



*Famiglio*, 726 F.3d 448, 451-52 (3d Cir. 2013) (quoting 28 U.S.C. § 1915(a)(2)). However, the statute prohibits a prisoner from bringing a civil action or an appeal *in forma pauperis* pursuant to 28 U.S.C. § 1915 "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). Where a prisoner has three prior qualifying dismissals under § 1915(g), the prisoner is required to prepay the filing fee before bringing another action or appeal, unless he or she shows "imminent danger of serious physical injury." 28 U.S.C. § 1915(g). Thus, "§ 1915(g) does not block a prisoner's access to the federal courts. It only denies the prisoner the privilege of filing before he has acquired the necessary filing fee." *Ball*, 726 F.3d at 452 (quoting *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 314 (3d Cir. 2001) (en banc)).

4. As of the date Kelley signed his affidavit of poverty in this case, Kelley has had three prior civil actions dismissed by this Court, while he was incarcerated, on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, within the meaning of § 1915(g). First, *Kelley v. Passaic County Jail*, Civ. No. 94-3528 (DRD) order (D.N.J. Sept. 16, 1996), counts as a strike under § 1915(g) because Kelley was incarcerated when he was granted permission to proceed *in forma pauperis*, the Court dismissed the complaint by granting defendants' motion pursuant to Fed. R. Civ. P. 12(b)(6), and Kelley did not appeal. Second, *Kelley v. Puma*, Civ. No. 94-5731 (WGB) order (D.N.J. Nov. 28, 1994), counts as a strike because Kelley was incarcerated when he was granted permission to proceed *in forma pauperis*, the Court dismissed the complaint with prejudice as frivolous, and Kelley did not appeal. Third,

*Kelley v. Talarico*, Civ. No. 94-5733 (WGB) order (D.N.J. Nov. 28, 1994), counts as a strike because Kelley was incarcerated when he was granted permission to proceed *in forma pauperis*, the Court dismissed the complaint with prejudice as frivolous, and Kelley did not appeal.

5. The facts asserted in the instant Complaint, which concern the alleged denial of Kelley's constitutional right to practice the Jewish religion, do not suggest that Kelley is in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g); *Ball*, 726 F.3d at 467-70; *Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001).

6. Based on the foregoing, this Court will deny Kelley's application to proceed *in forma pauperis* and administratively terminate this matter.

7. If Kelley prepays the filing and administrative fee totaling \$400 within 30 days of the date of the entry of this Order, then this Court will reopen the case and screen the Complaint for dismissal, as required by 28 U.S.C. § 1915A.

8. An appropriate Order accompanies this Memorandum Opinion.

s/William J. Martini

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**WILLIAM J. MARTINI, U.S.D.J.**

Dated: April 9, 2014