

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADOFILED  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

JUL 28 2007

GREGORY C. LANGHAM  
CLERKCivil Action No. **07-CV-01542** **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.)

ANTHONY RAY MARTINEZ, No. 114709,

Plaintiff,

v.

AMY COSNER, Law Library L.C.F., and  
LT. A. EVANS,

Defendants.

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

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On July 10, 2007 Plaintiff Anthony Ray Martinez submitted to the Court a *pro se* Prisoner Complaint Pursuant to 42 U.S.C. § 1983 and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The Clerk of the Court will be directed to commence a civil action, and Plaintiff will be instructed to show cause why the Complaint and action should not be denied pursuant to § 1915(g).

Mr. Martinez 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. Martinez, on three or more prior occasions, has brought an action in this Court that was dismissed on the grounds that it is frivolous. **See *Martinez v. Zadroga, et al.***, No. 06-cv-01130-ZLW (D. Colo. Aug. 3, 2006) (dismissed as legally frivolous), ***aff'd***, No. 06-1410, 2007 WL 172213 (10<sup>th</sup> Cir. Jan. 24, 2007) (both the court of appeals' dismissal and the district court's dismissal count as strikes); ***Martinez v. Bush***, No. 05-cv-01792-ZLW (D. Colo. Nov. 10, 2005) (dismissed as legally frivolous).

In response to the question on Page Two of the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, as to whether Mr. Martinez is in imminent danger of serious physical injury, Plaintiff answers that he is in imminent danger. Nonetheless upon review of the Complaint, the Court finds Plaintiff's allegations state otherwise.

Therefore, the Court finds that Mr. Martinez has initiated three or more actions that count as strikes pursuant to 28 U.S.C. § 1915(g) and that he is not under imminent danger of serious physical injury. Pursuant to § 1915(g) he is precluded from bringing the instant action ***in forma pauperis***. Mr. Martinez 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. Martinez 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 which 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, if Plaintiff fails 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 19<sup>th</sup> day of July, 2007.

BY THE COURT:

  
BOYD M. BOLAND  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. **07 - CV - 01542**

Anthony Ray Martinez  
Reg. No. 114709  
Limon Correctional Facility  
49030 State Hwy. 71  
Limon, CO 80826

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 7/23/07

GREGORY G. LANGHAM, CLERK

By: 

Deputy Clerk