

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02273-BNB

DAWANE ARTHUR MALLETT, and  
LAMARCUS HILLARD,

Petitioners,

v.

ERIC HOLDER, JR., US Attorney General,  
DAVID B. BERKEBILE, ADX Warden,  
SHUN KUDA, Associate Warden,  
PATRICIA RANGEL, SIA Acting, and  
CHRISTOPHER SYNSVOLL, Supervisory Institutional Attorney,

Respondents.

---

ORDER OF DISMISSAL

---

Petitioner, Dawane Arthur Mallett, a prisoner in the custody of the Federal Bureau of Prisons (BOP) at the United States Penitentiary, Administrative Maximum, at Florence, Colorado, initiated this action by filing *pro se* a motion (ECF No. 1) seeking mandamus relief pursuant to 28 U.S.C. § 1361. The instant action was commenced and, on August 23, 2013, Magistrate Judge Boyd N. Boland entered an order directing Mr. Mallett to cure certain deficiencies if he wished to pursue his claims in this action. Specifically, Magistrate Judge Boland directed Mr. Mallett to file a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file a properly supported motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. Mr. Mallett was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On September 19, 2013, Mr. Mallett submitted to the Court for filing in this action a document titled "Amended Complaint" (ECF No. 4) seeking mandamus relief pursuant to 28 U.S.C. § 1361. The "Amended Complaint" lists both Mr. Mallett and another federal prisoner, Lamarcus Hillard, as petitioners. Attached to the "Amended Complaint" is a certified copy of Mr. Mallett's inmate trust fund account statement. (See ECF No. 4 at 11-12.) Mr. Mallett also submitted a "Notice to the Clerk of the Court" (ECF No. 5) on September 19, 2013.

Petitioners have failed to cure the deficiencies in this action because the "Amended Complaint" is not on the court-approved Prisoner Complaint form and neither Petitioner has paid the required filing and administrative fees or filed a motion seeking leave to proceed *in forma pauperis*. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies. Furthermore, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If either Petitioner files a notice of appeal he also must pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Petitioners failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 3<sup>rd</sup> day of October, 2013.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court