

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02718-BNB

TIMOTHY WHITE BODY, JR.,

Applicant,

v.

BLAKE R. DAVIS, Warden, F.C.I.,

Respondent.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 29 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING LEAVE TO PROCEED *IN FORMA PAUPERIS*

Applicant, Timothy White Body, Jr., is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at the Federal Correctional Institution in Littleton, Colorado. He has filed *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Although he failed to cure a deficiency in the case by filing a motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, he did file a certified copy of his trust fund account statement as of December 5, 2008, showing that he has a balance of \$182.21 in his inmate trust fund account.

Section 1915(a)(1) allows a litigant to commence a lawsuit without prepayment of fees or security therefor. However, “[t]here is no absolute right to proceed in court without paying a filing fee in civil matters.” *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988); *see also* 28 U.S.C. § 1914(a). Proceeding *in forma pauperis* pursuant to § 1915, *i.e.* without paying a filing fee under § 1914, is a privilege extended to

individuals unable to pay such a fee. **See Holmes**, 852 F.2d at 153.

The Court finds that, because Applicant has \$182.21 in his prison account, he has sufficient assets to pay the \$5.00 filing fee and does not qualify to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. He will be directed to pay the \$5.00 filing fee required pursuant to 28 U.S.C. § 1914 if he wishes to pursue his claims in this action. Accordingly, it is


ORDERED that Applicant, Timothy White Body, Jr., is denied leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. It is

FURTHER ORDERED that Applicant pay the full \$5.00 filing fee **within thirty (30) days from the date of this order** if he wishes to pursue his claims in this action. It is

FURTHER ORDERED that if Applicant fails to pay the full \$5.00 filing fee within the time allowed, the habeas corpus application will be denied and the action will be dismissed without prejudice and without further notice.

DATED at Denver, Colorado, this 29 day of Jan, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02718-BNB

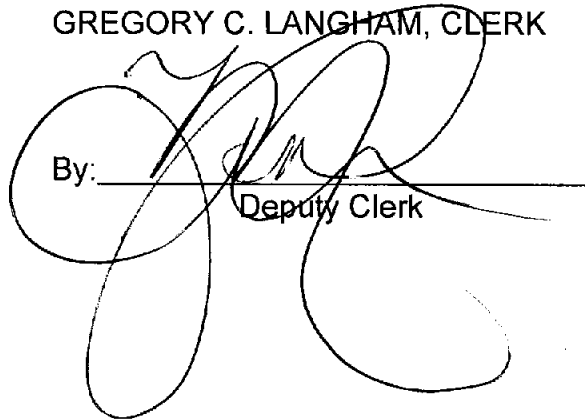
Timothy White Body
Reg No. 09470-059
FCI - Englewood
9595 West Quincy Ave
Littleton, CO 80123

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 1/29/09

GREGORY C. LANGHAM, CLERK

By: _____

Deputy Clerk

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is highly cursive and loops around the line. The text "By:" is to the left of the line, and "Deputy Clerk" is to the right.