

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 08 C 3817
)	(01 CR 1115)
ALFREDO LONGORIA,)	
)	
Defendant.)	

MEMORANDUM ORDER

This Court has previously denied a certificate of appealability in connection with the notice of appeal filed by Alfredo Longoria ("Longoria") in this action, at the same time apprising Longoria of his right to retender that issue to the Court of Appeals. Now Longoria has filed an Affidavit Accompanying Motion for Permission To Appeal In Forma Pauperis, which ordinarily calls for this Court to make a determination under 28 U.S.C. §1915 ("Section 1915").

As this Court's October 8, 2008 Statement as to Issuance of Certificate of Appealability indicates, its denial of such a certificate has been predicated on this Court's determination that Longoria's proposed appeal is legally frivolous. This Court's understanding of our Court of Appeals' position in such a situation is that a grant of in forma pauperis status would be inconsistent with that determination.

But this Court is less clear as to whether the Section 1915 requirement of payment of the appellate fees (which aggregate

\$455) still applies in such a situation (information received from the Seventh Circuit's Clerk's Office indicates that the obligation to pay the filing fees in installments as prescribed by Section 1915 is triggered by the simple filing of a notice of appeal). If such is the case, Longoria's Affidavit is inadequate because he has wholly ignored this instruction in the Affidavit form provided by the Court of Appeals:

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

Accordingly Longoria is ordered to comply with the just-quoted directive on or before November 21, 2008. In the meantime, this Court invites a response from the Court of Appeals as to the applicability or inapplicability of the Section 1915 requirement under the circumstances described here.



Milton I. Shadur
Senior United States District Judge

Date: November 5, 2008