

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02779-BNB

NAKIA PETTUS,

Plaintiff,

v.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 08 2009

GREGORY C. LANGHAM
CLERK

UNITED STATES (sued in their individual and/or official capacities),
U.S. BUREAU OF PRISONS (sued in their individual and/or official capacities), and
SARA M. REVELL (Warden) (sued in their individual and/or official capacities),

Defendants.

ORDER REVOKING LEAVE TO PROCEED *IN FORMA PAUPERIS*

Plaintiff, Nakia Pettus, is a prisoner in the custody of the United States Bureau of Prisons who currently is incarcerated at United States Penitentiary in Florence, Colorado. He filed *pro se* a civil rights complaint pursuant to *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), and 28 U.S.C. § 1331 (1993).

On February 25, 2009, Magistrate Judge Boyd N. Boland ordered Mr. Pettus to file within thirty days an amended complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and that alleged each defendant's personal participation in the asserted claims. On March 12, 2009, Mr. Pettus submitted an amended complaint. On April 2, 2009, Mr. Pettus supplemented the amended complaint.

On March 16, 2009, before addressing the amended complaint, Magistrate Judge Boland addressed Mr. Pettus's *in forma pauperis* status in a separate order to

show cause noting that Mr. Pettus had been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 in the instant action. Through independent research, Magistrate Judge Boland determined that Mr. Pettus was subject to filing restrictions under § 1915(g). Pursuant to § 1915(g):

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.

In the March 16, 2009, order to show cause, Magistrate Judge Boland pointed out that Mr. Pettus had 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. On September 28, 2004, the United States District Court for the Middle District of Florida (Middle District of Florida) dismissed a complaint filed by Mr. Pettus as frivolous. **See *Pettus v. Officer Carlson, et al.***, No. 04-cv-00384 (M. D. Fla. Sept. 28, 2004). Mr. Pettus appealed to the United States Court of Appeals for the Eleventh Circuit, which dismissed the appeal as frivolous. **See *Pettus v. Officer Carlson, et al.***, No. 04-15976-H (11th Cir. March 31, 2005). Mr. Pettus then filed another complaint in the Middle District of Florida containing the same factual allegations as in No. 04-cv-00384. On March 7, 2006, the Middle District of Florida, found that the claims were frivolous, and dismissed the case with prejudice. **See *Pettus v. United States, et al.***, No. 05-cv-1892-ORL-19, 2006 WL 560162 (M. D. Fla. Mar. 7, 2006).

Therefore, because Mr. Pettus 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, Magistrate Judge Boland ordered him to show cause within thirty days why his *in forma pauperis* status in this action should not be revoked. On April 2, 2009, Mr. Pettus submitted his response to the show-cause order titled "Motion for continuous to procede [sic] in forma pauperis." He has failed to show cause why his *in forma pauperis* status in this action should not be revoked. He also fails to allege facts in either the amended complaint or the supplement to the amended complaint demonstrating that he is in imminent danger of serious physical injury. Accordingly, it is


ORDERED that the *in forma pauperis* status of Plaintiff, Nakia Pettus, is revoked. It is

FURTHER ORDERED that Plaintiff is directed to submit **within thirty days from the date of this order** the \$340.00 balance due on the \$350.00 filing fee in this action. Mr. Pettus already paid an initial partial filing fee of \$10.00 on February 23, 2009. It is

FURTHER ORDERED that failure to pay the balance due on the filing fee within the time allowed will result in the dismissal of the instant action.

DATED at Denver, Colorado, this 7 day of April, 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-02779-BNB

Nakia Pettus
Reg No. 11015-002
US Penitentiary - Florence
P.O. Box 7000
Florence, CO 81226-7000

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 4/8/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk