

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

DELARICK W. EVANS,

Plaintiff,

v.

CASE NO. 16-3244-SAC-DJW

UNITED STATES OF AMERICA,

Defendant.

ORDER

This matter comes before the court on a civil complaint filed pro se by a prisoner in state custody. Plaintiff seeks to be recognized as a direct descendant of a federally-recognized tribe and related housing assistance.

As amended by the Prison Litigation Reform Act (PLRA) of 1996, 28 U.S.C. § 1915, the federal in forma pauperis statute, provides that a prisoner bringing a civil action or appeal in federal court must pay the full filing fee but may do so over time if granted leave to proceed in forma pauperis. 28 U.S.C. § 1915(b)(1)-(2). The PLRA amendments also include a “3-strike” provision that reads:

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.

28 U.S.C. §1915(g).

This provision does not bar a prisoner with three strikes from filing civil actions, but it operates to eliminate the privilege to proceed in forma pauperis. A prisoner who has three strikes may still proceed in civil actions or appeals by prepaying the full filing fee. See *Jennings v. Natrona County Detention Center Medical Facility*, 175 F.3d 775, 778 (10th Cir. 1999); see also *Medberry v. Butler*, 185 F.3d 1190, 1193 n.2 (11th Cir. 1999)(“We note that 28 U.S.C. §1915(g) does not deny prisoners the right of access to the courts; it merely requires them to pay the filing fee immediately and in full rather than on an installment plan.”)

Having reviewed the court records, the court finds plaintiff is subject to the provisions of 28 U.S.C. § 1915(g). Plaintiff has filed cases in this district using both the name “Delarick Evans” and an alias name of “Delarick Hunter.” The Kansas Department of Corrections (“KDOC”) Offender Search website¹ lists “Delarick Hunter” as an alias name for plaintiff, and court records reflect that all pleadings submitted by Delarick Evans and Delarick Hunter bear the same prison identification number (KDOC #67355) for the prisoner plaintiff.

Because plaintiff has filed at least three cases as “Delarick Hunter” which were dismissed as legally frivolous or as stating no claim for relief,² the court finds the “3-strike” bar in § 1915(g) applies to bar plaintiff from proceeding in forma pauperis in this civil action absent a showing that he is under imminent danger of serious physical harm. While no such showing of imminent physical harm is evident on the face of the complaint, the court will allow plaintiff a

¹ See <https://kdocrepository.doc.ks.gov/kasper/search/detail?kdocNumber=67355>

² The cases are: (1) *Hunter v. Supreme Court of Kansas*, Case No. 07-3037-SAC (action seeking federal mandamus relief against state officials, dismissed as frivolous); (2) *Hunter v. State of Kansas*, Case No. 08-3075-SAC (civil rights complaint concerning pending state court criminal proceeding, damages claims dismissed as frivolous, claims for declaratory and injunctive relief dismissed on abstention grounds); and (3) *Hunter v. McKune*, Case No. 08-3111-SAC (civil rights action seeking damages for error in sentence computation dismissed as barred by *Heck v. Humphrey*, 512 U.S. 477 (1994)).

limited opportunity to make that showing or pay the \$400.00 filing fee. The failure to file a timely response may result in the dismissal of this action without additional prior notice.

IT IS, THEREFORE, BY THE COURT ORDERED that plaintiff is granted to and including February 2, 2017, to show cause to the Honorable Sam A. Crow why his motion for leave to proceed in forma paupers should not be denied pursuant to 28 U.S.C. § 1915(g) or to submit the \$400.00 filing fee to the clerk of the court.

IT IS SO ORDERED.

Dated this 19th day of January 2017, in Kansas City, Kansas.

s/ David J. Waxse
David J. Waxse
U.S. Magistrate Judge