

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION

JONATHAN LEWIS,

Plaintiff,

v.

4:20cv300–WS/HTC

FDOC,

Defendant.

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ORDER ADOPTING THE MAGISTRATE JUDGE’S  
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation (ECF No. 15) docketed August 10, 2020. The magistrate judge recommends that this case be dismissed pursuant to the three-strikes provision of 28 U.S.C. § 1915(g).

The plaintiff, Jonathan Lewis, has filed objections (ECF No. 21) to the magistrate judge’s report and recommendation. Among other things, Lewis suggests that the magistrate judge erred in counting—as strikes—cases for which he paid the filing fee. Courts have consistently determined, however, that the “three strikes” provision set forth in 28 U.S.C. § 1915(g) is not limited to prior in forma pauperis actions. *See, e.g., Belanus v. Clark*, 796 F.3d 1021, 1028 (9th Cir.

2105) (concluding that dismissals may be designated as strikes under § 1915(g) regardless of whether the filing fee is paid); *Hyland v. Clinton*, 3 F. App'x 478, 479 (6th Cir. 2001) (noting that “§ 1915(g) does not distinguish between prior in forma pauperis actions and prior actions in which the fee was paid”). Thus, the fact that Lewis paid the filing fee in some but not all of his prior cases is of no benefit to him—all of Lewis's dismissed cases cited by the magistrate judge count as strikes. Because Lewis has not paid the filing fee in this case, has had three (3) or more strikes under § 1915(g), and has not demonstrated that he is under imminent danger of serious physical injury, his case must be dismissed without prejudice, just as the magistrate judge has recommended.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation (ECF No. 15) is hereby ADOPTED and incorporated by reference into this order.
2. Plaintiff's Motion for a Temporary Restraining Order and a Preliminary Injunction (ECF No. 4) is DENIED. All other pending motions are DENIED.
3. The plaintiff's complaint and this action are DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1915(g).
4. The clerk shall enter judgment stating: “This action is dismissed without prejudice pursuant to 28 U.S.C. § 1915(g).”

DONE AND ORDERED this 11th day of September, 2020.

s/ William Stafford  
WILLIAM STAFFORD  
SENIOR UNITED STATES DISTRICT JUDGE