted
- (2)  is missing affidavit
- (3)  is missing certified copy of prisoner's trust fund statement for the 6-month period immediately preceding this filing (Account statement submitted does not cover the entire 6-month period)
- (4)  is missing required financial information
- (5)  is missing an original signature by the prisoner
- (6)  is not on proper form (must use the court's current form)
- (7)  names in caption do not match names in caption of complaint, petition or habeas application
- (8)  An original and a copy have not been received by the court. Only an original has been received.
- (9)  other \_\_\_\_\_

**Complaint, Petition or Application:**

- (10)  is not submitted
- (11)  is not on proper form (must use the court's current form)
- (12)  is missing an original signature by the prisoner
- (13)  is missing page nos. \_\_\_\_\_
- (14)  uses et al. instead of listing all parties in caption
- (15)  An original and a copy have not been received by the court. Only an original has been received.
- (16)  Sufficient copies to serve each defendant/respondent have not been received by the court.
- (17)  names in caption do not match names in text
- (18)  other \_\_\_\_\_

Mr. Twitty seeks leave to proceed without prepayment of fees or security therefor pursuant to 28 U.S.C. § 1915. In relevant part, this statute 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). For the purposes of this analysis, the Court may consider actions

or appeals dismissed prior to the enactment of 28 U.S.C. § 1915(g). **Green v. Nottingham**, 90 F.3d 415, 420 (10th Cir. 1996).

Mr. Twitty has initiated more than three actions or appeals in a court of the United States while he was incarcerated or detained in any facility that were dismissed as frivolous, malicious, or for failure to state a claim. Mr. Twitty filed at least two prior civil actions in the United States District Court for the Northern District of Georgia, Atlanta Division, that were dismissed pursuant to 28 U.S.C. § 1915A. **See Twitty v. Deane**, No. 1:00-cv-1064-TWT (N.D. Ga. July 18, 2000); **Twitty v. Larson**, No. 1:98-cv-3188 (N.D. Ga. Mar. 2, 1999). The Eleventh Circuit dismissed as frivolous Mr. Twitty's appeal from the Court's ruling in **Twitty v. Larson**, No. 1:98-cv-3188. **See** Docket No. 00-14092 (11th Cir. 2001).

Mr. Twitty also previously filed at least one civil action in the United States District Court for the District of South Carolina that was dismissed for failure to state a claim for which relief may be granted. **See Twitty v. Hawk-Sawyer**, No. 7:00-cv-3192 (D.S.C. Mar. 26, 2002). In addition, the United States District Court for the District of Kansas twice has denied Mr. Twitty permission to proceed *in forma pauperis* because of the "three strikes" provision of 28 U.S.C. § 1915(g). **See Twitty v. Ashcroft**, No. 5:02-cv-3270-GTV (D. Kan. Nov. 18, 2002); **see also Twitty v. Ashcroft**, No. 5:01-cv-3484-GTV (D. Kan. Jan. 11, 2002). This Court previously has revoked Mr. Twitty's *in forma pauperis* status pursuant to the "three strikes" provision of § 1915(g). **See Twitty v. Gonzalez**, No. 06-cv-00667-ZLW (D. Colo. June 26, 2006), **appeal filed**, No. 06-1380 (10th Cir. Aug. 30, 2006). In the instant action, Mr. Twitty fails to assert facts

that support his allegation that he is under imminent danger of serious physical injury. Therefore, Mr. Twitty 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 Mr. Twitty cure the deficiencies designated above **within thirty (30) days from the date of this order**. Any papers that Mr. Twitty files in response to this order must include the civil action number on this order. It is

FURTHER ORDERED that the amended complaint shall be titled "Amended Prisoner Complaint," and shall be filed with the Clerk of the Court, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that the clerk of the Court mail to Mr. Twitty, together with a copy of this order, two copies of the following form to use in submitting the amended complaint: Prisoner Complaint. It is

FURTHER ORDERED that Mr. Twitty show cause in writing **within thirty (30) days from the date of this order** why he should not be denied leave to proceed pursuant to 28 U.S.C. § 1915(g) because: (1) he 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; and (2) he fails to establish that he is under imminent danger of serious physical injury. 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, United States District Court for the District of Colorado, Alfred A. Arraj United States Courthouse, 901 Nineteenth

Street, A105, Denver, Colorado 80294. It is

FURTHER ORDERED that, if Mr. Twitty fails to cure the designated deficiencies and to show cause **within thirty (30) days from the date of this order**, the action will be dismissed without further notice. The dismissal shall be without prejudice.

DATED at Denver, Colorado, this 13<sup>th</sup> day of July, 2007.

BY THE COURT:

  
\_\_\_\_\_  
BOYD N. BOLAND  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

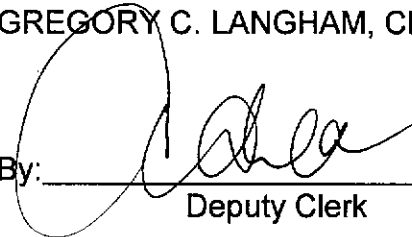
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Andre Twitty  
Reg. No. 18558-018  
ADX – Florence  
PO Box 8500  
Florence, CO 81226

I hereby certify that I have mailed a copy of the **ORDER** and **two copies of the Prisoner Complaint** to the above-named individuals on 7/16/07

GREGORY C. LANGHAM, CLERK

By: \_\_\_\_\_



Deputy Clerk