

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

PETER JOSHUA LABRECK,

Plaintiff,

v.

Case No. 17-11905

HEIDI E. WASHINGTON, DIRECTOR,
et al.,

Defendants.

**ORDER TERMINATING OBJECTIONS, DENYING WITHOUT PREJUDICE
DEFENDANTS' MOTION TO REVOKE PLAINTIFF'S *IN FORMA PAUPERIS* STATUS**

Before the court is a "Second Report and Recommendation to Grant Defendants' Motion to Revoke Plaintiff's *In Forma Pauperis* Status and to Dismiss . . ." (the "R&R") issued by Magistrate Judge David Grand on August 3, 2018. Objections were timely submitted by Plaintiff Peter LaBreck, but not placed on the docket until September 14, 2018. The objections are handwritten, voluminous, and difficult to comprehend given Plaintiff's pro se status. No responses to the objections have yet been filed. Though this case has been pending since 2017, it was only recently reassigned to the undersigned judge. (See July 3, 2018 Text Entry Order of Reassignment.) The issue currently before the court, and presented in the R&R, is whether Plaintiff has sufficiently shown that he is "under imminent danger of serious physical injury" in order to overcome the "three strikes" rule articulated under 28 U.S.C. § 1915(g).

Having reviewed the R&R, and the underlying documents, the court is not convinced, at this time, that Plaintiff's *in forma pauperis* status should be revoked. For all the reasons stated in the R&R, the court is skeptical that Plaintiff presents proof that he is under an imminent danger of serious harm; nonetheless, the court is reluctant to make that finding without further study of the relevant issues. Unfortunately, from reviewing the file, it appears that there have been multiple conferences on this issue, before at least two different judges, as well as communications from Plaintiff's federal defense attorney to the prior presiding Judge. It appears that at various times the previous presiding Judge instructed the parties to communicate with one another and to share relevant information, but the court cannot tell, from the matters presented, to what extent such meetings occurred or if any progress was made. Further, it appears that the matters presented in this case are, to some extent, matters of hybrid criminal-civil issues, and that they are purportedly intertwined with Plaintiff's federal criminal case. The court is inclined to appoint counsel, at least on a preliminary basis, from the Federal Defenders Office, to aid the court in streamlining the issues presented in the lengthy, hand-written submissions from Plaintiff. However, there is currently no pending motion by Plaintiff to appoint counsel. Thus, the court will deny the pending motion, without prejudice, in order to obtain Plaintiff's view on the suitability of appointing counsel—only preliminarily—to represent his interests in demonstrating whether the “imminent danger” exception applies to his case. Accordingly,

IT IS ORDERED that Defendant's “Motion to Revoke Plaintiff's *In Forma Pauperis* Status and to Dismiss . . .” (Dkt. # 18) is DENIED WITHOUT PREJUDICE and all pending objections are hereby TERMINATED AS MOOT.

IT IS FURTHER ORDERED that Plaintiff Peter Joshua LaBreck is DIRECTED to submit to the court by **October 22, 2018**, a statement indicating his position about the suitability of appointing an attorney from the Federal Defender's Office to represent his interests in organizing, scheduling, and streamlining the issues in this case.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 28, 2018

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, September 28, 2018, by electronic and/or ordinary mail.

s/William Barkholz for Lisa Wagner
Case Manager and Deputy Clerk
(810) 292-6525

S:\CLELAND\CLELAND\CHD\ORDERS AND OPINIONS\R&RS\17-11905.LABRECK.OBJECTIONS.R&R.DOCX